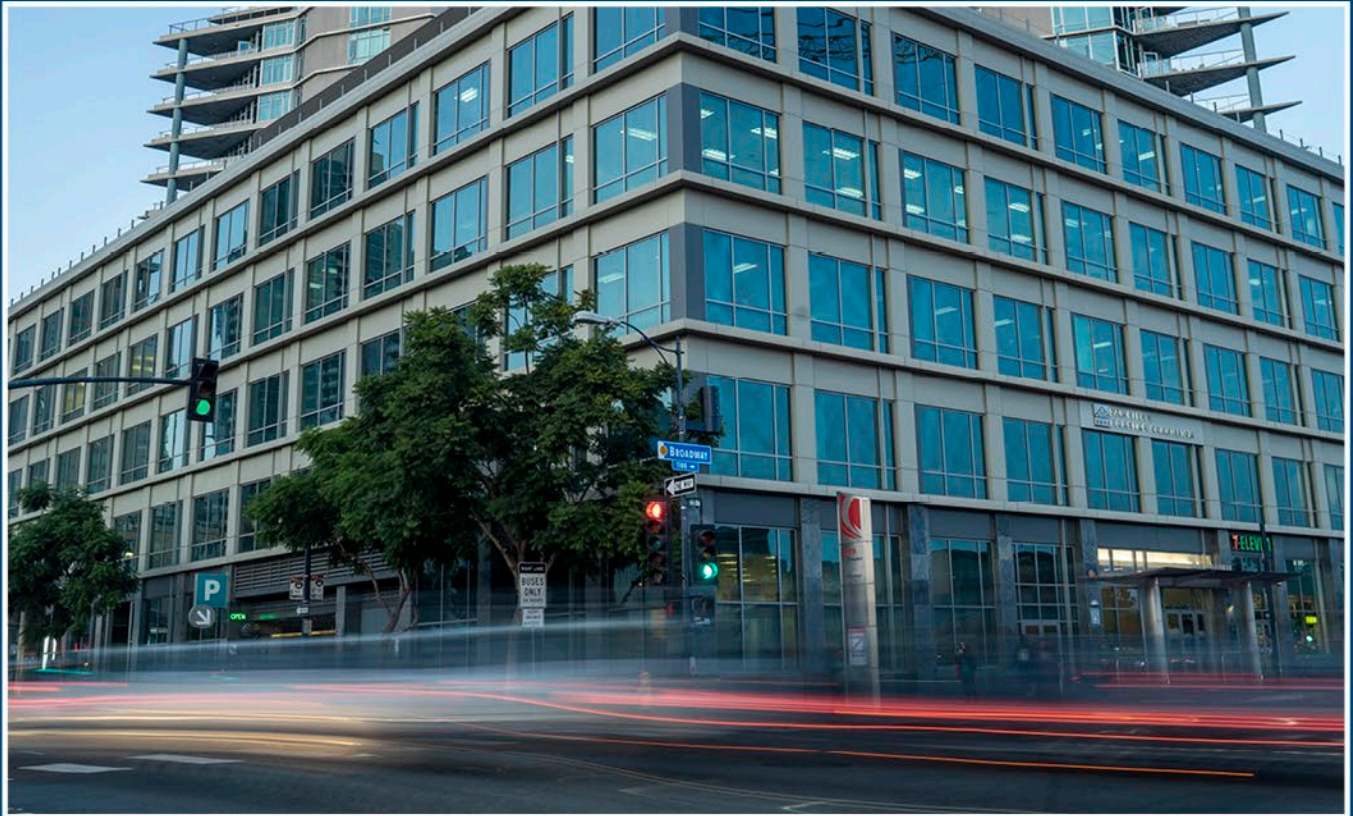




SAN DIEGO
HOUSING
COMMISSION



SDHC Board of Commissioners Onboarding Manual

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ONBOARDING

- Introductory Meeting with San Diego Housing Commission (SDHC) President & CEO and Executive Vice Presidents
- Training with SDHC President & CEO, SDHC General Counsel and City of San Diego Ethics Commission representative, if possible
 - City Ethics Ordinance
 - SDHC Conflict of Interest Policies
 - Statements of Economic Interest (Form 700)
 - Brown Act
 - Roberts Rules of Order
 - SDHC Board Meeting decorum and process
 - Public Records Act
- SDHC Rental Assistance Division Overview with SDHC Executive Vice President of Rental Assistance and Workforce Development
- SDHC Homeless Housing Innovations Division Overview with SDHC Senior Vice President of Homelessness Innovations
- SDHC Real Estate Division Overview with SDHC Executive Vice President of Real Estate
- SDHC Policy and Land Use Overview with SDHC Senior Vice President of Policy and Land Use



SDHC OVERVIEW

The San Diego Housing Commission (SDHC) has earned a national reputation as a model public housing agency, creating innovative programs that provide housing opportunities for individuals and families with low income or experiencing homelessness in the City of San Diego — the eighth-largest city in the nation, second largest in California. For Fiscal Year 2024, SDHC has an approved budget of \$595 million and 395 full-time staff positions.

Created in 1979, SDHC performs four major program functions to create affordable housing opportunities:

- Provide federal rental assistance for more than 17,000 households with low income, annually;
- Address homelessness through the Community Action Plan on Homelessness for the City of San Diego; HOUSING FIRST – SAN DIEGO, SDHC’s homelessness initiative, which has created more than 11,200 housing solutions for people experiencing homelessness or at risk of homelessness; and City of San Diego homelessness shelters and services programs that SDHC administers;
- Creating and preserving affordable housing through SDHC’s roles as a developer, investor, lender, landlord, issuer of Multifamily Housing Revenue Bonds, and administrator of City land use programs, such as inclusionary housing. More than 23,000 affordable housing units in which SDHC has participated are currently in service in the City of San Diego, of which 4,120 are owned or managed by SDHC, including its nonprofit affiliate; and
- Monitoring and advocating legislation, regulations and policies that advance SDHC’s mission, vision, purpose, core values and strategic priorities.

Equity and Inclusivity

Since October 2020, SDHC has taken important steps to design, develop and implement a formal Equity Assurance initiative that proactively supports equity and inclusion in SDHC’s existing and future programs, policies, activities and practices. Accomplishments achieved in that time include: incorporating equity and inclusion in SDHC’s Strategic Plan, providing internal training, conducting equity lens reviews, procuring a proactive community engagement platform, and assisting with the development of SDHC’s First-Time Homebuyer Program for Black, Indigenous, People of Color (BIPOC) households with middle income. The most recent Equity Assurance update presented to the SDHC Board of Commissioners is available on SDHC’s website at https://sdhc.org/wp-content/uploads/2023/03/108_EquityWorkshop_Final.pdf

Annual Budget

SDHC’s Fiscal Year is July 1 to June 30. Each year, SDHC staff present the proposed budget for the upcoming Fiscal Year initially as an informational workshop to the SDHC Board of Commissioners (Board). The following month, SDHC staff return to the SDHC Board to request the SDHC Board’s recommendation for the Housing Authority of the City of San Diego (Housing Authority¹) to approve the budget. SDHC’s budget is then presented to the City Council’s Budget Review Committee, usually in May each year. SDHC staff present the budget to the

¹ On October 3, 1968, the San Diego City Council passed resolution R-194944, establishing the Housing Authority and declaring City Councilmembers to be the Housing Authority Commissioners.



Housing Authority for final consideration in June, typically on the same day the City Council considers the City of San Diego's Fiscal Year Budget.

MOVING TO WORK AGENCY

SDHC is one of only 39 original Moving to Work (MTW) agencies out of approximately 3,200 public housing authorities in the nation. In 2021 and 2022, the U.S. Department of Housing and Urban Development announced the addition of 87 public housing authorities as MTW agencies.

MTW status provides SDHC and other public housing authorities the flexibility to implement a variety of innovative, cost-effective approaches to provide housing assistance in the communities they serve. This flexibility is essential to creating localized strategies that most effectively meet their communities' needs while achieving the MTW program's statutory objectives: use federal dollars more efficiently; help residents to become more financially self-reliant; and improve housing choices for families with low income.

MAJOR PROGRAM FUNCTIONS

Rental Assistance

SDHC's largest program is federal Section 8 Housing Choice Voucher rental assistance. The U.S. Department of Housing and Urban Development (HUD) funds this rental assistance program.

- **Section 8 Housing Choice Vouchers:**
SDHC helps pay rent for more than 17,000 households with low income in the City of San Diego each year.
 - Participants pay a predetermined portion of their income toward their rent. SDHC pays the remainder of the rent, up to the applicable payment standard, directly to the landlord.
 - More than 80 percent of participants have extremely low income (less than 30 percent of the Area Median Income, or \$41,350 per year for a family of four)
 - Approximately 60 percent of participants are identified as "elderly/disabled," and 40 percent are identified as able to work (Work-Able) under SDHC's Path to Success Initiative. Effective July 2024, the definition of "elderly" will change from age 55 and older to age 62 and older to align with HUD's definition.

Included in the more than 17,000 Housing Choice Vouchers are special purpose vouchers committed to populations at risk of or experiencing homelessness, such as Veterans Affairs Supportive Housing (VASH), Emergency Housing Vouchers (EHV), Family Unification Program (FUP), Mainstream Vouchers and MTW programs. More than 5,000 federal rental housing vouchers have been committed to address homelessness in the City of San Diego.

- Wait List
The need for federal rental assistance for households with low income exceeds the amount of federal funding available for the rental assistance program. As a result, SDHC maintains Rental Assistance Wait Lists. Households with low income apply for rental assistance from SDHC through the SDHC Rental Assistance Wait List portal,



available on SDHC's website at <https://sdhc.org/housing-opportunities/help-with-your-rent/wait-list-portal/>.

SDHC has implemented preferences for the Wait List:

- People who live or work in the City of San Diego.
- Extremely low-, very low- and low-income families with two or more people who include a dependent, with annual income less than 80 percent of San Diego's Area Median Income.
- Active-duty military and veterans
- Seniors aged 62 or older with low income.
- Individuals with disabilities.
- Individuals experiencing homelessness with a disability.

SDHC selects applicants from the Wait List by the date and time they applied, on a first come, first served basis, along with the preferences that they match, if any. When funding is available, SDHC selects names from the Wait List and staff determine whether the applicant is eligible for rental assistance.

To maintain accurate lists of applicants for the limited amount of federal rental assistance in the City of San Diego, SDHC periodically updates its Wait Lists. This includes extensive outreach to applicants on the Wait List and instructions to update their information to remain on the Wait List.

– Path to Success

This SDHC MTW initiative encourages Section 8 Housing Choice Voucher rental assistance families to become more financially self-reliant. Path to Success modified the method SDHC uses to determine the portion of the monthly rent that rental assistance families and public housing residents pay. The rent methodology was designed to motivate families to increase earnings. In addition, Path to Success set minimum monthly rent payment amounts for Work-Able participants. There is no minimum monthly rent payment amount for Elderly/Disabled families.

– SDHC Achievement Academy

The SDHC Achievement Academy is a learning and resource center with programs that emphasize career planning, job skills, job placement and personal financial education to help individuals and families become more financially self-reliant. Programs are available at no cost to participants, who primarily are Section 8 Housing Choice Voucher participants, public housing residents or participants in certain homelessness programs. Households with low income citywide are eligible to participate in SDHC Achievement Academy programs through its designation as an EnVision Center, in collaboration with the City of San Diego and San Diego Workforce Partnership. With MTW flexibility, SDHC launched the SDHC Achievement Academy in 2010.

– Choice Communities

This SDHC MTW initiative provides families that receive rental assistance with more flexibility to choose to live in neighborhoods that offer more opportunities for transportation, schools, and employment. To increase housing opportunities through this initiative and to assist as many low-income families as possible, SDHC updated the payment standards that are used to determine the amount of rental assistance



each family receives. SDHC divided City of San Diego ZIP Codes into three groups, each with its own payment standards: Choice Communities, Enterprise Communities and Signature Communities.

- Landlord Services
 - *Landlord Partnership Program (LPP)*

This program provides financial and support incentives to attract and retain landlords to rent to families that receive federal rental assistance from SDHC.
 - *Landlord Portal*

SDHC's Landlord Portal provides landlords with access to information about their accounts – 24 hours a day, 7 days a week – from anywhere they have Internet access: unit inspection results; ledger balances; pending payment and abatement holds; caseworker assignments; contact and profile information; online forms (change of address, etc.)
 - *Establishing Rents*

Landlords who lease their units to Section 8 Housing Choice Voucher households are required to submit a request to SDHC if they want to increase the rent. SDHC determines whether or not the rent requested by the landlord for a Section 8 Housing Choice Voucher rental assistance household is reasonable. SDHC compares the requested rent to the rents on other units on the premises with tenants who do not receive rental assistance, as well as other, comparable unassisted rental units in the market. Rent reasonableness must be determined at the rental assistance household's initial move-in and when the landlord requests a rent increase.
 - *Inspections*

SDHC is required to ensure that all housing units occupied by Section 8 Housing Choice Voucher rental assistance participants meet certain health and safety standards. These "Housing Quality Standards" (HQS) are set by the U.S. Department of Housing & Urban Development (HUD). Before SDHC enters into a contract and issues rental assistance payments, units must pass an HQS inspection.
- **Compliance Monitoring Department**

SDHC's Rental Assistance Division includes the agency's Compliance Monitoring Department, which verifies that housing units designated as affordable are occupied by qualified low- and moderate-income tenants. This department also tracks tenant and landlord compliance with affordability requirements stemming from the City of San Diego's Inclusionary Housing law, Density Bonus land-use regulations, state and federal Multifamily Housing Revenue Bond tax credits, and housing built with financial support from SDHC. In addition, the Compliance Monitoring Department administers the tenant relocation requirements that result from condominium conversion projects within the City of San Diego. SDHC does not monitor compliance of affordable units that do not receive SDHC funding and are not subject to the City program requirements (for example, affordable units for which the U.S. Department of Housing and Urban Development provides financial assistance directly, without SDHC's involvement).



Homelessness Solutions

SDHC is a leader in collaborative efforts to address homelessness in the City of San Diego.

- **HOUSING FIRST – SAN DIEGO**

SDHC's homelessness initiative, HOUSING FIRST – SAN DIEGO has created more than 11,200 housing solutions for individuals and families experiencing homelessness or at risk of homelessness.

HOUSING FIRST – SAN DIEGO launched on November 12, 2014. It is rooted in the national "Housing First" model of addressing homelessness. "Housing First" focuses on providing appropriate housing options as quickly as possible, with as few requirements or conditions as possible, and access to supportive services, as needed. Current programs include but are not limited to: homelessness prevention and diversion, SDHC Moving Home Rapid Rehousing, Landlord Engagement and Assistance Program, New Permanent Supportive Housing, and SDHC Moving On Rental Assistance.

- The Landlord Engagement and Assistance Program (LEAP) provides incentives and benefits to landlords who rent to San Diegans experiencing homelessness, as well as housing location and financial assistance for tenants to pay security deposits and application fees. LEAP households in other HOUSING FIRST – SAN DIEGO programs, such as SDHC Moving Home Rapid Rehousing, secure rental homes of their own.

- **Community Action Plan on Homelessness for the City of San Diego**

SDHC was among the lead agencies in the development of the Community Action Plan on Homelessness (Action Plan). Through a contract with SDHC on behalf of the City, the Corporation for Supportive Housing (CSH), a nationally recognized consultant with broad expertise in the area of homelessness, developed this Action Plan, which is a comprehensive, 10-year plan that builds on recent progress, lays out short-term achievable goals and serves as a guide for long-term success in addressing homelessness.

The City Council accepted the Action Plan in October 2019. In fall 2022, the Action Plan's Leadership Council requested that an updated analysis of the crisis response and housing needs in the Action Plan be conducted. As a result, the Action Plan's Implementation Team worked with CSH to conduct an updated needs analysis. The updates from this analysis were presented to the SDHC Board of Commissioners, the City Council's Land Use and Housing Committee and the City Council in fall 2023.

SDHC's President & CEO serves on the Action Plan's Leadership Council; SDHC's Executive Vice President of Strategic Initiatives serves on the Action Plan's Implementation Team; and SDHC's Vice President of Policy serves as one of the Policy Liaisons for the Action Plan.

- **City's Homeless Shelters and Services Programs**

SDHC has administered the City's homeless shelters and services programs since 2010 through Memoranda of Understanding with the City.

- Shelters
The City's Bridge Shelter and Interim Housing programs address the immediate shelter needs of San Diegans experiencing homelessness. The shelters provide safe,



temporary housing with as few barriers to shelter residency as possible, as well as stabilization and supportive services to prepare individuals and families experiencing homelessness for the most appropriate housing solutions. SDHC currently oversees a coordinated shelter intake process to maximize the use of available beds within the system. NOTE: Bed availability listed below is subject to change based on public health guidance from local, state, or federal authorities.

City of San Diego Bridge Shelters			
Shelter	Operator	Population Served	Beds
16 th Street and Newton Avenue	Alpha Project	Adults age 18 or older	326
17 th Street and Imperial Avenue	Alpha Project	Adults age 18 or older	140
Golden Hall, 202 C St.	Father Joe's Villages	Adult men age 18 or older	324

City of San Diego Interim Housing Programs			
Program	Operator	Population Served	Beds
Paul Mirabile Center	Father Joe's Villages	Adults age 18 or older	350
Connections Housing	People Assisting the Homeless (PATH)	Adults age 18 or older	80
Bishop Maher Center	Father Joe's Villages	Adult women age 18 or older	28
Harm Reduction Shelter	Alpha Project	Adults age 18 or older experiencing substance use disorder or co-occurring conditions	44
Rosecrans Shelter	Alpha Project	Adults age 18 or older	150
Interim Family Shelter	Alpha Project	Families experiencing homelessness	105
Rachel's Promise Women's Shelter	Catholic Charities of San Diego	Women age 18 or older	40
Haven Family Interim Shelter Program	The Salvation Army	Families experiencing homelessness	9 units (32 beds)
LGBTQ+ Affirming Shelter for Transition-Age Youth	LGBT Center	Transition-age youth ages 18-24	23



City of San Diego Youth Shelters			
Program	Operator	Population Served	Beds
TAY Interim Shelter	Urban Street Angels	Transition-Age Youth (TAY) ages 18 to 24	52
Youth Emergency Shelter	San Diego Youth Services	Youth ages 12 to 17 who are runaways and/or experiencing homelessness	17

– Transitional Housing

Transitional Housing programs provide service-enhanced temporary housing for up to 24 months along with a variety of supportive services to assist individuals and families in transitioning to permanent housing. Current Transitional Housing programs include:

Current City of San Diego Transitional Housing Programs			
Program	Operator	Population Served	Beds/Units
Serial Inebriate Program	Mental Health Systems	Individuals identified as chronic inebriates experiencing homelessness, age 18 or older, who are offered treatment in lieu of custody through a court order	56 beds
Turning Point	YMCA of San Diego County	Single and parenting youth ages 16 to 21	10 units
Transitional Living Center	The Salvation Army	Single mothers and their children, prioritizing families that have experienced domestic violence or human trafficking or are recovering from substance abuse	28 units

– Supportive Services

▪ *Day Center for Adults Experiencing Homelessness*

The Day Center for Adults Experiencing Homelessness, operated by Father Joe's Villages, is a drop-in facility where adults experiencing homelessness or at risk of homelessness may receive a variety of services and resources to meet their basic and longer-term needs, such as:

- Information and referrals to stabilization services and other community resources
- Showers and bathrooms
- Food and water
- Mail services
- Cell phone charging
- Secure storage
- Laundry services

▪ *Storage Centers*

The City's storage centers serve San Diegans experiencing homelessness. They provide a safe place for people to keep their belongings as they attend to personal needs, which may include working on housing options, looking for or going to work, attending classes, meeting with service providers, seeking medical care, or other



activities such as accessing cleaning or washing facilities. There are currently three storage centers operating in the City:

Program	Operator	Bins
Storage Connect Center I 116 S. 20 th St. (Sherman Heights)	Mental Health Systems	Up to 500
Storage Connect Center II 5453 Lea St. (Chollas Creek)	Mental Health Systems	Up to 500
Transitional Storage Center 252 16 th St. (Downtown San Diego)	Think Dignity	Up to 400 lockers and bins

- *HomeShare*
The HomeShare program, operated by ElderHelp of San Diego, is a roommate matching service, connecting people who want to share their homes with those looking for affordable housing. The program connects individuals experiencing homelessness or at risk of homelessness with seniors residing in the City who are interested in renting a spare bedroom for a fee or service exchange arrangement.
- Homelessness Response Center (HRC)
The City of San Diego's Homelessness Response Center (HRC) provides a broad range of services to help individuals and families experiencing homelessness on their path to permanent or other long-term housing. SDHC operates and administers the HRC, in collaboration with the City of San Diego, People Assisting the Homeless (PATH), the Regional Task Force on Homelessness (RTFH), and homelessness service providers. The HRC provides two major programs on-site:
 - *System Navigation Services*
Coordination of all activities to move someone from homelessness to permanent or longer-term housing.
 - *Support Services On-site*
A variety of supportive services from multiple service providers to address individual needs of people experiencing homelessness.

All HRC services are focused on meeting the unique needs of each customer being served. For more information: <https://www.sdhc.org/homelessness-solutions/hrc/>

- Permanent Housing
 - *Rapid Rehousing*
Rapid Rehousing (RRH) provides short- and medium-term rental assistance and supportive services to households experiencing homelessness. SDHC operates its Moving Home program and administers eight rapid rehousing programs, operated by five providers: The Salvation Army, People Assisting the Homeless (PATH), Home Start, Inc., South Bay Community Services Corporation, and Father Joe's Villages.
 - *Permanent Supportive Housing*
Permanent Supportive Housing (PSH) is long-term rental assistance paired with intensive wraparound supportive services to help maintain housing stability for



households that experienced homelessness and have long-term disabilities, extensive service needs, and lengthy or repeated episodes of homelessness.

SDHC receives grants from the U.S. Department of Housing and Urban Development (HUD) Continuum of Care (CoC) program to fund PSH. SDHC administers 11 PSH programs with these funds. They provide rental assistance for more than 275 units. These programs are operated by eight homelessness service providers: Father Joe's Villages, Housing Innovation Partners, Townspeople, Mental Health Systems, Home Start, Inc., South Bay Community Services Corporation, Pathfinders, and The San Diego LGBT Community Center.

In addition, SDHC collaborates with developers to provide rental housing vouchers to help pay rent at affordable housing developments for individuals and families who experienced homelessness and receive access to supportive services through their residence. SDHC also works with the U.S. Department of Veterans Affairs to help veterans experiencing homelessness obtain PSH with Veterans Affairs Supportive Housing (VASH) vouchers.

– Reporting/ Dashboards

To provide the public and policymakers with important data about affordable housing and homelessness programs in the City of San Diego, SDHC provides comprehensive, interactive dashboards that are available on SDHC's website. The homelessness dashboard provides information based on industry-standard, best-practice metrics for many of SDHC's homelessness programs. The affordable housing dashboard provides an overview of affordable housing throughout the city and a searchable map with property-specific information, including proximity to public transportation and contact information for the property management company for each site.

▪ *Homelessness Dashboard*

<https://www.sdhc.org/homelessness-solutions/city-homeless-shelters-services/dashboard/>

▪ *Affordable Housing Dashboard*

<https://public.tableau.com/app/profile/san.diego.housing.commission.sdhc/viz/CityofSanDiegoAffordableHousingOverview/AffordableHousingOverview>

– Homelessness Program for Engaged Educational Resources (PEER)

A first-of-its kind collaboration between the San Diego Housing Commission (SDHC) and San Diego City College, the Homelessness PEER course provides specialized education, training and job placement assistance to develop the workforce needed for programs and services that help San Diegans experiencing homelessness. As a leader in collaborative efforts to address homelessness in the City of San Diego, SDHC identified the need for additional qualified applicants for positions in the area of homelessness programs and services. This course builds upon established San Diego City College certificate programs in mental health work, alcohol and other drug studies, gerontology, and the Associate of Arts Degree in Behavioral Health: Social Work. Students in these programs are the focus of City College outreach efforts to identify students for the new course.



Creating and Preserving Affordable Housing

SDHC supports the creation and preservation of affordable housing through its roles as a lender, bond issuer, administrator of City of San Diego land use programs, and a property owner. SDHC's participation in developments through these roles requires the developments to remain affordable for a specific period of time—usually 55 years or more—for low-income households with income up to a specified San Diego Area Median Income (AMI) level.

- **SDHC Loans**

SDHC loans to developments fill the gap that remains after developers have secured all other available funding sources. Funding awarded by SDHC helps developers obtain resources from other local, state and federal sources to enable them to complete new construction or rehabilitation of existing properties. SDHC loans consist of federal and local funds SDHC administers:

- Federal HOME Investment Partnerships Program funds that the U.S. Department of Housing and Urban Development (HUD) awards to the City of San Diego.
- The City of San Diego Affordable Housing Fund, which consists of revenue from Housing Impact Fees charged to commercial developments and Inclusionary Housing Fees charged to residential developments.

SDHC awards funds through a competitive Notice of Funding Availability (NOFA) process. Late summer each year, SDHC issues a NOFA to make available loan funds and, in some instances, rental housing vouchers, for affordable rental housing and/or permanent supportive housing developments.

- **Multifamily Housing Revenue Bonds**

SDHC authorizes the issuance of Multifamily Housing Revenue Bonds to support affordable housing development, subject to approval from the Housing Authority of the City of San Diego (Housing Authority²). However, SDHC, the City of San Diego and the Housing Authority are not financially liable for these bonds. Private sources of funds, such as revenue from the development, are used to repay the bonds. Multifamily Housing Revenue Bonds are also known as private activity bonds.

Multifamily Housing Revenue Bonds enable affordable housing developers to obtain below-market financing because interest income from the bonds is exempt from state and federal taxes. These bonds qualify developments for federal low-income housing tax credits. The low-income housing tax credit provides affordable developers with federal tax credits, administered by the state, that are sold to private investors who contribute equity to a development in exchange for tax benefits. The tax credits are sold (or syndicated) to a corporate investor, which in turn offsets their federal tax liability. The allocation of tax credits is competitive.

SDHC's Multifamily Mortgage Revenue Bond Program Policy includes eligibility requirements for the program, such as:

- A minimum of 20 percent of the units must be restricted to households earning up to 50 percent of Area Median Income (AMI); or

² On October 3, 1968, the San Diego City Council passed resolution R-194944, establishing the Housing Authority and declaring City Councilmembers to be the Housing Authority Commissioners.



- A minimum of 40 percent of the units must be restricted to households earning up to 60 percent of AMI.

The issuance of Multifamily Housing Revenue Bonds requires a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing as well as preliminary bond authorization and final bond authorization. The SDHC Board of Commissioners has the authority to approve preliminary steps to issue bonds and to conduct a TEFRA public hearing. Final bond authorization must be presented to the Housing Authority of the City of San Diego for consideration. A TEFRA resolution must be presented to and approved by the San Diego City Council.

- **Recycled Bonds**

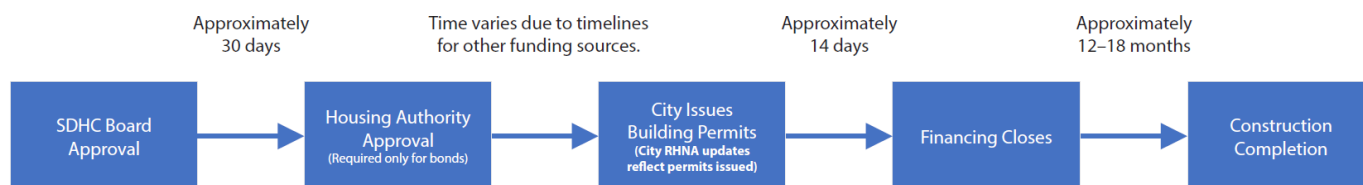
SDHC also collaborates with the California Housing Finance Agency (CalHFA) to recycle previously allocated Multifamily Housing Revenue Bonds, sometimes also referred to as private activity bonds.

The 1986 Federal Tax Reform Act determines how much tax-exempt private activity bond debt a state can issue (Annual State Ceiling) in a calendar year. Private activity bonds are used for a number of programs in California, not just affordable housing.

Traditionally, an affordable housing project would pay off the majority of its tax-exempt bonds when the construction phase was completed. At this stage, the bonds are “retired” and no longer available. Recycled bonds allow the reuse of volume cap authority that would otherwise be retired after completion of construction. Volume cap allocations through recycled bonds do not count toward the Annual State Ceiling.

Bond recycling allows for the re-use of previously allocated bond capacity that is normally lost, and recycles private activity bonds into a new project, without the use of limited low-income housing tax credits. CalHFA has a large capital investment from Apple and is using a portion to purchase and reissue recycled bonds.

- **Affordable Housing Development Process**



- **Land Use Programs**

SDHC also administers City of San Diego land use programs—such as Inclusionary Housing, Complete Communities Housing Solutions, Density Bonus and Accessory Dwelling Unit Density Bonus requirements—to create new affordable rental housing. SDHC’s Land Use staff review affordable housing developments that are submitted to City of San Diego staff and assist with drafting and recording the affordable housing agreements. The recorded documents are then provided to SDHC’s Compliance Monitoring Department.



– Accessory Dwelling Unit Bonus Program

The City of San Diego Accessory Dwelling Unit (ADU) Bonus program enables property owners to construct additional ADUs beyond the standard allowance. Once the maximum number of ADUs permitted by right per the underlying zoning has been reached, this program offers further opportunities for development. To determine the specific allowances for each property, SDHC refers to San Diego Municipal Code section [141.0302](#) and the property's specific zoning regulations.

The ADU Bonus Program grants one bonus unrestricted ADU for each deed-restricted affordable ADU provided. In Sustainable Development Areas (SDA), there is no limit on bonus ADUs, subject to development regulations, while outside SDA, the limit is two bonus ADUs—one restricted affordable ADU and one unrestricted ADU. Participation in the program requires property owners to establish a recorded agreement with SDHC, secured by a deed of trust. Owners can select from various Area Median Income (AMI) levels for the affordable, deed-restricted ADU, including very low (50% of AMI for 10 years), low (60% of AMI for 10 years), or moderate (110% of AMI for 15 years). Additionally, the program requires that affordable ADUs must be comparable to market-rate ADUs in size, bedroom mix, amenities, and features, ensuring comparable standards across both affordable and market-rate housing units.

– Coastal Overlay Zone

Developments in the City of San Diego's "coastal overlay zone" are required to comply with State Coastal Commission and local regulations to preserve residential units occupied by low- and moderate-income families. In general, the law requires one-for-one replacement if affordable units are demolished or converted to another use. The developer also has the option to pay an in-lieu fee to the City of San Diego Housing Trust Fund, which is part of the Affordable Housing Fund.

– Complete Communities Housing Solutions

The City of San Diego Complete Communities Housing Solutions (CCHS) program is an optional affordable housing program to encourage building homes near high-frequency transit. The focus is to create a variety of housing options for everyone, particularly those with low income or middle income. Eligible sites must be zoned to allow residential or mixed use at a minimum of 20 dwelling units per acre or greater for the entirety of the site, and the site must be within a Sustainable Development Area (SDA). At least 40 percent of the pre-bonus units must be deed-restricted as affordable in accordance with the proportions outlined below:

- 15 percent of units have rents that do not exceed 30 percent of the monthly dollar amount for 50 percent of San Diego's Area Median Income (AMI).
- 15 percent of units have rents that do not exceed 30 percent of the monthly dollar amount for 120 percent of AMI.
- 10 percent of the units have rents that do not exceed 30 percent of the monthly dollar amount for 60 percent of AMI.

In exchange for meeting the program's requirements, eligible developments may receive incentives without initiating discretionary action. Incentives include, but are not limited to, a floor area ratio determined by the tiers identified in the program; a waiver of specified regulations, including maximum residential density and maximum structure height, up to five incentives; and scaling of Development Impact Fees. To view all the requirements and regulations, please see San Diego Municipal Code Chapter 14, Article 3, Division 10: <https://www.sandiego.gov/city-clerk/officialdocs/municipal-code/chapter-14>



– Condominium Conversions

Developers converting 20 or more rental housing units to for-sale condominiums are also required to set aside 10 percent of the units for residents with incomes at or below 100 percent of the San Diego Area Median Income (AMI).

– Density Bonus

Developers building five or more dwelling units in the City of San Diego (City) may be eligible for an increase in development density in exchange for setting aside a percentage of the units as affordable housing.

The purpose of the City's Density Bonus regulations is to provide incentives for developments that provide housing for very low-, low- and moderate-income households, as well as senior households, transition-age foster youth, disabled Veterans, or homeless San Diegans.

On March 6, 2018, the San Diego City Council approved changes to the Density Bonus program, including:

- Offering 10 percent density bonus for developments that do not go beyond the maximum permitted building footprint.
- Allowing developers to be eligible for an incentive or a waiver even if they don't request a density bonus.
- Allowing for 100 percent density bonus for micro-unit production for developments that do not go beyond the permitted building footprint.

Properties that currently contain or within the last five years have contained dwelling units with rent restrictions for low- or very-low-income tenants also may qualify for a density bonus if:

- The property provides affordable units at percentages specified in the City's Municipal Code, or
- All of the units, except manager's units, are affordable to very low- and low-income households.

– Housing Impact Fees

The City of San Diego's (City) Housing Impact Fee, also known as a commercial linkage fee, is charged to commercial developments to help finance affordable housing for low-income workers whose jobs were created by commercial, industrial or retail development.

The Housing Impact Fee is calculated by the City's Facilities Financing Department, collected by the City's Development Services Department, and deposited into the City's Affordable Housing Fund. SDHC administers the Affordable Housing Fund, which helps to meet the housing needs of the City's very low-, low-, and median-income households.

The fee charged per square foot and building type is specified in the San Diego Municipal Code.

The Housing Impact Fee was established in 1990 after a Nexus Study commissioned by the San Diego City Council in 1989 concluded that commercial development creates



jobs that warrant the need for additional affordable housing due to employment growth. The Nexus Studies have been updated multiple times since then.

– Inclusionary Housing

The Inclusionary Housing Ordinance applies to all residential developments with 10 or more units or condominium conversions of two or more units.

The ordinance requires new residential and mixed-use developments to include 10 percent of the on-site rental units as affordable housing for individuals with income up to 60 percent of the Area Median Income. This requirement will be phased in over five years, beginning July 1, 2020:

- On-site affordable rental housing units obligation:
 - July 1, 2020 – June 30, 2021: 2 percent
 - July 1, 2021 – June 30, 2022: 4 percent
 - July 1, 2022 – June 30, 2023: 6 percent
 - July 1, 2023 – June 30, 2024: 8 percent
 - July 1, 2024: 10 percent
- Alternative compliance measures include:
 - the ability to pay a fee per square foot:
 - July 1, 2020 – June 30, 2021: \$15.18/square foot
 - July 1, 2021 – June 30, 2022: \$17.64/square foot
 - July 1, 2022 – June 30, 2023: \$20.09/square foot
 - July 1, 2023 – June 30, 2024: \$22.55/square foot
 - July 1, 2024: \$25.00/square foot
 - development of inclusionary units off-site,
 - rehabilitation of existing units, and
 - land dedication.

Rental housing units are required to remain affordable for at least 55 years pursuant to the Inclusionary Housing Ordinance.

The San Diego City Council approved updates to the Inclusionary Housing Ordinance on December 10, 2019, culminating efforts led by City Council President Georgette Gómez. SDHC worked with the Council President's office to facilitate meetings to obtain input from stakeholders and analyze the impacts of potential updates to the ordinance. SDHC administers the Inclusionary Housing Fund on behalf of the City of San Diego and monitors rental housing units to ensure compliance with the Inclusionary Housing Ordinance.

– North City Future Urbanizing Area

The Inclusionary Affordable Housing requirement in the northern part of the City known as the North City Future Urbanizing Area requires housing developers to dedicate 20 percent of their units to affordable buyers or renters, as specified by the San Diego Municipal Code.

The North City Future Urbanizing Area includes the neighborhoods of Black Mountain Ranch, Del Mar Mesa, Pacific Highlands, and Torrey Highlands.



– Single-Room Occupancy (SRO) Properties

Under the City's SRO Ordinance, SDHC does not have jurisdiction over SRO units unless an owner takes action that requires a City permit to:

- Convert the SRO units to a different use;
- Rehabilitate the SRO; or
- Eliminate the SRO units

When the owner applies for such a permit from the City, the City then notifies SDHC, which administers the provisions of the City's SRO Ordinance.

The SRO Ordinance includes requirements for plans to replace SRO units and relocation assistance for SRO residents.

• **First-time Homebuyer Program**

SDHC offers deferred loans and homeownership grants to help low- and moderate-income families buy their first home. The SDHC First-Time Homebuyer Program can assist with the purchase of a single-family home, townhome or condominium in the City of San Diego. This program is funded primarily through federal U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnerships Program grants to the City of San Diego that are administered by SDHC. Additional funding sources include federal Community Development Block Grant funds, State CalHome Program funds, and City of San Diego Affordable Housing Funds. Since 1988, SDHC has helped more than 6,000 families and individuals buy their first homes.

SDHC also administers the first-time homebuyer programs for the County of San Diego and the cities of Chula Vista and El Cajon.

– First-time Homebuyer Program for Black, Indigenous, People of Color (BIPOC) Households with Middle Income

SDHC launched a pilot program in June 2023 to help middle-income first-time homebuyers of color achieve the dream of homeownership in San Diego. The pilot program offers two options for assistance:

- \$40,000 in total assistance, consisting of a \$20,000 deferred loan toward the down payment and a \$20,000 grant toward closing costs; or
- \$20,000 grant toward the down payment and closing costs.

Households with income of 80 percent to 150 percent of San Diego's Area Median Income may be eligible.

Funding for this pilot program consists of resources from a Wells Fargo Foundation Wealth Opportunities Realized Through Homeownership (WORTH) grant awarded to SDHC. The Wells Fargo Foundation awarded a \$7.5 million WORTH grant to SDHC, announced in September 2022, to expand efforts to help more people of color in the San Diego region become homeowners. These efforts aim to help create 5,000 new homeowners of color in San Diego County by the end of 2025. Nationally, WORTH aims to help create 40,000 new homeowners of color by the end of 2025.



- **Accessory Dwelling Unit (ADU) Programs**

- ADU Finance Pilot Program

Through this program, SDHC helps homeowners with low income in the City of San Diego build ADUs on their property. The program provides financial assistance in the form of construction loans and technical assistance that helps homeowners understand and complete the process of building an ADU. Participating homeowners may generate wealth for themselves through the increase in their property's value and the rental income from their ADU. In addition, the program helps create affordable rental housing in the City of San Diego because the rents for the ADUs built with help from the program are required to remain affordable for seven years.

- ADU Development Pilot Program

To help San Diego homeowners understand the process related to ADU construction, SDHC built ADUs in the available yard space at five single-family homes SDHC owns and rents as affordable housing in the City of San Diego. Through this process, SDHC documented "lessons learned" with regard to site feasibility, design, construction, cost, timeline, oversight needed, and other development-related aspects that may arise with the development of ADUs. The SDHC report "Accessory Dwelling Unit Pilot Program: Lessons Learned for San Diego Homeowners," published online in October 2021, and additional information about ADUs, is available on SDHC's website at <https://www.sdhc.org/adu>

- **Housing Development Partners (HDP)**

SDHC established its nonprofit affiliate, HDP, in 1990. HDP develops and preserves affordable housing for low-income San Diegans through the rehabilitation of existing buildings and new construction. Rental housing for seniors, families, veterans, workers and residents with special needs are among the developments in HDP's real estate portfolio. HDP is staffed by SDHC employees. HDP is governed by a five-member board, which consists of SDHC's President & CEO, two members of the SDHC Board of Commissioners, one member of the Housing Authority of the City of San Diego and one at-large community member. The SDHC Board of Commissioners designates which SDHC Commissioners and community member serve on HDP's Board of Directors.

- **SDHC-owned Affordable Housing**

SDHC, including HDP, owns or manages 4,120 affordable rental housing units in the City of San Diego, of which 189 are public housing units. SDHC leases these housing units to households with income up to 80 percent of San Diego's Area Median Income (AMI).

Legislative Affairs

SDHC engages with elected leaders and officials at local, state and federal levels of government, as well as stakeholders. SDHC works to advance policies consistent with SDHC's vision, mission, purpose, core values and strategic priorities. SDHC monitors legislative activities closely to identify issues and legislation that could affect the individuals and families SDHC's programs serve. In addition, SDHC provides policy recommendations to address a variety of issues.



GOVERNANCE AND SENIOR LEADERSHIP

- **Governance**

The San Diego Housing Commission (SDHC) is governed by the Housing Authority of the City of San Diego (Housing Authority). The Housing Authority consists of the nine members of the San Diego City Council. The Housing Authority has final authority over SDHC's budget and major policy changes. The actions of the seven-member SDHC Board of Commissioners are advisory to the Housing Authority. SDHC is managed by a President and Chief Executive Officer, who also serves as the Housing Authority's executive director.

The seven members of the SDHC Board of Commissioners (Board) are appointed by the Mayor, subject to confirmation by the City Council. The SDHC Board reviews proposed changes to housing policy, property acquisitions, other financial commitments, and agency operations, including allocation of resources, revisions to personnel policies and annual administrative and operating budgets. The Board offers policy guidance to SDHC staff through its communications with the agency's President and Chief Executive Officer. Two of the Board's seats are reserved for residents of agency-owned housing units or recipients of federal Section 8 Housing Choice Voucher rental assistance. One of these tenant Board members must be 62 years of age or older. Commissioners who are residents of SDHC's affordable housing or are rental assistance recipients serve for terms of two years, or until a replacement is appointed. The five remaining Commissioners serve terms of four years, or until a replacement is appointed.

SDHC Board members are subject to the City of San Diego's Ethics Ordinance and are required to file a Statement of Economic Interests, known as a Form 700, which is filed with the City Clerk's Office. Additional information is included in the "San Diego Ethics Commission Fact Sheet on Joining a City Board or Commission" (Appendix B), SDHC Policy PO101.000 "Conflict of Interest Code and Related Provisions" (Appendix C), and SDHC Policy PO209.000 "Mandatory Disclosure of Business Interests (Appendix D), which are included in the Appendices to this manual.

- Housing Authority of the City of San Diego
City Council President [Sean Elo-Rivera](#), District 9
City Council President Pro Tem [Joe LaCava](#), District 1
City Councilmember [Jennifer Campbell](#), District 2
City Councilmember [Stephen Whitburn](#), District 3
City Council District 4 is vacant as of December 2023.
City Councilmember [Marni von Wilpert](#), District 5
City Councilmember [Chris Cate](#), District 6
City Councilmember [Raul Campillo](#), District 7
City Councilmember [Vivian Moreno](#), District 8

<https://www.sdhc.org/governance-legislative-affairs/housing-authority-of-the-city-of-san-diego/>

- SDHC Board of Commissioners
Chair Eugene "Mitch" Mitchell
Vice Chair Ryan Clumpner
Commissioner Johanna Hester
Commissioner Kellee Hubbard
Commissioner Antoine "Tony" Jackson
Commissioner Melinda Vásquez



<https://www.sdhc.org/governance-legislative-affairs/sdhc-board-of-commissioners/>

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Vice President, Information Technology Geof Bartell

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<https://www.sdhc.org/about-us/leadership-team/>



- **General Counsel**

SDHC is a separate legal body from the City of San Diego and the Housing Authority. SDHC formed under the provisions of the California Health and Safety Code dealing with Housing Authorities and Housing Commissions. In addition, state law allows a city or county to form both a Housing Authority and Housing Commission by a local ordinance. SDHC is formed under the provisions of the San Diego Municipal Code pursuant to the state Housing Authority law. As a separate entity, SDHC retains its own General Counsel. General Counsel is responsible for performing the majority of the legal work for SDHC. General Counsel coordinates with the office of the City Attorney, which represents the Housing Authority of the City of San Diego. In addition, General Counsel attends all SDHC public meetings and is available in an advisory capacity for SDHC staff and members of the SDHC Board of Commissioners. General Counsel also represents SDHC in connection with litigation, as necessary. When appropriate, General Counsel coordinates legal services with outside counsel when retained by SDHC or SDHC's insurance companies. SDHC selects its General Counsel through a competitive Request for Proposals (RFP) procurement process. The proposed contract with General Counsel for legal services is presented to the SDHC Board of Commissioners for consideration, subject to Housing Authority review pursuant to San Diego Municipal Code 98.0301(e)(4)(a)(ii).



FREQUENTLY USED TERMS AND ACRONYMS

Accessory Dwelling Unit (ADU)

An attached or detached residential dwelling unit that is 1,200 square feet in size or less, provides complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, and is located on a lot with a proposed or existing single dwelling unit or multiple dwelling unit.

Source: San Diego Municipal Code 113.0103

<https://docs.sandiego.gov/municode/MuniCodeChapter11/Ch11Art03Division01.pdf>

Affordable Housing

Rental housing units on which restrictions are recorded on the property, requiring the rent for the unit to be affordable for a household with income up to a specified income level, such as 30 percent, 50 percent, 60 percent or 80 percent of San Diego's Area Median Income (AMI). [See also: Housing Affordability, Naturally Occurring Affordable Housing, and Area Median Income.]

Americans with Disabilities Act (ADA)

Area Median Income (AMI)

AMI is the median income for each metropolitan area. The U.S. Department of Housing and Urban Development (HUD) establishes the AMI each year. The current AMI levels for the City of San Diego are updated on SDHC's website at <https://www.sdhc.org/amiincomelimits/>

Bridge Shelter

The City's Bridge Shelters offer a centralized location and safe place for men, women and children experiencing homelessness to receive temporary housing and appropriate services needed to expedite placement into permanent housing.

California Debt Limit Allocation Committee (CDLAC)

CDLAC is a state agency created to set and allocate California's annual debt ceiling and administer the State's tax-exempt bond program to allocate the debt authority. CDLAC's programs are used to finance affordable housing developments for low-income Californians, build solid waste disposal and waste recycling facilities, and to finance industrial development projects.

Source: <https://www.treasurer.ca.gov/CDLAC/>

California Department of Housing and Community Development (HCD)

HCD is a state agency that administers funding programs to support the creation and preservation of affordable housing in the State of California.

Source: <https://www.hcd.ca.gov/>

California Environmental Quality Act (CEQA)

California Tax Credit Allocation Committee (CTCAC)

CTCAC administers the federal and state Low-Income Housing Tax Credit Programs. Both programs were created to promote private investment in affordable rental housing for low-income Californians.

Source: <https://www.treasurer.ca.gov/ctcac/>



Choice Communities Initiative

This is an SDHC Moving to Work initiative that provides families that receive rental assistance with more flexibility to choose to live in neighborhoods that offer more opportunities for transportation, schools, and employment. To increase housing opportunities through this initiative and to assist as many low-income families as possible, SDHC updated the payment standards that are used to determine the amount of rental assistance each family receives. SDHC divided City of San Diego ZIP Codes into three groups, each with its own payment standards: Choice Communities, Enterprise Communities and Signature Communities.

Community Action Plan on Homelessness for the City of San Diego (CAPH)

A comprehensive, 10-year plan that builds on recent progress, lays out short-term achievable goals and serves as a guide for long-term success in addressing homelessness in the City of San Diego. SDHC was one of the lead agencies in the development of the plan.

Community Development Block Grant (CDBG)

The CDBG Program supports community development activities to build stronger and more resilient communities. To support community development, activities are identified through an ongoing process. Activities may address needs such as infrastructure, economic development projects, public facilities installation, community centers, housing rehabilitation, public services, clearance/acquisition, microenterprise assistance, code enforcement, homeowner assistance, etc.

Source: <https://www.hudexchange.info/programs/cdbg/>

Continuum of Care

SDHC administers federal Continuum of Care funds that support permanent supportive housing and rapid rehousing programs to help quickly obtain and maintain permanent housing for individuals and families experiencing homelessness. The Regional Task Force on Homelessness (RTFH) is the San Diego Continuum of Care (CoC), designated by the U.S. Department of Housing and Urban Development (HUD). The CoC Program is designed to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families and communities by homelessness; promote access to and affect utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

Source: <https://www.rtfhsd.org/about-coc/>

Coordinated Entry System (CES)

A system that enables homeless housing providers to screen individuals experiencing homelessness for the most appropriate housing options based on who is most in need. Permanent supportive housing units developed with financing from SDHC or supported with Continuum of Care funds, as well as SDHC-funded rapid rehousing programs identify residents through the CES, managed by the Regional Task Force on Homelessness (RTFH).

Cost-Burdened:

A household is cost-burdened when it pays more than 30 percent of its gross income on housing.

Source: https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html

Davis-Bacon

Federal law that requires the payment of prevailing wages on public works projects.

Source: <https://www.dol.gov/agencies/whd/government-contracts/construction>



Density

The number of housing units built on a site. Density is usually defined by the number of dwelling units per acre.

Source: https://www.sandag.org/rcp_revised_draft/appendix1.pdf

Density Bonus (DB)

Allowing a developer to build more units than otherwise would be permitted by the zoning for the property in exchange for the developer setting aside a portion of the development as affordable housing.

Source: https://www.sandag.org/rcp_revised_draft/appendix1.pdf

Development Impact Fee (DIF)

Fees the City of San Diego collects to mitigate the public facilities impacts of new development.

Development Services Department, City of San Diego (DSD)

Direct Displacement

Direct displacement is when residents are forced to move due to increasing rents.

Source: <https://www.huduser.gov/portal/sites/default/files/pdf/DisplacementReport.pdf>

Elderly/Disabled

An SDHC Section 8 Housing Choice Voucher household in which **all** adults are age 55 or older, disabled or a full-time student ages 18 to 23.

Emergency Housing Voucher (EHV)

Through the American Rescue Plan Act, the U.S. Department of Housing and Urban Development provided 70,000 Emergency Housing Vouchers nationwide, of which 480 were awarded to SDHC, to assist individuals and families who are homeless, at-risk of homelessness, fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, or were recently homeless or have a high risk of housing instability.

Source: <https://www.hud.gov/ehv>

Emergency Solutions Grant (ESG)

The federal ESG program provides funding to: engage homeless individuals and families living on the street; improve the number and quality of emergency shelters for homeless individuals and families; help operate these shelters; provide essential services to shelter residents; rapidly rehouse homeless individuals and families; and prevent families and individuals from becoming homeless. ESG funds may be used for these five program components: street outreach, emergency shelter, homelessness prevention, rapid rehousing assistance, Homeless Management Information System (HMIS), and up to 7.5% of a recipient's allocation can be used for administrative activities.

Source: https://www.hud.gov/program_offices/comm_planning/esg

Extremely Low Income (ELI)

Household income equal to or less than 30 percent of the Area Median Income (AMI). [See also: Area Median Income]

Source: <https://www.hcd.ca.gov/community-development/building-blocks/housing-needs/extremely-low-income-housing-needs.shtml>



Fair Market Rent (FMR) / Small Area FMR (SAFMR)

The U.S. Department of Housing and Urban Development (HUD) establishes the FMR for each metropolitan area across the country. The FMR generally guides the payment standard amounts for the Section 8 Housing Choice Voucher rental assistance program and determines rents for project-based Section 8 Housing Choice Voucher contracts. FMRs are estimates of rent plus the cost of utilities, except telephone. FMRs are housing marketwide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. FMRs are set at the 40th percentile rent, the dollar amount below which the rent for 40 percent of standard quality rental housing units fall within the FMR area. The 40th percentile rent is drawn from the distribution of rents of all units within the FMR area that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units. SAFMR areas are the U.S. Postal Service ZIP code areas within a designated metropolitan area. HUD will set SAFMRs for certain metropolitan FMR areas for use in the administration of tenant-based rental assistance under the Section 8 Housing Choice Voucher program. The criteria for HUD's selection of SAFMR areas are specified in Title 24 of the Code of Federal Regulations section 888.113. SDHC's payment standards through the Choice Communities Initiative were informed by HUD's SAFMRs.

Source: https://archives.huduser.gov/portal/glossary/glossary_all.html and <https://www.law.cornell.edu/cfr/text/24/888.113> [See also: Payment Standard]

Family Unification Program (FUP)

This program was established in 1990 when the lack of adequate housing emerged as a critical factor in the out-of-home placement of children. The intent of the program is to provide timely housing voucher assistance for reunifying families, for families whose children are at risk of out-of-home placement due to inadequate housing, and for youth(s) that are the least 18 years of age and not more than 24 years of age who left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act, and is homeless or is at risk of becoming homeless at age 16 or older. It is administered by collaborating housing agencies and Child Welfare Services (CWS). FUP provides CWS families with Housing Choice Voucher rental assistance.

Source: <https://www.sdhc.org/wp-content/uploads/2022/08/FY-2023-S8-Admin-Plan-FINAL.pdf>

Guardian Scholars Program

SDHC partners with San Diego State University to provide rental assistance for up to 100 students who have experienced homelessness or are at risk of homelessness.

HOME Investment Partnerships Program (HOME)

SDHC administers HOME funds that the U.S. Department of Housing and Urban Development awards to the City of San Diego. The HOME program provides formula grants to states and localities that communities use - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. HOME is the largest federal block grant to state and local governments designed exclusively to create affordable housing for low-income households. HOME funds are awarded annually as formula grants to participating jurisdictions (PJs). The program's flexibility allows states and local governments to use HOME funds for grants, direct loans, loan guarantees or other forms of credit enhancements, or rental assistance or security deposits.

Source: https://www.hud.gov/program_offices/comm_planning/home



Homeless

CRITERIA FOR DEFINING HOMELESS	Category 1	Literally Homeless	(1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: (i) Has a primary nighttime residence that is a public or private place not meant for human habitation; (ii) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); <u>or</u> (iii) Is exiting an institution where (s)he has resided for 90 days or less <u>and</u> who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution
	Category 2	Imminent Risk of Homelessness	(2) Individual or family who will imminently lose their primary nighttime residence, provided that: (i) Residence will be lost within 14 days of the date of application for homeless assistance; (ii) No subsequent residence has been identified; <u>and</u> (iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing
	Category 3	Homeless under other Federal statutes	(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who: (i) Are defined as homeless under the other listed federal statutes; (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application; (iii) Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; <u>and</u> (iv) Can be expected to continue in such status for an extended period of time due to special needs or barriers
	Category 4	Fleeing/ Attempting to Flee DV	(4) Any individual or family who: (i) Is fleeing, or is attempting to flee, domestic violence; (ii) Has no other residence; <u>and</u> (iii) Lacks the resources or support networks to obtain other permanent housing

Source:

https://files.hudexchange.info/resources/documents/HomelessDefinition_RecordkeepingRequirementsandCriteria.pdf

Homeless Emergency Aid Program (HEAP)

A one-time, \$500 million block grant program established in 2018 to provide direct assistance to Continuums of Care and large cities in California to address the homelessness crisis in the state. The California Interagency Council on Homelessness (Cal ICH) is responsible for administering HEAP.

Source: https://bcsh.ca.gov/calich/aid_program.html



Homeless Housing, Assistance and Prevention (HHAP) Program

A state grant program to address homelessness in California. The first round consisted of \$650 million that provides local jurisdictions with funds to support regional coordination and expand or develop local capacity to address their immediate homelessness challenges. HHAP Round 2 is a \$300 million grant that provides support to local jurisdictions to continue to build on regional collaboration developed through previous rounds of California Interagency Council on Homelessness funding and to develop a unified regional response to homelessness. HHAP Round 3 is a \$1 billion grant that provides local jurisdictions, including federally recognized tribal governments, with flexible funding to continue efforts to end and prevent homelessness in their communities.

Source: https://bcsh.ca.gov/calich/hhap_program.html

Homeless Management Information System (HMIS)

HMIS is a local web-based information technology system that San Diego's Continuum of Care (CoC) uses to capture and report on client, project, and system level information regarding homeless services utilization, performance and outcomes.

Source: <https://www.rtfhsd.org/about-coc/homeless-management-information-system-hmis/>

Housing Affordability Housing is generally considered to be affordable when the occupant is paying no more than 30 percent of their gross monthly income on housing costs, including utilities.

Source: www.hud.gov [See also: Affordable Housing, Naturally Occurring Affordable Housing, and Area Median Income.]

Housing Assistance Payment (HAP)

The rental assistance SDHC provides to Section 8 Housing Choice Voucher households.

Housing Development Partners (HDP)

SDHC's nonprofit affiliate for affordable housing development.

Housing Element

In 1969, California passed a law requiring all local governments to have a plan to meet their housing needs. Local governments meet this requirement by releasing a Housing Element every 8 years as a part of their General Plan.

Source: <https://www.hcd.ca.gov/community-development/housing-element/index.shtml>

Housing First

The "Housing First" approach to addressing homelessness focuses on providing appropriate housing options as quickly as possible, with as few requirements or conditions as possible, and access to supportive services, as needed.

HOUSING FIRST – SAN DIEGO (HFSD)

SDHC's homelessness action plan launched November 12, 2014. As of October 31, 2023, the programs of HOUSING FIRST – SAN DIEGO have created more than 11,200 housing solutions for individuals and families experiencing homelessness or at risk of homelessness.



Housing Impact Fee/Commercial Linkage

A fee charged to commercial developers to help finance affordable housing for workers with low income whose jobs were created by commercial, industrial or retail development. The Housing Impact Fee is calculated by the City of San Diego's (City) Facilities Financing Department, collected by the City's Development Services Department, and deposited into the City's Affordable Housing Fund, which the San Diego Housing Commission administers.

Source: <https://www.sdhc.org/doing-business-with-us/developers/housing-impact-fee/>

Infill Development

Building on unused and underutilized lands, within other existing development patterns, usually in urban areas.

Source: <https://opr.ca.gov/planning/land-use/infill-development/>

Landlord Partnership Program (LPP)

Provides financial and support incentives to landlords who rent to families who receive federal rental assistance through the Section 8 Housing Choice Voucher program administered by SDHC.

Landlord Engagement and Assistance Program (LEAP)

Provides incentives and benefits to landlords who rent to San Diegans experiencing homelessness, as well as housing location and financial assistance for tenants to pay security deposits and application fees.

Low Income (LI)

Household income between 60 percent and 80 percent of the Area Median Income [See also: Area Median Income]

Source: <https://www.sdhc.org/wp-content/uploads/2022/AMIIncomeLimits.pdf>

Low-Income Housing Tax Credit (LIHTC)

The low-income housing tax credit provides affordable developers with federal tax credits, administered by the state, that are sold to private investors who contribute equity to a development in exchange for tax benefits. The tax credits are sold (or syndicated) to a corporate investor, which in turn offsets their federal tax liability.

Mainstream Voucher

These vouchers provide rental assistance for families experiencing homelessness that include a non-elderly person between the ages of 18 and 61 with a disability.

Market-Rate Housing

Housing units available for sale or rent at the current market value.

Source: <https://www.lawinsider.com/dictionary/market-rate-housing>

Memorandum of Understanding (MOU)

Mental Health Services Act (MHSA)

Effective January 1, 2005, the MHSA provides state funding to counties for expanded and innovative mental health programs. MHSA programs support the County of San Diego's vision of Live Well San Diego by providing the community services to assist with mental and behavioral health needs, education about the importance of mental health, and how to access necessary resources, so that all San Diego residents may lead healthy and productive lives. Managed through the County of San Diego, the California Housing Finance Agency (CalHFA) was allocated \$33 million in 2008 for a new housing program, under which MHSA funds were



made available to developers to finance the costs associated with development, acquisition, construction, and/or rehabilitation of permanent supportive housing for individuals with serious mental illness. In 2016, the MHSA Housing Program was succeeded by the Local Government Special Needs Housing Program (SNHP), which was initially funded by a \$10 million allocation approved by the County of San Diego Board of Supervisors. In 2018, the Board of Supervisors authorized the transfer of an additional \$10 million to CalHFA, bringing the County's total SNHP investment to \$20 million.

Source:

https://www.sandiegocounty.gov/content/sdc/hhsa/programs/bhs/mental_health_services_act/mhsa.html#:~:text=MHSA%20programs%20support%20the%20County's,lead%20healthy%20and%20productive%20lives.

Mixed-Use Development

Projects where more than one use (e.g., residential and commercial) is located within a building or development.

Source: https://www.sandag.org/rcp_revised_draft/appendix1.pdf

Moderate Income (MI)

Household income between 81 percent and 120 percent of Area Median Income. [See also: Area Median Income]

Source: <https://www.hcd.ca.gov/grants-funding/income-limits/index.shtml>

Monarch School Project

SDHC partners with the Monarch School to provide rental housing vouchers for up to 25 families who have at least one child enrolled at the Monarch School, one of the few schools in the nation specifically serving children experiencing homelessness.

Moving to Work (MTW)

MTW is a designation from the U.S. Department of Housing and Urban Development (HUD) that gives SDHC the flexibility to implement a variety of innovative, cost-effective approaches to provide housing assistance in the City of San Diego. SDHC is one of only 39 original MTW agencies out of approximately 3,200 public housing authorities in the nation. In 2021 and 2022, HUD announced the addition of 70 public housing authorities as MTW agencies.

Multifamily Housing Program (MHP)

A California Department of Housing and Community Development (HCD) program that provides low-interest, long-term, deferred-payment loans for new construction, rehabilitation and preservation of permanent and transitional rental housing for households with lower income.

Source: <https://www.hcd.ca.gov/grants-funding/active-funding/mhp.shtml>

National Environmental Policy Act (NEPA)

Nexus Study

A study to analyze and document the linkages, or nexus, among construction of new workplace buildings (such as office, retail, hotel, etc.), the employees that work in them, and the demand for affordable housing.

Source:

[http://www.sdhc.org/uploadedFiles/Real_Estate/Best_Practices_Task_Force/SDHC%20Job%20Housing%20Nexus%20Study%202013\(1\).pdf](http://www.sdhc.org/uploadedFiles/Real_Estate/Best_Practices_Task_Force/SDHC%20Job%20Housing%20Nexus%20Study%202013(1).pdf)



No Place Like Home (NPLH)

Funds the development of permanent supportive housing for persons who are in need of mental health services and are experiencing homelessness, chronic homelessness, or at risk of chronic homelessness.

Source: <https://www.hcd.ca.gov/no-place-like-home#:~:text=Funds%20the%20development%20of%20permanent,at%20risk%20of%20chronic%20homelessness>.

Non-Elderly with Disabilities (NED) Vouchers

Non-Elderly with Disabilities (NED) Vouchers enable non-elderly disabled families to lease affordable private housing of their choice. NED vouchers also assist persons with disabilities who often face difficulties in locating suitable and accessible housing on the private market. Only income-eligible families whose head of household, spouse or co-head is non-elderly (under age 62) and disabled may receive a NED voucher. Families with only a minor child with a disability are not eligible. The NED HUD award to SDHC was limited to zero- and one-bedroom vouchers. NED vouchers utilize the flexibilities of the Moving to Work program, including the Path to Success rent calculation.

Source: SDHC Section 8 Administrative Plan <https://www.sdhc.org/wp-content/uploads/2022/08/FY-2023-S8-Admin-Plan-FINAL.pdf>

“Not in My Backyard” (NIMBY)

Individuals opposed to additional development in their neighborhood.

Source: <https://corporatefinanceinstitute.com/resources/knowledge/other/nimby/>

Notice of Funding Availability (NOFA)

Payment Standard

The payment standard is the maximum subsidy payment that the Section 8 Housing Choice Voucher would pay for an apartment or rental house, minus the applicable tenant rent portion. Families pay a predetermined amount of the rent, and SDHC pays the remainder of the rent, up to the applicable payment standard, directly to the landlord. The payment standard is based on the number of bedrooms approved for the family's size and the community to which the family moves. If the total rent payment for an apartment or house is higher than the payment standard, the tenant is responsible for paying the difference, in addition to their predetermined portion of the rent. Current payment standards are available on SDHC's website:

https://www.sdhc.org/wp-content/uploads/2022/Payment-Standards_Income-Limits.pdf

Permanent Supportive Housing (PSH)

Permanent Supportive Housing (PSH) is permanent housing in which housing assistance (e.g., long-term leasing or rental assistance) and supportive services are provided to assist households with at least one member (adult or child) with a disability in achieving housing stability.

Source: <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-program-components/permanent-housing/permanent-supportive-housing/>

Prevailing Wages

Prevailing wages are specific, minimum hourly wage rates determined by state or federal government for trade workers on public works projects and include fringe benefit amounts for health insurance, vacation and pension.

Source: <https://www.sandiego.gov/compliance/prevailing-wage>



Project One for All (POFA)

County of San Diego initiative with collaborating organizations, including SDHC, to provide intensive wraparound services, including mental health counseling and housing, to individuals experiencing homelessness with serious mental illness.

Source: <https://www.sandiegocounty.gov/content/sdc/sdhcd/project-one-for-all/>

Project-Based Housing Vouchers (PBV)

Awarded to specific affordable housing developments to provide rental assistance linked to their units. When a tenant moves on, the rental housing voucher remains with the affordable housing unit to help another San Diegan experiencing homelessness.

Public Housing Agency/Authority (PHA)

Any state, county, municipality, or governmental entity that is authorized to engage or assist in development or operation of housing for households with low income. California Health and Safety Code sections 34200 – 34380 govern Housing Authorities in the state of California.

Source: https://archives.huduser.gov/portal/glossary/glossary_all.html

Rapid Rehousing (RRH)

Rapid rehousing rapidly connects families and individuals experiencing homelessness to permanent housing through a tailored package of assistance that may include the use of time-limited financial assistance and targeted supportive services.

Source: <https://www.hudexchange.info/resource/3891/rapid-re-housing-brief/>

Regional Housing Needs Assessment (RHNA)

A mandated state housing law that quantifies the housing needs in each of California's jurisdictions every eight years.

Source: <https://scag.ca.gov/housing>

Regional Task Force on Homelessness (RTFH)

As the Lead Agency for San Diego region's Continuum of Care (CoC), the RTFH is governed by a Board of Directors and is the collaborative applicant to Housing and Urban Development (HUD), responsible for this region's annual PIT Count (WeAllCount), hosting an Homeless Management Information System (HMIS) for the San Diego region and the Imperial County region, operating the Coordinated Entry System (CES), and acting as the funding source grantee for the Youth Homelessness Demonstration Program (YHDP), the Homeless Emergency Aid Program (HEAP), and Homeless Housing, Assistance and Prevention (HHAP).

Source: <https://www.rtfhsd.org/about-rtfh/our-purpose/>

Rent Stabilization

State law prohibits the owner of residential real property from, over the course of any 12-month period, increasing the gross rental rate for a dwelling or housing unit more than 5 percent plus the percentage change in the cost of living, as defined, or 10 percent, whichever is lower.

Source: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1482

Request for Proposals (RFP)

A formally advertised and competitive selection process used for obtaining a consultant or other services that will cost more than \$100,000 in which the evaluation and selection for award of a contract cannot be based on price alone but is based on established criteria that include price and other factors.

Source: SDHC Procurement Policy

http://www.sdhc.org/uploadedFiles/About/Administrative_Policies/PO-PUR-373.01%20-%20Statement%20of%20Procurement%20Policy.pdf



Request for Qualifications (RFQ)

A formally advertised and competitive selection process used for obtaining A/E Consultant services that will cost more than \$150,000 in which the evaluation and selection of A/E Consultants is based on the A/E Consultants' qualifications, and price is not used as an evaluation criterion. An RFQ may also be similarly used when procuring development partners. For RFQs for A/E Consultant services in the amount of \$150,000 or less, a formally advertised selection process need not be utilized as long as efforts are undertaken to assure that any procurement of such services is competitive and reasonable in cost. "A/E Consultants" are consultants providing architectural, engineering, landscape architectural or land surveying services.

Source: SDHC Procurement Policy

http://www.sdhc.org/uploadedFiles/About/Administrative_Policies/PO-PUR-373.01%20-%20Statement%20of%20Procurement%20Policy.pdf

San Diego Housing Commission (SDHC)

San Diego Association of Governments (SANDAG)

SANDAG is a regional agency governed by a Board of Directors composed of mayors, councilmembers, and county supervisors from each of the region's 19 local governments. Supplementing these voting members are advisory representatives from Imperial County, the U.S. Department of Defense, Caltrans, San Diego Unified Port District, Metropolitan Transit System, North County Transit District, San Diego County Water Authority, Southern California Tribal Chairmen's Association, Mexico, and the San Diego County Regional Airport Authority.

Source: <https://www.sandag.org/index.asp?fuseaction=about.home>

SANDAG Regional Plan

Every four years, SANDAG creates a regional plan with the 18 cities in the San Diego region. This plan lays out the goals for the region and the steps that need to be taken to achieve those goals.

Source: <https://sdforward.com>

SDHC Achievement Academy

A learning and resource center available at no cost for individuals and families with low income in the City of San Diego. SDHC Achievement Academy programs emphasize career planning, job skills, and personal financial education to help individuals and families become more financially self-reliant. Households with low income citywide are eligible to participate in SDHC Achievement Academy programs through its designation as an EnVision Center, in collaboration with the City of San Diego and San Diego Workforce Partnership.

SDHC Building Opportunities Inc. (SDHC BOI)

SDHC's nonprofit affiliate that supports programs that provide opportunities to improve the quality of life for low- and moderate-income families in the City or County of San Diego.

SDHC Moving Home

Helps individuals and families experiencing homelessness to quickly obtain and maintain permanent housing through a tailored package of assistance that can include rental assistance and case management. SDHC has committed 50 rental housing units that it owns, annually, to provide housing through the Moving Home program.



SDHC Moving On

SDHC partners with the County of San Diego Behavioral Health Services Division to provide up to 50 rental housing vouchers for households who previously experienced homelessness who are ready to transition out of permanent supportive housing, but still need rental assistance.

Section 8 Housing Choice Vouchers (Section 8 or HCV)

The Section 8 Housing Choice Voucher program provides federal rental assistance to help households with low income pay their rent in the private rental market. The U.S. Department of Housing and Urban Development (HUD) funds the rental assistance program for local public housing authorities.

Source: https://www.hud.gov/topics/housing_choice_voucher_program_section_8

Severely Rent-Burdened

A household is severely rent-burdened when it spends more than 50 percent of its gross income on rent.

Source https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html#:~:text=HUD%20defines%20cost%2Dburdened%20families,of%20one's%20income%20on%20rent.

Small Area Fair Market Rent (SAFMR)

See “Fair Market Rent (FMR) / Small Area FMR (SAFMR).”

Sponsor-Based Subsidy (SBS)/Sponsor-Based Housing Voucher (SBV)

Awarded through a competitive bidding process to nonprofit or for-profit organizations, or “sponsors,” to provide rental assistance to San Diegans experiencing homelessness, who also receive supportive services.

Storage Connect Center

A center that helps keep homeless San Diegans’ belongings off downtown streets, sidewalks, and storefronts by providing a safe place for individuals to keep their belongings as they attend to their personal needs, which may include working on housing options, looking for work, attending classes, meeting with service providers, seeking medical care, or other activities such as accessing cleaning or washing facilities.

Transit-Oriented Development (TOD)

Development of commercial space, housing services, and job opportunities close to public transportation, thereby reducing dependence on automobiles. TODs are typically designed to include a mix of land uses within a quarter-mile walking distance of transit stops or core commercial areas.

Source: https://archives.huduser.gov/portal/glossary/glossary_all.html

Transitional Housing

Transitional Housing (TH) provides temporary housing with supportive services to individuals and families experiencing homelessness with the goal of interim stability and support to successfully move to and maintain permanent housing. TH projects can cover housing costs and accompanying supportive services for program participants for up to 24 months.

Source: <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-program-components/transitional-housing/>

U.S. Department of Housing and Urban Development (HUD)

Work-Able

An SDHC Section 8 Housing Choice Voucher household with at least one adult who is younger than 55, not disabled, and not a full-time student ages 18-23.



Veterans Affairs Supportive Housing (VASH)

SDHC partners with the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs (VA) to provide rental assistance to veterans experiencing chronic homelessness. The VA San Diego Healthcare System provides clinical health and case management services to VASH participants.

Veterans Housing and Homelessness Prevention Program (VHHP)

California Department of Housing and Community Development Program to provide long-term loans for the acquisition, construction, rehabilitation, and preservation of affordable multifamily housing for veterans and their families to allow veterans to access and maintain housing stability.

For additional terms and definitions, please see the U.S. Department of Housing and Urban Development's Glossaries: https://www.hud.gov/sites/documents/DOC_35734.PDF or https://archives.huduser.gov/portal/glossary/glossary_all.html



GLOSSARY OF SDHC PROGRAMS

Accessory Dwelling Unit (ADU) Finance Program

The SDHC Accessory Dwelling Unit (ADU) Finance Program helps homeowners with low income in the City of San Diego build ADUs on their property. The program provides financial assistance in the form of construction loans (up to \$200,000) and technical assistance that helps homeowners understand and complete the process of building an ADU. Participating homeowners may generate wealth for themselves through the increase in their property's value and the rental income from their ADU. In addition, the program helps create affordable rental housing in the City of San Diego because the rents for the ADUs built with help from the program are required to remain affordable for seven years.

Affordable Housing/Permanent Supportive Housing Development

Through a competitive Notice of Funding Availability (NOFA) process, SDHC awards funds to support the development of affordable rental housing and/or permanent supportive housing. SDHC awards the funds as loans that are repaid over time, depending on the cash flow from the property's revenue. SDHC's loans fill the gap that remains after developers secure all other available funding sources. SDHC's approval of loan funds helps developers obtain financing from other funding sources, including local, state and federal agencies. The funds SDHC awards to developments consist of federal, state and local dollars SDHC administers for the City of San Diego, such as: federal HOME Investment Partnerships Program (HOME) funds that the U.S. Department of Housing and Urban Development (HUD) awards to the City of San Diego; federal Community Development Block Grant Affordable Housing Revolving Loan Funds that HUD awards to the City of San Diego; and the City of San Diego Affordable Housing Fund, which comprises revenue from Housing Impact Fees charged to commercial developments and Inclusionary Housing Fees charged to residential developments.

Bridge Shelters

The City of San Diego's Bridge Shelters offer a centralized location and safe place for men, women and children experiencing homelessness to receive temporary housing and appropriate services needed to expedite placement into permanent housing.

Choice Communities Initiative

This is an SDHC Moving to Work initiative that provides families that receive rental assistance with more flexibility to choose to live in neighborhoods that offer more opportunities for transportation, schools, and employment. To increase housing opportunities through this initiative and to assist as many low-income families as possible, SDHC updated the payment standards that are used to determine the amount of rental assistance each family receives. SDHC divided City of San Diego ZIP Codes into three groups, each with its own payment standards: Choice Communities, Enterprise Communities and Signature Communities.

City-County Reinvestment Task Force

The San Diego City-County Reinvestment Task Force (RTF) is a public-private body that was created by the City and the County of San Diego to evaluate local bank lending practices and develop strategies for reinvestment in low- and moderate-income communities. It is co-chaired by a member of the San Diego City Council (currently Council President Pro Tem Monica Montgomery Steppe) and the San Diego County Board of Supervisors (currently Supervisor Joel Anderson), who jointly appoint 13 members, representing local governments, banks, and community development nonprofits. The group monitors the percentage of deposits that major local banks reinvest into the community through small-business loans, affordable housing development, and mortgage loans to residents in low-income neighborhoods. The RTF is an



outgrowth of the Federal Community Reinvestment Act, which was enacted by the U.S. Congress in 1977 to reduce discriminatory credit practices, also known as redlining, in low-income neighborhoods. Funding for the RTF is provided by the San Diego Housing Commission, the County, and corporate bank grants. SDHC also provides staff for RTF.

Community Action Plan on Homelessness for the City of San Diego (CAPH)

A comprehensive, 10-year plan that builds on recent progress, lays out short-term achievable goals and serves as a guide for long-term success in addressing homelessness in the City of San Diego. SDHC was one of the lead agencies in the development of the plan.

COVID-19 Housing Stability Assistance Program (HSAP)

HSAP helped pay rent and utilities for households with low income in the City of San Diego that experienced financial hardship due to or during the ongoing COVID-19 pandemic. SDHC launched the online application portal for HSAP on March 15, 2021, and started making payments in late April 2021. HSAP essentially concluded August 31, 2022. The program made payments totaling more than \$218 million to help more than 18,300 eligible households.

Emergency Housing Voucher (EHV)

Through the American Rescue Plan Act, the U.S. Department of Housing and Urban Development provided 70,000 Emergency Housing Vouchers nationwide, of which 480 were awarded to SDHC, to assist individuals and families who are homeless, at-risk of homelessness, fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, or were recently homeless or have a high risk of housing instability. As of October 17, 2022, SDHC's lease-up rate for Emergency Housing Vouchers is 100 percent, with 480 households leasing rental housing units with the Emergency Housing Vouchers awarded to SDHC. Source: <https://www.hud.gov/ehv>

Eviction Prevention Program (EPP)

SDHC contracts with Legal Aid Society of San Diego to operate EPP. The program launched December 20, 2021. Renters with low income in the City of San Diego who face eviction for not paying their rent due to the financial effects of the COVID-19 pandemic can receive legal help through EPP. Renter households are eligible for help from EPP if they reside at a City of San Diego address; have household income at or below 80 percent of San Diego's Area Median Income (\$104,100/year for a family of four); have an obligation to pay rent; and include at least one household member who experienced a reduction of income or other financial hardship due to the COVID-19 pandemic. Eligible renter households can receive full legal representation throughout the pre-eviction and eviction process, in settlement negotiations and through trial, if necessary. In addition, limited legal services are available for eligible tenants through clinics, hotlines or appointments (virtual or in person), such as help with: completing COVID-19-related declarations; submitting formal responses to eviction notices; formal responses to Unlawful Detainers; and requests for reasonable accommodations.

Family Unification Program (FUP)

This program was established in 1990 when the lack of adequate housing emerged as a critical factor in the out-of-home placement of children. The intent of the program is to provide timely housing voucher assistance for reunifying families, for families whose children are at risk of out-of-home placement due to inadequate housing, and for youth(s) that are the least 18 years of age and not more than 24 years of age who left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act, and is homeless or is at risk of becoming homeless at age 16 or older. It is administered by collaborating housing agencies and Child Welfare Services (CWS). FUP provides CWS families



with Housing Choice Voucher rental assistance. Source: <https://www.sdhc.org/wp-content/uploads/2022/08/FY-2023-S8-Admin-Plan-FINAL.pdf>

First-Time Homebuyer Programs

SDHC offers deferred loans of up to 22 percent of the home purchase price, based on the applicant's need, and homeownership grants to help low- and moderate-income families buy their first homes. The SDHC First-Time Homebuyer Program can assist with the purchase of a single-family home, townhome or condominium in the City of San Diego. To help homebuyers in a competitive market, SDHC also can preapprove applicants and provide preapproval letters. The SDHC First-Time Homebuyer Program is able to close financing within 30 days of contract signing if the application and supporting documents are submitted to SDHC within five days of opening escrow. This program is funded primarily through federal U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnerships Program grants to the City of San Diego, which SDHC administers. Additional funding sources include State CalHome funds and City of San Diego Affordable Housing Funds.

Guardian Scholars Program

SDHC partners with San Diego State University to provide rental assistance for up to 100 students who have experienced homelessness or are at risk of homelessness.

Home of Your Own

The SDHC Housing Choice Voucher (HCV) Homeownership Program, Home of Your Own, is designed to expand homeownership opportunities for HCV participants. This program assists HCV participants in transitioning from rental assistance to homeownership, using their voucher assistance. The program is currently not accepting new participants.

Homelessness Program for Engaged Educational Resources (PEER)

A first-of-its kind collaboration between SDHC and San Diego City College, the Homelessness PEER course provides specialized education, training and job placement assistance to develop the workforce needed for programs and services that help San Diegans experiencing homelessness. As a leader in collaborative efforts to address homelessness in the City of San Diego, SDHC identified the need for additional qualified applicants for positions in the area of homelessness programs and services. This course builds upon established San Diego City College certificate programs in mental health work, alcohol and other drug studies, gerontology, and the Associate of Arts Degree in Behavioral Health: Social Work. Students in these programs are the focus of City College outreach efforts to identify students for the new course. SDHC and the City of San Diego fund the PEER program, while San Diego City College leverages existing San Diego Community College District resources.

Homelessness Response Center

The City of San Diego Homelessness Response Center provides a broad range of services to help individuals and families experiencing homelessness on their path to permanent or longer-term housing. SDHC operates and administers the HRC, in collaboration with the City of San Diego, People Assisting the Homeless (PATH), the Regional Task Force on the Homeless (RTFH), and homelessness service providers. The HRC provides two major programs on-site:

- System Navigation Services: Coordination of all activities to move someone from homelessness to permanent or longer-term housing.
- Support Services On-site: A variety of supportive services from multiple service providers to address individual needs of people experiencing homelessness.



All HRC services are focused on meeting the unique needs of each customer being served. Programs also follow the “Housing First” approach to addressing homelessness. “Housing First” focuses on providing appropriate housing options as quickly as possible, with as few requirements or conditions as possible, and access to supportive services, as needed.

Housing Development Partners (HDP)

SDHC’s nonprofit affiliate for affordable housing development. HDP’s purposes are to: provide affordable housing for people with low or moderate income, seniors and individuals with disabilities by acquiring or developing publicly funding housing; provide housing-related facilities and services for people with low or moderate income, seniors and individuals with disabilities; and take other actions that may reasonably promote housing for people with low or moderate income, seniors or people with disabilities.

HOUSING FIRST – SAN DIEGO (HFSD)

SDHC’s homelessness action plan launched November 12, 2014. As of October 31, 2023, the programs of HOUSING FIRST – SAN DIEGO have created more than 11,200 housing solutions for individuals and families experiencing homelessness or at risk of homelessness.

Housing Instability Prevention Program (HIPP)

HIPP helps pay rent and other housing-related expenses for families in the City of San Diego with low income, experiencing a housing crisis and at risk of homelessness. SDHC provides enrolled households with \$250, \$500 or \$750 per month toward their rent, depending on the household’s circumstances. HIPP also provides case management and assists with housing-related expenses, such as past-due rent and past-due utilities, depending on the household’s need. These payments are made directly to the landlord or utility company. Enrolled households receive assistance for up to 24 months. Funding is limited. With current funding through Fiscal Year 2024, the program can assist approximately 300 households.

Landlord Partnership Program (LPP)

Provides financial and support incentives to landlords who rent to families who receive federal rental assistance through the Section 8 Housing Choice Voucher program administered by SDHC.

Landlord Engagement and Assistance Program (LEAP)

Provides incentives and benefits to landlords who rent to San Diegans experiencing homelessness, as well as housing location and financial assistance for tenants to pay security deposits and application fees.

Mainstream Voucher

These vouchers provide rental assistance for families experiencing homelessness that include a non-elderly person between the ages of 18 and 61 with a disability.

Mobility Counseling

An SDHC mobility counselor assists with pre- and post-moving counseling, housing search assistance and guidance about neighborhood features for families moving to Choice or Enterprise Communities.

Monarch School Project

SDHC partners with the Monarch School to provide rental housing vouchers for up to 25 families who have at least one child enrolled at the Monarch School, one of the few schools in the nation specifically serving children experiencing homelessness.



Moving to Work (MTW)

MTW is a designation from the U.S. Department of Housing and Urban Development (HUD) that gives SDHC the flexibility to implement a variety of innovative, cost-effective approaches to provide housing assistance in the City of San Diego. SDHC is one of only 39 original MTW agencies out of approximately 3,200 public housing authorities in the nation. In 2021 and 2022, HUD announced the addition of 70 public housing authorities as MTW agencies.

Multidisciplinary Outreach Team

The Multidisciplinary Outreach Program is operated by PATH through a contract with SDHC. PATH collaborates and subcontracts with Father Joe's Villages for the healthcare component. The program utilizes an integrated multidisciplinary team that includes a nurse practitioner, four clinical outreach specialists, a medical assistant/outreach worker, two peer support specialists, and a part-time substance abuse counselor. Father Joe's Villages also leverages support from several members from its Street Health Team and Village Health Clinic to increase access to services. These include access to Father Joe's Villages' psychiatric nurse practitioner and clinical psychologist and other healthcare professionals. The program addresses existing gaps in the system by deploying a multidisciplinary outreach team to work directly with those hardest to serve. Services include, but are not limited to: street medicine services, including medical triage, wound care, bio-psycho-social assessments, medication assisted treatment, care coordination with primary care, mental or behavioral health services and substance abuse counseling, housing-focused street-based case management, peer support, system navigation and post-placement stabilization support, basic needs support, referrals to support systems, benefits and services, and transportation assistance.

Non-Elderly with Disabilities (NED) Vouchers

Non-Elderly with Disabilities (NED) Vouchers enable non-elderly disabled families to lease affordable private housing of their choice. NED vouchers also assist persons with disabilities who often face difficulties in locating suitable and accessible housing on the private market. Only income-eligible families whose head of household, spouse or co-head is non-elderly (under age 62) and disabled may receive a NED voucher. Families with only a minor child with a disability are not eligible. The NED HUD award to SDHC was limited to zero- and one-bedroom vouchers. NED vouchers utilize the flexibilities of the Moving to Work program, including the Path to Success rent calculation. Source: SDHC Section 8 Administrative Plan <https://www.sdhc.org/wp-content/uploads/2022/08/FY-2023-S8-Admin-Plan-FINAL.pdf>

Path to Success

This SDHC MTW initiative encourages Section 8 Housing Choice Voucher rental assistance families to become more financially self-reliant. Path to Success modified the method SDHC uses to determine the portion of the monthly rent that rental assistance families and public housing residents pay. The rent methodology was designed to motivate families to increase earnings. In addition, Path to Success set minimum monthly rent payment amounts for Work-Able participants. There is no minimum monthly rent payment amount for Elderly/Disabled families.

Permanent Supportive Housing (PSH)

Permanent Supportive Housing (PSH) is permanent housing in which housing assistance (e.g., long-term leasing or rental assistance) and supportive services are provided to assist households experiencing homelessness with at least one member (adult or child) with a disability in achieving housing stability.

Source: <https://www.hudexchange.info/homelessness-assistance/coc-esq-virtual-binders/coc-program-components/permanent-housing/permanent-supportive-housing/>



Project-Based Housing Vouchers (PBV)

Awarded to specific affordable housing developments to provide rental assistance linked to their units. When a tenant moves on, the rental housing voucher remains with the affordable housing unit to help another San Diegan with low income or experiencing homelessness.

Rapid Rehousing (RRH)

Rapid rehousing rapidly connects families and individuals experiencing homelessness to permanent housing through a tailored package of assistance that may include the use of time-limited financial assistance and targeted supportive services. SDHC operates the Moving Home RRH program and contracts with service providers who operate additional RRH programs in the City of San Diego. Source: <https://www.hudexchange.info/resource/3891/rapid-re-housing-brief/>

SDHC Achievement Academy

A learning and resource center available at no cost for individuals and families with low income in the City of San Diego. SDHC Achievement Academy programs emphasize career planning, job skills, job placement and personal financial education to help individuals and families become more financially self-reliant. Households with low income citywide are eligible to participate in SDHC Achievement Academy programs through its designation as an EnVision Center, in collaboration with the City of San Diego and San Diego Workforce Partnership. SDHC Achievement Academy participants are predominantly Section 8 Housing Choice Voucher households, public housing residents and participants in certain homelessness programs.

SDHC Building Opportunities Inc. (SDHC BOI)

SDHC's nonprofit affiliate that supports programs that provide opportunities to improve the quality of life for low- and moderate-income families in the City or County of San Diego.

SDHC Moving Home

Helps individuals and families experiencing homelessness to quickly obtain and maintain permanent housing through a tailored package of assistance that can include rental assistance and case management. SDHC has committed 50 rental housing units that it owns, annually, to provide housing through the Moving Home program.

SDHC Moving On

SDHC partners with the County of San Diego Behavioral Health Services Division to provide up to 50 rental housing vouchers for households who previously experienced homelessness who are ready to transition out of permanent supportive housing, but still need rental assistance.

SDHC-Owned Affordable Rental Housing

SDHC, including its nonprofit affiliate, Housing Development Partners, owns or manages 4,120 affordable rental housing units in the City of San Diego, of which 189 are federal public housing units.

Section 8 Housing Choice Vouchers (Section 8 or HCV)

The Section 8 Housing Choice Voucher program provides federal rental assistance to help households with low income pay their rent in the private rental market. The U.S. Department of Housing and Urban Development (HUD) funds the rental assistance program for local public housing authorities, including SDHC. Source:

https://www.hud.gov/topics/housing_choice_voucher_program_section_8



Sponsor-Based Subsidy (SBS)/Sponsor-Based Housing Voucher (SBV)

Awarded through a competitive bidding process to nonprofit or for-profit organizations, or “sponsors,” to provide rental assistance to San Diegans experiencing homelessness, who also receive supportive services.

Storage Connect Center

A center that helps keep homeless San Diegans’ belongings off downtown streets, sidewalks, and storefronts by providing a safe place for individuals to keep their belongings as they attend to their personal needs, which may include working on housing options, looking for work, attending classes, meeting with service providers, seeking medical care, or other activities such as accessing cleaning or washing facilities.

Tenant Protection Voucher

Tenant Protection Vouchers are provided to protect U.S. Department of Housing and Urban Development (HUD) assisted families from hardship as the result of a variety of actions that occur in HUD’s Public Housing (Low-Rent), the Multifamily Housing portfolios, and Moderate Rehabilitation properties.

Transitional Housing

Transitional Housing (TH) provides temporary housing with supportive services to individuals and families experiencing homelessness with the goal of interim stability and support to successfully move to and maintain permanent housing. TH projects can cover housing costs and accompanying supportive services for program participants for up to 24 months. Source: <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-program-components/transitional-housing/>

Veterans Affairs Supportive Housing (VASH)

SDHC partners with the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs (VA) to provide rental assistance to veterans experiencing chronic homelessness. The VA San Diego Healthcare System provides clinical health and case management services to VASH participants.



APPENDICES

- A. San Diego Municipal Code 98.0301
- B. City of San Diego Ethics Commission Fact Sheet on Joining a Board or Commission
- C. SDHC Policy PO101.000 Conflict of Interest Code and Related Provisions
- D. SDHC Policy PO209.000 Mandatory Disclosure of Business Interests
- E. SDHC Policy PO205.000 Guidelines for Open Meetings and Access to Public Records
- F. Open & Public V: A Guide to the Ralph M. Brown Act (League of California Cities: <https://www.calcities.org/resource/open-public-v-a-guide-to-the-ralph-m.-brown-act>)
- G. The People's Business: A Guide to the California Public Records Act (League of California Cities: <https://www.calcities.org/resource/the-peoples-business-a-guide-to-the-california-public-records-act>)
- H. SDHC At a Glance
- I. SDHC Reports
- J. SDHC Strategic Plan Fiscal Year (FY) 2022 – 2024
- K. SDHC Strategic Plan FY 2022 – 2024: Fiscal Year 2023 Progress Report
- L. San Diego Municipal Code 98.0501-0518 Affordable Housing Fund
- M. San Diego Municipal Code 142.1301-1314 Inclusionary Regulations
- N. San Diego Municipal Code 143.0510-0590 SRO Regulations

Article 8: Housing**Division 3: San Diego Housing Commission**

(“San Diego Housing Commission” added 9–30–1985 by O–16511 N.S.)
 (Retitled to “San Diego Housing Commission and Relocation Appeals Board”
 on 12-1-2016 by O-20746 N.S.; effective 12-31-2016.)
 (Retitled from “San Diego Housing Commission and Relocation Appeals Board” to
 “San Diego Housing Commission” on 7-18-2023 by O-21683 N.S.; effective 8-17-2023.)

§98.0301 San Diego Housing Commission

- (a) Creation of *Commission*. There is hereby created a *Commission* to act as a Housing Commission under the Housing Authority Law of the State of California. The name of the *Commission* shall be the San Diego Housing Commission. The *Commission* is granted all rights, powers, and duties of a Housing Authority pursuant to the provisions of California Health and Safety Code sections 34200-34380, except those expressly retained by the Housing Authority of the City of San Diego in this section.
- (b) Definitions. For purposes of this section, defined terms appear in italics. The following definitions apply in this section:

Board of Commissioners means the governing body of the *Commission* consisting of *members* appointed through the process in Section 98.0301(f).

Commission means the San Diego Housing Commission, a public agency created pursuant to the California Health and Safety Code.

Commission President means the President and Chief Executive Officer of the *Commission*.

Housing Authority Executive Director means the *Commission President*.

Housing Authority means the Housing Authority of the City of San Diego, a public agency created pursuant to the California Health and Safety Code.

Member means a commissioner of the *Board of Commissioners*.

Persons of low income means a group or family that lacks the amount of income necessary, as determined by the *Housing Authority*, to enable it to live without financial assistance in decent, safe, and sanitary dwellings without overcrowding.

- (c) Investigatory Functions. The *Board of Commissioners*’ investigatory functions include the following:
- (1) Investigate living, dwelling and housing conditions in the City of San Diego and the means and methods of improving such conditions.
 - (2) Determine where there is a shortage of decent, safe, and sanitary dwelling accommodations for *persons of low income*.
 - (3) Engage in research, studies and experiments on the subject of housing.
 - (4) Make recommendations to the *Housing Authority* for changes or revisions in *Housing Authority* policies.
 - (5) Review and recommend revisions to personnel policies and procedures.
 - (6) Review and recommend action on annual administrative and operating budgets.
 - (7) Perform such other functions not inconsistent with this section that the *Housing Authority* or City Council delegates to the *Commission* by resolution.
- (d) Administrative Functions. The *Board of Commissioners*’ administrative functions include the following:
- (1) Approve plans and specifications, authorize advertisements for bids and proposals, accept and reject bids and proposals, and approve expenditures for goods, services, public works, land clearance, loans, grants, claims, leases and other interests in real property, and other contracts and agreements; however, the programs, projects or activities for such expenditures shall have been previously approved by the *Housing Authority*, or the expenditures shall be for items included in budgets previously approved by the *Housing Authority*.
 - (2) Approve submission of applications for funds where such applications do not constitute a binding agreement to accept such funds, if awarded, and approve contracts for the receipt of such funds.
 - (3) Approve guidelines for the administration of programs previously approved and funded by the *Housing Authority*.

- (4) Review conflict of interest codes and submit proposed conflict of interest codes for City Council approval in accordance with California Government Code section 82011.
 - (5) Approve lease forms, grievance procedures, occupancy policies, rent and utility schedules, tenant council agreements, and other United States Department of Housing and Urban Development (HUD)-required documents for the administration of public housing and rent subsidy programs.
 - (6) Act upon such other matters not inconsistent with this section that the *Housing Authority* or City Council delegates to the *Commission* by resolution.
 - (7) Hold a public hearing before the *Housing Authority* makes a decision, and (i) forward a written recommendation to the *Housing Authority*, or (ii) forward the matter to the *Housing Authority* without a recommendation.
 - (8) Act upon all other administrative matters in accordance with federal, state, and local laws and regulations, except the matters set forth below in sections 98.0301(d)(8)(A)-(E), and except as provided in section 98.0301(e), in which case, the *Board of Commissioners'* actions shall be advisory only, and shall be referred for *Housing Authority* action:
 - (A) The *Commission's* annual budget;
 - (B) Bond issuances and actions related to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) hearings;
 - (C) Memoranda of Understanding between recognized employee organizations and the *Commission*;
 - (D) Adoption or amendment of any *Commission* policy; and
 - (E) Any other matters that are determined to be advisory only by City Council or *Housing Authority* resolution.
- (e) Finality of Actions.

- (1) All *Board of Commissioners*’ actions taken pursuant to section 98.0301(d) shall be final seven calendar days after action by the *Board of Commissioners*, except for actions taken on the matters set forth in sections 98.0301(d)(8)(A)-(E), and except as provided in section 98.0301(e)(2).
- (2) Any action by the *Board of Commissioners* may be referred to the *Housing Authority* for final action, within seven calendar days after the date of the action by:
 - (A) *Board of Commissioners*’ resolution.
 - (B) *Housing Authority Executive Director* written notification to the *Board of Commissioners*’ chairperson.
 - (C) Written notice by two members of the City Council or *Housing Authority*, or the City Manager, to the *Housing Authority Executive Director*.
- (3) If a matter is referred to the *Housing Authority* for final action in accordance with Section 98.0301(e)(2), the Chair of the *Housing Authority*, who shall be the Council President, as the role is defined in San Diego Municipal Code section 22.0101, shall set the matter on the next available *Housing Authority* agenda, and the action taken by the *Board of Commissioners* shall be advisory.
- (4) *Housing Authority* Notification
 - (A) The *Board of Commissioners* shall not act on any of the following matters unless the *Commission President* first provides written notification to the *Housing Authority*:
 - (i) Approval of any proposed acquisition, sale, or lease of real property for a term in excess of five years; or
 - (ii) Approval of any development project, rehabilitation loan commitment, or contract for the acquisition of goods or services, involving the expenditure of more than \$1,000,000.

- (B) The *Commission President* shall provide the notification at least seven calendar days in advance of the meeting at which the action is proposed to be considered, except that, in the event the *Commission President* determines it necessary to place such an action on an agenda fewer than seven calendar days before a meeting of the *Board of Commissioners*, the *Commission President* shall provide the notification at the time the *Commission President* makes that determination, no later than the time the agenda is posted, and under no circumstances later than 24 hours in advance of the meeting.
- (f) Appointment of *Members*. The *Board of Commissioners* shall consist of seven *members* who shall be appointed by the Mayor subject to City Council confirmation.
- (1) Two *members* shall be tenants of *Commission*-owned units, which include those owned by limited liability companies in which the *Commission* is the sole member, or recipients of housing assistance pursuant to HUD's tenant-based housing choice voucher program (Section 8). At least one of the *members* appointed pursuant to this subsection shall be over 62 years of age. So long as required by federal law, at least one of the *members* appointed pursuant to this subsection shall be a recipient of housing assistance in the tenant-based housing choice voucher program (Section 8).
- (2) Each *member*, except the two *members* appointed pursuant to section 98.0301(f)(1), shall have at least five years of experience in one or more of the following areas: real estate finance, affordable housing, homelessness, workforce development, healthcare, nonprofit, education, or community-based organizations. City Council may make an exception to this requirement when a person with unique qualifications, but without the required experience, is available to serve as a *member*. When nominating a person who does not have the required experience, the Mayor shall provide information to City Council regarding the nominee's unique qualifications to be a *member*.
- (3) The term of office of each *member* shall be four years, except that the terms of office of the two *members* appointed pursuant to section 98.0301(f)(1) shall be two years as set forth in California Health and Safety Code section 34272. A *member* shall hold office until the *member's* successor has been appointed and confirmed.

- (4) Vacancies occurring during a term shall be filled for the unexpired term by appointment made by the Mayor subject to City Council confirmation. Whenever the Mayor does not appoint a *member* within 45 days after a vacancy occurs, the Council shall make such appointment.
- (5) Each *member* shall receive as compensation the sum of \$50 for each meeting of the *Board of Commissioners* attended, provided that the total compensation for each *member* shall not exceed \$100 in any one month. In addition, each *member* shall receive necessary travel and incidental expenses related to *member* duties. Any *member* may waive compensation by filing a written waiver of compensation form with the *Commission President*.
- (6) For inefficiency, neglect of duty, or misconduct in office, a *member* may be removed by majority vote of the City Council.
- (g) Organization of the *Board of Commissioners*. The *Board of Commissioners* shall determine the time, place, and frequency of its meetings. Four *members* shall constitute a quorum and the vote of at least four *members* shall be necessary for any action by the *Board of Commissioners*. The *Board of Commissioners* may adopt rules of procedure for the conduct of its business and do anything else necessary or proper to carry out its functions in accordance with federal, state, and local laws and regulations.
- (h) Indemnification of *Members*. To the fullest extent permitted under California Government Code sections 825, 995, and 995.2, City shall indemnify *members* against civil actions brought against them in their individual or official capacities, or both, and pay judgments and settlements for claims against the *members* for matters arising out of acts or omissions occurring within the scope of their service to the *Commission*, provided that the *member* cooperates and assists with the defense. Any indemnification shall not include punitive or exemplary damages.
- (i) *Commission President*.
 - (1) The *Housing Authority* shall appoint the *Commission President*, who may be removed from office by the *Housing Authority* at any time.
 - (2) The *Commission President* shall serve, ex officio, as the *Housing Authority* Executive Director.

- (3) The *Housing Authority* and *Board of Commissioners* shall direct and review the work of the *Commission President*. The *Board of Commissioners* shall conduct an annual performance review of the *Commission President* and shall present the performance review to the *Housing Authority* at a properly noticed closed session meeting for approval. The *Board of Commissioners* shall recommend the *Commission President's* annual compensation for *Housing Authority* approval at a properly noticed open session meeting of the *Housing Authority*.

(Amended 4-25-1994 by O-18062 N.S.)

(Amended 12-24-2013 by O-20331 N.S.; effective 1-23-2014.)

(Amended 12-1-2016 by O-20746 N.S.; effective 12-31-2016.)

(Amended 10-10-2017 by O-20861 N.S.; effective 11-9-2017.)

(Amended 9-21-2022 by O-21520 N.S.; effective 10-21-2022.)

(Amended 1-13-2023 by O-21592 N.S.; effective 2-12-2023.)



FACT SHEET ON JOINING A CITY BOARD OR COMMISSION

The City's volunteer board and commission members provide an invaluable service to the City of San Diego. Because such individuals obtain influence and authority in their capacity as city officials, however, it is important to ensure that their official actions do not benefit their personal financial interests. For this reason, the City's Ethics Ordinance includes conflict of interest laws that are applicable to members of most of the City's boards and commissions. Prospective members of a City board or commission should be aware that these laws require the disclosure of certain types of personal financial information and impose a number of prohibitions and restrictions. This fact sheet is designed to offer general guidance regarding these laws. It should not, however, be considered a substitute for the actual language contained in the ethics ordinance.

- ❖ Members of some boards and commissions are subject to the Ethics Ordinance because they are "high level filers." This term includes members of the Planning Commission, Funds Commission, Retirement Board, and the Defined Contribution Plan Board.
- ❖ Members of most other City boards and commissions are subject to the Ethics Ordinance because the City Council has adopted a conflict of interest code for them. These entities make final governmental decisions or substantive recommendations. A list of the boards with conflict of interest codes can be found on the City Clerk's website at: <http://www.sandiego.gov/city-clerk/elections/eid/codes.shtml#boards>.
- ❖ Some boards are considered "solely advisory" and are exempt from the Ethics Ordinance. This fact sheet does not apply to such boards. Note that boards with the term "advisory" in their name aren't necessarily exempt from the Ethics Ordinance; such boards may still have some decision-making authority. Check the list of conflict codes on the City Clerk's website – if a conflict code has been created for a board, it is not "solely advisory," and the provisions of this fact sheet are applicable.

DISCLOSURE REQUIREMENTS

- ❖ Board and commission members must disclose their economic interests on a form prepared by the State's Fair Political Practices Commission. It is known as a Form 700 or a statement of economic Interests, and it is filed with the City Clerk's office.
- ❖ The purpose of these disclosure requirements is to provide the public with relevant information about city officials to ensure that they are not using their City positions to promote or enhance their own financial interests.
- ❖ The type of information disclosed on a Form 700 is determined either by state law (for the high level filers) or by the conflict of interest code adopted for a particular board or commission. You can find your board or commission's conflict code on the City Clerk's website.
- ❖ Board and commission members must file an "assuming office" Form 700 within 30 days of taking office, an "annual" Form 700 on or before April 1 of each year, and a "leaving office" Form 700 within 30 days of leaving the board or commission.

- ❖ Depending on the scope of disclosure applicable to your board or commission (as set forth in the conflict code), you may have to disclose the following information on a Form 700:
 - ✓ Your investments (for example, stocks, bonds, excluding those in a mutual fund);
 - ✓ Any business you own (this includes partial ownership), and the names of people (for example, clients, customers) who have paid \$10,000 or more to the business;
 - ✓ Real property you own (excluding your personal residence), and income from renters;
 - ✓ People and entities that have provided you with income (\$500 or more) or gifts (\$50 or more); and,
 - ✓ The above information, but with regard to your spouse (which includes a registered domestic partner) and dependent children.
- ❖ For more information regarding the disclosure requirements for board and commission members, please refer to the ethics commission's fact sheet on disclosing economic interests.

RESTRICTIONS AND PROHIBITIONS

- ❖ The Ethics Ordinance prohibits members of City boards and commissions from accepting gifts (for example, meals, tickets to events) valued at \$590 or more from the same reportable source (that is., a source identified on the conflict of interest code for your agency) within a single calendar year. For more information, including the applicable exceptions to this rule, please refer to the ethics commission's fact sheet on gifts to city officials.
- ❖ Members of City boards and commissions may not:
 - ✓ participate in City decisions that might affect (even indirectly) their financial interests, such as companies in which they own stock, or companies/clients from whom they have received income (see the ethics commission's disqualification fact sheets for more information);
 - ✓ participate in City matters that involve the interests of a person or entity with whom they are seeking or negotiating future employment;
 - ✓ use their City position or authority to induce anyone to provide them with something of value; or,
 - ✓ solicit campaign contributions from City employees.
- ❖ You may not participate in any matter before your board or commission that involves someone who has paid you \$500 or more within the previous twelve months. In other words, if you represent a client who has a matter pending before your board or commission, you will have to recuse yourself from participating in all discussions and votes regarding that matter. In addition, you may not assist that client with reports, appearances, or presentations related to the matter, nor may you have any communications with City staff members concerning the matter. For more information on this prohibition, please consult the ethics commission's fact sheet on representing clients before your board.

Note that board and commission members subject to the above rules are required to obtain ethics training from the ethics commission upon assuming office, and every two years thereafter. Such members will be contacted by the commission as their training deadline approaches.

If you have any questions concerning your obligations as a board or commission member under the City's Ethics Ordinance, please contact the ethics commission at (619) 533-3476.

San Diego Housing Commission
POLICY

Subject: **CONFLICT OF INTEREST CODE AND RELATED PROVISIONS**

Number: **PO101.000**

Effective Date: 11/3/94

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1. BACKGROUND

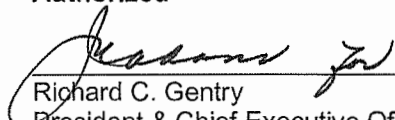
- 1.1 Federal, State and Local Conflict Laws Incorporated by Reference. All employees, Commissioners, consultants for the Commission, contractors doing business with the Commission, agents of the Commission, and each of them, shall comply with and adhere to all applicable conflict of interest provisions contained in the applicable federal, state and local law to the full extent required by the applicable federal, state and local law.
- 1.2 The Political Reform Act, Government Code Section 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regulations Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendices in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and together constitute the Conflict of Interest Code of the San Diego Housing Commission.
- 1.3 Pursuant to Section b(4) of the Standard Code, designated employees shall file statements of economic interests with the Clerk of the City of San Diego and copies will be made available to any person upon request.

2. POLICY AND ADOPTION OF CODE

- 2.1 Compliance with Applicable Laws. All employees, officers, commissioners of the San Diego Housing Commission, consultants, contractors, subcontractors, grantees, and borrowers shall, to the full extent required by the applicable law, comply with all applicable laws including, but not limited to, HOME, CDBG, etc., and all other federal conflict requirements and provisions, if federal funds and/or programs are involved, including 24 CFR 570.611, 24 CFR Part 982, 24 CFR Part 92, 24 CFR Part 85, and any and all other federal applicable federal conflict provisions. State conflict provisions shall include, but are not limited to, Government Code Sections 87100, et. seq., Government Code Sections 1126, et. seq., Government Code Sections 1090, et. seq., Government Code Section 19990 et. seq., and Health and Safety Code Section 34281 et. seq. Local conflict of interest provisions shall include San Diego Municipal Code Sections 27.3501 et. Seq. (San Diego Ethics Ordinance) and any and all administrative regulations promulgated by the President & Chief Executive Officer, or designee, to implement the federal, state and local conflict laws, if any.

Supersedes Policy 101.000, Issued 11/3/94; Rev: 4/23/96, 11/26/96, 12/08/98, 11/14/00, 8/16/02, 12/15/06, 9/18/08, 02/20/09

Authorized


Richard C. Gentry
President & Chief Executive Officer

11/21/2013
Date

Date

San Diego Housing Commission
POLICY

Subject: **CONFLICT OF INTEREST CODE AND RELATED PROVISIONS**

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2.2 The Standard Code as referenced in 2 Cal. Code of Regulations Section 18730 is hereby adopted by the San Diego Housing Commission. A true and correct copy of the standard code contained in 2 Cal. Code of Regulations Section 18730 may be obtained by contacting the San Diego Housing Commission offices, located at 1122 Broadway, San Diego, CA 92101. Said copy of the Code of Regulations is incorporated herein by reference.

2.3 2 Cal. Code of Regulations 18730. Provisions of Conflict of Interest Code. Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code Section 87300 or the amendment of a conflict of interest code within the meaning of Government Code Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code Section 87100, and to other state or local laws pertaining to conflicts of interest.

2.4 General Definitions:

A. Designated Employees, Disclosure Categories, Definitions: The designation of officers and employees, disclosure categories, and definitions referenced in the conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(i) Designated Employees The persons holding positions listed in Appendix A are designated employees. It has been determined that these persons make or participate in the making of decisions which may have a foreseeable material effect on financial interests.

(ii) Disclosure Categories This Code does not establish any disclosure obligation for those designated employees who are also specified in Government Code Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 87200, et seq.¹ Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees and positions, the disclosure categories set forth in Appendix B specify which kinds of financial interests are reportable. Such a designated employee or position shall disclose in his/her statement of economic interests those financial interests he/she has which are of the kind described in the disclosure categories to which he/she is assigned in Appendix A. It has been determined that the financial interests set forth in a designated employee's or position's disclosure categories are the kinds of financial interests which he/she foreseeably can affect materially through the conduct of his/her office.

¹ Designated employees who are required to file statements of economic interests under any other agency's Conflict of Interest Code, or under Article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code Section 81004.

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(iii) Definitions The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. Sections 18100, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code and in Appendix C.

B. Other Definitions: The following definitions are applicable to all portions of this policy except as referenced herein in Section 2.4 (A) above.

(i) "Contractor" means any individual or firm that enters into an agreement with the Housing Commission or the Housing Authority of the City of San Diego for the provision of goods and services, construction, architect/engineering, consulting services, loans and/or grants.

(ii) "Contract" means any mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. Examples include, but are not limited to, contracts, and amendments thereto, purchase orders, leases, maintenance agreements, and ordering agreements. Contract also includes loans and/or grants.

(iii) "Solicitation" means any informal or formal request for prices, bids, proposals, and/or qualifications that are issued in anticipation of making a contract, award and/or loan or grant.

2.5 Mandatory Disclosure of Interests by Prospective Contractors, Consultants, Suppliers, etc.

A. Purpose

To establish principles for determining the name and identity of any and all persons directly or indirectly involved in the proposed transaction, the precise nature of all interests of all persons therein, and other data pertinent to the award of a contract, including grants and/or loans.

B. Policy

No employee, officer, or agent of the Housing Commission or of the Housing Authority of the City of San Diego shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by an employee, officer or agent involved in making the award or his/her Spouse and/or dependent children.

C. Disclosure Required

To ensure that all potential conflicts of interest are identified, all contractors, including grantees and borrowers, selected for award of contracts in excess of \$25,000, including options, for architect/engineering and professional consultants, and all contractors selected for award of contracts in excess of \$49,999, including options, for construction and goods and services, shall be required to submit a Statement for Public Disclosure.

D. Failure to Submit

San Diego Housing Commission
POLICY

Subject: **CONFLICT OF INTEREST CODE AND RELATED PROVISIONS**

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Failure to submit a Statement for Public Disclosure, or failure to fully disclose all of the information enumerated in the Statement for Public Disclosure, shall be grounds for denial of contract award and may result in forfeiture of any and all rights and privileges that have been granted heretofore.

- 2.6 Notification of Conflicts or Potential Conflicts and Manner of Abstention All legally mandated abstentions should be filled out and transmitted to the Commission in advance of a hearing, but not later than the time of the hearing, using the form attached hereto as Appendix E. Examples of required written disclosures include, but are not limited to, conflicts involving economic interests under the Political Reform Act, Government Code sections 1090, 1091 and 1091.5 disclosures, Health and Safety Code section 34281 disclosures, City's Ethics Ordinance, and disclosures required by the "rule of necessity" under Government Code section 87100, et. seq.
- 2.7 Provision Governing Former Employees. No employee or member of the Housing Commission or of the Housing Authority of the City of San Diego shall have any prohibited interest, direct or indirect, not shall profit from any Housing Commission contract to the extent prohibited by applicable federal, state or local law.
3. Promulgation of Conflict of Interest Administrative Regulations The President & Chief Executive Officer of the Commission shall, from time to time, promulgate administrative regulations to implement the various conflict of interest provisions referenced above, if and when required. Such administrative regulations shall be made available to members of the public upon request. The Board of Commissioners may, but shall not be required to, review, approve and amend such administrative regulations, at such times as the Board, in its sole discretion shall determine. Subject to such discretionary review by the Board, all authority to promulgate, amend, review and revise the administrative regulations shall be vested in the President & Chief Executive Officer of the Commission.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87300-87302, 89501, 89502, 89503, and 89504, Government Code.

HISTORY:

New Section filed 4/2/80 as an emergency; effective upon filing. Certificate of Compliance included.

Editorial correction

Amendment of subsection (b) filed 1/9/81; effective thirtieth day thereafter

Amendment of subsection (b)(7)(B)l. filed 1/26/83; effective thirtieth day thereafter

Amendment of subsection (b)(7)(A) filed 11/10/83; effective thirtieth day thereafter

Amendment filed 4/13/87; effective thirtieth day thereafter

Amendment of subsection (b) filed 10/21/88; effective thirtieth day thereafter

Amendment filed 8/28/90; effective thirtieth day thereafter

Amendment filed 8/7/92; effective thirtieth day thereafter

Amendment filed 2/5/93; effective upon filing

Amendment filed 3/14/95; effective upon filing

Amendment filed 4/23/96; effective upon filing

Amendment filed 11/26/96; effective upon filing

Amendment filed 12/08/98; effective upon filing

Amendment filed 11/14/00; effective upon filing

Amendment filed 8/16/02; effective upon filing

Amendment filed 12/15/06; effective upon filing

Amendment filed 09/12/08; effective upon filing

Amendment filed 02/20/09; effective upon filing

Amendment filed 12/7/10; effective upon filing

Amendment filed 11/13/12; effective upon filing

APPENDIX A

DESIGNATED EMPLOYEES and DESIGNATED POSITIONS

Positions Requiring Full Disclosure Type I as set forth in Appendix B:

Assistant Directors
Board of Commissioners
Directors
Executive Vice President & Chief of Staff
Legal Counsel
Directors of the Housing Development Partners of San Diego
Directors of the HDP Mason Housing Corporation
Members of the Loan Committee
President & Chief Executive Officer
Senior Vice President
Vice Presidents

Positions Requiring Full Disclosure Type II, as set forth in Appendix B:

Executive Assistant to President & Chief Executive Officer

Positions Requiring Limited Disclosure Type I, as set forth in Appendix B: (contracting)

Communications Manager
Community Liaison
Community Relations Specialist
Contracts Analyst
Housing Construction Specialist
Housing Construction Supervisor
Housing Construction Manager
Human Resources Manager
Information Technology Manager

Positions Requiring Limited Disclosure Type II, as set forth in Appendix B: (services and grants)

Accountant
Accounting Supervisor
Budget Manager
Business Analyst
Contract Employees (who make/participate in Commission decisions in Board & Executive Functions, Business Services, Financial Services, Communications & Public Affairs, and/or Policy Departments)
Financial Specialist
Financial Analyst
Information Systems Service Manager
Project Manager
Senior Accountant
Senior Budget Analyst
Senior HR Analyst
Supervising Project Manager
Supervising Workforce Readiness Coordinator
Senior Program Analyst in Housing Innovations
Senior Program Analyst in Operations

Positions Requiring Limited Disclosure III, as set forth in Appendix B: (services/grants with RP)

Assistant Real Estate Managers
Contract Employees (who make/participate in Commission decisions in Real Estate, Operations, Housing Innovations and/or Rental Assistance Departments)
Housing Programs Manager
Senior Housing Supervisor
Loan Services Manager
Loan Underwriting Specialist
Loan Servicing Specialist
Real Estate Managers
Senior Program Analyst in Real Estate
Senior Program Analyst in Rental Assistance
Quality Assurance Manager

CONSULTANTS

"Consultant" is an individual who, pursuant to a contract with the Housing Commission either:

- (1) Makes a governmental decision whether to: (a) Approve a rate, rule or regulation; (b) Adopt or enforce a law; (c) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement; (d) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval; (e) Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract; (f) Grant agency approval to a plan, design, report, study, or similar item; (g) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or
- (2) Serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

Consultants shall make Full Disclosure subject to the President & Chief Executive Officer's (or his/her designated authority's) determination, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The President & Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Director of Financial Services/Budget Officer - This position manages public investments and will file a Statement of Economic Interests pursuant to Government Code §87200.

APPENDIX B

DISCLOSURE CATEGORIES

Full Disclosure – Type I

You are required to disclose the following interests:

- any and all interests in real property that are within the jurisdiction* of the San Diego Housing Commission ("Housing Commission");
- any and all investments, business positions and sources of income from a person or business in the jurisdiction* of the Housing Commission. A business is in the jurisdiction of the Housing Commission if it is currently doing business in the City of San Diego, is planning on doing business in the City of San Diego or has done business in the city of San Diego in the last two (2) years; and
- any and all gifts, loans, travel expenses, etc. from any person or business entity doing business with the Housing Commission and/or the Housing Authority of the City of San Diego ("Housing Authority").

Full Disclosure – Type II (excluding interest in real property)

You are required to disclose the following interests:

- any and all investments, business positions and sources of income from a person or business in the jurisdiction* of the Housing Commission. A business is in the jurisdiction of the Housing Commission if it is currently doing business in the City of San Diego, is planning on doing business in the City of San Diego or has done business in the city of San Diego in the last two (2) years; and
- any and all gifts, loans, travel expenses, etc. from any person or business entity doing business with the Housing Commission and/or the Housing Authority.

Limited Disclosure – Type I (contracting)

You are required to disclose the following interests:

- any and all investments, business positions and sources of income from a person or business in the jurisdiction* of the Housing Commission that provides leased facilities, goods, equipment, machinery, vehicles, and/or services, including training and/or consulting services, of a type utilized by your department. A business is in the jurisdiction of the Housing Commission if it is currently doing business in the City of San Diego, is planning on doing business in the City of San Diego or has done business in the City of San Diego in the last two (2) years; and
- any and all gifts, loans, travel expenses, etc. from a person or business doing business with the Housing Commission and/or the Housing Authority, that provide leased facilities, goods, equipment, machinery, vehicles, and/or services, including training and/or consulting services, of the type utilized by your department.

Limited Disclosure – Type II (grant/service providers)

You are required to disclose the following interests:

- any and all investments, business positions and/or income from any person or business (including a non-profit entity) doing business in the jurisdiction* of the Housing Commission and that provides goods and/or services of a nature similar to those utilized by your department. A business is in the jurisdiction of the Housing Commission if it is currently doing business in the City of San Diego, is planning on doing business in the City of San Diego or has done business in the City of San Diego in the last two (2) years;
- any and all investments, business positions and/or income from any person or business (including a non-profit entity) within the jurisdiction* of the Housing Commission that is of the type to receive grants or other monies from or through the Housing Commission. A business is in the jurisdiction of the Housing Commission if it is currently doing business in the City of San Diego, is planning on doing business in the City of San Diego or has done business in the City of San Diego in the last two (2) years; and
- any and all gifts, loans, travel expenses, etc. from a person or business doing business with the Housing Commission and/or the Housing Authority that provides goods or services of a nature similar to those utilized by your department.

Limited Disclosure – Type III (grant/service providers with disclosure of real property interest)

You are required to disclose the following interests:

- any and all interests in real property that are within the jurisdiction* of the Housing Commission;
- any and all investments, business positions and/or income from any person or business (including a non-profit entity) doing business in the jurisdiction* of the Housing Commission and that provides goods and/or services of a nature similar to those utilized by your department. A business is in the jurisdiction of the Housing Commission if it is currently doing business in the City of San Diego, is planning on doing business in the City of San Diego or has done business in the City of San Diego in the last two (2) years;
- any and all investments, business positions and/or income from any person or business (including a non-profit entity) within the jurisdiction* of the Housing Commission that is of the type to receive grants or other monies from or through the Housing Commission. A business is in the jurisdiction of the Housing Commission if it is currently doing business in the City of San Diego, is planning on doing business in the City of San Diego or has done business in the City of San Diego in the last two (2) years; and

- any and all gifts, loans, travel expenses, etc. from a person or business doing business with the Housing Commission and/or the Housing Authority that provides goods or services of a nature similar to those utilized by your department.

* "Jurisdiction" means the geographical area encompassing the City of San Diego, as depicted on the map in Appendix D. Real property is considered to be "within the jurisdiction" if the property or any part of it is located within or not more than two miles outside the boundaries of the City of San Diego or within two miles of any land owned or used by the San Diego Housing Commission. (82035)

APPENDIX C

General Provisions

When a designated employee is required to disclose investments and sources of income, the employee need only disclose investments in business entities and sources of income that do business in the jurisdiction or have done business in the jurisdiction, within the past two years. In addition to other activities, a business entity is doing business within the jurisdiction if it owns real property within the jurisdiction.

When a designated employee is required to disclose interests in real property, the employee shall disclose real property located whole or in part within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned by the local government agency. (The boundaries of the Housing Commission's jurisdiction are depicted and described on Appendix D.)

Designated employees or designated positions shall disclose their financial interest pursuant to the appropriate disclosure category(ies) as indicated in the chart in Appendix A.

Late Filing. The filing officer may impose penalties for statements of economic interests that are filed late. The fine is \$10 per day beginning the day after the filing deadline, up to a maximum of \$100. Late filing penalties can be reduced or waived under certain circumstances.

Amendment to Appendix A: The President & Chief Executive Officer is authorized to implement proposed revisions to the Designated Positions List as classifications are added and deleted. Changes to the approved Designated Positions List will be forwarded for document approval during the biennial review process per City Council Resolution 287239.

APPENDIX D

"Jurisdiction" means the geographical area encompassing the City of San Diego, as depicted on the map in Appendix D. Real property is considered to be "within the jurisdiction" if the property or any part of it is located within or not more than two miles outside the boundaries of the City of San Diego or within two miles of any land owned or used by the San Diego Housing Commission.

(Map of Jurisdiction)

APPENDIX E

WRITTEN DISCLOSURE OF CONFLICT OR POTENTIAL CONFLICT OR
OTHER REASON FOR ABSTENTION AND NOTICE OF INTENTION TO
ABSTAIN FROM PARTICIPATION AND ACTION ON THE ITEM

DATE: _____

TO: The Clerk of the City of San Diego, President & President & Chief Executive Officer,
Secretary and General Counsel of the San Diego Housing Commission

FROM: _____
(Name) (Title)

SUBJECT: San Diego Housing Commission Item _____
for Meeting Scheduled on _____ (“the Item”)

NATURE OF CONFLICT OR POTENTIAL CONFLICT OR OTHER REASON
FOR ABSTENTION:

The undersigned requests that this written disclosure be made part of the public record and incorporated into the minutes of the meeting, if, and to the extent, required by law, including but not limited to Government Code Sections 87100, 87101, 1090, 1091, 1091.5, Health and Safety code Section 32481, City’s Ethics Ordinance and the applicable regulations, including, but not limited to 2 Cal. Regs. 18730(b)(10).

Executed this _____ of _____, at San Diego, California.

(Name Printed or Typed)
Commissioner or Employee of the
San Diego Housing Commission

RESOLUTION NUMBER R- 307809DATE OF FINAL PASSAGE NOV 13 2012RESOLUTION ADOPTING AN AMENDED CONFLICT OF
INTEREST CODE FOR THE SAN DIEGO HOUSING
COMMISSION

WHEREAS, Government Code sections 87300 and 87302 require local agencies to adopt conflict of interest codes designating positions that involve the making or participation in making of decisions which may foreseeably have a material effect on financial interests, and for each position, the financial interests which are reportable; and

WHEREAS, in compliance with Government Code section 87306.5, the City is in the midst of a required City-wide biennial review of all conflict of interest codes for which the City Council serves as code-reviewing body; and

WHEREAS, by Resolution R-305874 (adopted by the City Council on May 25, 2010), the City Council directed every City department, agency, board and commission for which the City Council serves as code-reviewing body to make biennial reports and to update their conflict of interest codes as necessary; and

WHEREAS, as the City's code-reviewing body, the City Council finds it in the public interest to adopt the standard conflict of interest code promulgated by the California Fair Political Practices Commission (FPPC) in Regulation 18730, and hereby declares its intention to incorporate by reference the terms of FPPC Regulation 18730 and any amendments to that regulation duly adopted by the FPPC as part of each conflict of interest code for which the City Council has responsibility; and

WHEREAS, the Conflict of Interest Code for the San Diego Housing Commission was originally issued in November 1994 and has been amended periodically since that date; and

WHEREAS, the Conflict of Interest Code for the San Diego Housing Commission was last amended through Resolution No. R-306454, approved by the Council on December 7, 2010; and

WHEREAS, the San Diego Housing Commission now seeks to amend its conflict of interest code to include new positions that must be designated, revise disclosure categories, revise the titles of existing positions, and delete titles of positions that no longer exist, as detailed in its code; and

WHEREAS, the San Diego Housing Commission Board has voted to approve the amendments and to recommend that the City Council adopt the proposed amendments to the code; and

WHEREAS, Government Code section 87303 provides that when a proposed conflict of interest code or amendment is approved by the code-reviewing body, it shall be deemed adopted, and, accordingly, this resolution is not subject to veto by the Mayor; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that a Conflict of Interest Code for the San Diego Housing Commission is hereby adopted, consisting of standard language embodied in title 2, section 18730 of the California Code of Regulations, and any amendments to that regulation duly adopted by the Fair Political Practices Commission, with Appendix A showing designated positions and their duties, and Appendix B showing the disclosure categories.

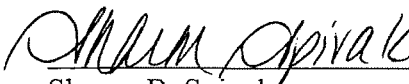
BE IT FURTHER RESOLVED, that a copy of Appendix A and Appendix B to the Conflict of Interest Code for the San Diego Housing Commission as adopted be placed on file in the Office of the City Clerk as Document No. RR- 307809.

BE IT FURTHER RESOLVED, that the persons whose positions are designated in the Conflict of Interest Code for the San Diego Housing Commission shall file their statements of economic interest with the City Clerk in compliance with the schedule set forth in Government Code section 87302(b) and Fair Political Practices Commission Regulation 18730, or any amendments thereto, which set forth the deadlines for the filing of initial statements, assuming office statements, annual statements and leaving office statements.

BE IT FURTHER RESOLVED, that the statements of economic interest filed by designated persons be retained by the Office of the City Clerk and be made available for public inspection and reproduction.

BE IT FURTHER RESOLVED, that the Conflict of Interest Code for the San Diego Housing Commission becomes effective upon the date of adoption of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Sharon B. Spivak
Deputy City Attorney

SBS:jdf
10/12/12
Or.Dept: S.D. Housing Commission
Doc. No.: 454794

San Diego Housing Commission

POLICYSubject: **MANDATORY DISCLOSURE OF BUSINESS INTERESTS**Number: **PO209.000**

Effective Date: October 3, 1995

Page 2 of 2

- 3.3 No employee or member of the Housing Commission or of the Housing Authority of the City of San Diego shall have any private interest, direct or indirect, nor shall profit from any Housing Commission contract when prohibited by applicable federal, state or local law.
- 3.4 To ensure that all potential conflicts of interest are identified, all contractors selected for award of contracts in excess of \$25,000, including options, for architect/engineering and professional consultants, and all contractors selected for award of contracts in excess of \$49,999, including options, for construction and goods and services, shall be required to submit a Statement for Public Disclosure in a time approved by the President & Chief Executive Officer of the Housing Commission.
- 3.5 Failure to submit a Statement for Public Disclosure, or failure to fully disclose all of the information enumerated in the Statement for Public Disclosure, shall be grounds for denial of contract award and may result in forfeiture of any and all rights and privileges that have been granted heretofore.

4. ADMINISTRATIVE PROCEDURESResponsibilityAction

Procuring Section

4.1

Incorporates Statement for Public Disclosure in all solicitations for architect/engineering and professional consultants anticipated to result in a contract award in excess of \$25,000, including options, and all construction and goods and services solicitations anticipated to result in a contract award of in excess of \$49,999, including options.

4.2

After award selection is made by the delegated approval authority, the Procuring Section will require the selected contractor to submit a fully completed Statement for Public Disclosure.

4.3

The Procuring Section will forward the Statement for Public Disclosure and all contract award documents to the Project Manager for review.

Project Manager

4.4

The Project Manager will review the Statement for Public Disclosure and all contract award documents to determine if a conflict of interest or other reportable issues exist.

Procuring Section

4.5

The Project Manager shall include a summary of possible conflicts of interest or other concerns within the Report to the Board of Commissioners or Housing Authority and attaches a copy of the Statement for Public Disclosure to the Report.

Board

4.6

Each individual member reviews the Report and the Statement for Public Disclosure.

POLICY

Subject: **MANDATORY DISCLOSURE OF BUSINESS INTERESTS**

Number: **PO209.000**

Effective Date: October 3, 1995

Page 1 of 2

1. PURPOSE

- 1.1 To establish principles for determining the name and identity of any and all persons directly or indirectly involved in the proposed transaction, the precise nature of all interests of all persons therein, and other data pertinent to the award of a contract.
- 1.2 To set forth administrative procedures implementing these principles.

2. DEFINITIONS

- 2.1 "Contractor" means any individual or firm that enters into an agreement with the Housing Commission or the Housing Authority of the City of San Diego for the provision of goods and services, construction, architect/engineering, or consulting services.
- 2.2 "Contract" means any mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. Examples include, but are not limited to, contracts, and amendments thereto, purchase orders, leases, maintenance agreements, and ordering agreements.
- 2.3 "Solicitation" means any informal or formal request for prices, bids, or proposals that is issued in anticipation of making a contract award.

3. POLICY

- 3.1 No employee, officer, or agent of the Housing Commission or of the Housing Authority of the City of San Diego shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved.
- 3.2 Such conflict would arise when a financial or other interest in a firm selected for award is held by an employee, officer or agent involved in making the award or his/her spouse and/or dependent children.

[Supersedes Policy 209.000, Issued 8/22/94, Effective 10/3/95, Revised 12/15/06]

Authorized: _____



Carrol M. Vaughan, Executive Vice President
& Chief Operating Officer

12/15/06
Date

POLICYSubject: **GUIDELINES FOR OPEN MEETINGS AND ACCESS TO PUBLIC RECORDS**Number: **PO205.000**

Effective Date: 3/17/98

Page 1 of 3

1 Background

- 1.1 The California Public Records Act [California Government Code Section 6250 *et seq.*], the Ralph M. Brown Act (also known as the Open Meetings Law) [California Government Code Section 54950 *et seq.*] and the Freedom of Information Act (FOIA) [Title 5, United States Code, Section 552] establish the right of the people to participate in their government. These laws mandate that meetings of public agencies must be open and permit public testimony, that the records of public agencies must be open to inspection by members of the public, and that copies of public agency records must be provided to members of the public if requested. At the same time, the California Constitution and state and federal laws provide certain rights to privacy to persons and to some public records containing information about those persons.
- 1.2 This Policy provides guidelines for open meetings and access to public records.

2 Open Meetings

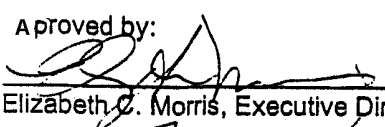
- 2.1 The meetings of the San Diego Housing Authority and San Diego Housing Commission and all subordinate bodies created by them shall be held openly in full view of the public pursuant to the requirements of the Ralph M. Brown Act. Each body shall establish a schedule of regular meetings each year which shall be posted in a conspicuous public place in each office of the San Diego Housing Commission. Special and emergency meetings shall only be called pursuant to the provisions of Ralph M. Brown Act. Meeting agenda shall be posted prior to each meeting, and distributed to each local newspaper and broadcast station requesting notice. The meeting agenda and of all materials included in the agenda packet shall be made available for public review, and copies shall be provided to the members of the public who request them upon payment of a fee based upon the estimated cost of providing the service.

3 Public Records

- 3.1 Public records maintained by the San Diego Housing Commission will be available for inspection by members of the public pursuant to the following procedures:
- 3.2 Public records maintained by the San Diego Housing Commission shall be available for inspection during the regular business hours of the agency. Because many of the public records maintained by the agency are stored in working files located at one or more of several work sites, and most of those records contain some information which is exempt from disclosure, it is necessary that agency staff have time to collect and review requested records prior to their disclosure.

[Supersedes Policy 205.000, Issued: 8/3/87, Effective: 3/17/98]

Approved by:


 Elizabeth C. Morris, Executive Director

Date


 Paula Burrier-Lund, Deputy Executive Director

Date

POLICYSubject: **GUIDELINES FOR OPEN MEETINGS AND ACCESS TO PUBLIC RECORDS**Number: **PO205.000**

Effective Date: 3/17/98

Page 2 of 3

- 3.3 Requests for inspection or copying of public records:
- 3.3.1 Shall be specific, focused and not interfere with the ordinary business operations of the agency. The operational functions of the agency will not be suspended to permit inspection of records during periods in which such records are reasonably required by agency personnel in the performance of their duties. If the request requires review of numerous records, a mutually agreeable time should be established for the inspection of the records.
 - 3.3.2 Shall be directed to the Public Information Officer of the agency, who will coordinate collection and review of the desired records.
 - 3.3.3 Shall sufficiently describe records so that identification, location and retrieval of the records can be achieved by agency personnel.
 - 3.3.4 Shall be submitted in writing and shall include the name and address of the person requesting the records, unless the request involves records which are maintained by the agency for the purpose of immediate public inspection.
- 3.4 The agency may refuse to disclose any records which are exempt from disclosure under the Public Records Act.
- 3.5 Any person may appeal a decision to deny access to a public record by filing, within ten working days of the denial, a written request for review of the denial with the Executive Director. The request for review of the denial shall set forth a description of the records demanded and the person's reasons for believing that the records should be disclosed. The Executive Director shall review the request, seeking the opinion of legal counsel when necessary, and shall inform the person requesting review of his/her determination in writing, setting forth the reasons for denial of access when the denial is upheld.
- 3.6 Only records that are already in existence are covered by the Public Records Act. There is no requirement that the agency create new records or develop compilations of existing records.
- 3.7 Physical inspection of the records shall be permitted within the agency's offices and under the conditions determined by the agency. Upon either the completion of the inspection or the oral request of agency personnel, persons inspecting agency records shall relinquish physical possession of the records. Persons inspecting agency records shall not destroy, mutilate, deface, alter, or remove any such records from the agency. The agency reserves the right to have agency personnel present during the inspection of records in order to prevent the loss or destruction of records.
- 3.8 Upon any request for a copy of records, other than records the agency has determined to be exempt from disclosure under the Public Records Act, agency personnel shall provide copies of the records to any person upon payment of a fee covering costs of duplication. Copies of records shall be provided within ten working days of receipt of the request except in unusual circumstances.

POLICYSubject: **GUIDELINES FOR OPEN MEETINGS AND ACCESS TO PUBLIC RECORDS**Number: **PO205.000**

Effective Date: 3/17/98

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4 Fee Schedule

- 4.1 The Housing Commission shall from time-to-time determine the cost of providing copies of public records, including reproduction and delivery, and set a fee schedule to recover that cost. In the case of agendas and agenda materials, the fee schedule should be set so as to encourage public participation in the public deliberations of the Housing Commission and any subordinate bodies.

A copy of this policy and fee schedule shall be posted in a conspicuous public place in each office of the San Diego Housing Commission, and a copy thereof shall be made available free of charge to any person requesting such copy.

History

Adopted: 1979

Revised: 10/10/86 (fees)

Revised: 3/2/87 (fees)

Revised: 8/3/87

Revised: 3/17/98

**SAN DIEGO HOUSING COMMISSION
OFFICE OF THE EXECUTIVE DIRECTOR
MEMORANDUM**

DATE: September 15, 1998

TO: Managers, Supervisors, Policy Manual Holders

FROM: Tim O'Connell, Assistant to the Executive Director
Acting Public Information Officer

**SUBJECT: REVISED POLICY AND ADMINISTRATIVE REGULATION REGARDING
OPEN MEETINGS AND ACCESS TO PUBLIC RECORDS**

Attached are newly revised Policy PO205.000, and Administrative Regulation AR205.000, "Guidelines for Open Meetings and Access to Public Records." Please review them and place them in your Policy Manual (if you have one). If you have any questions about these new guidelines or about any specific request for agency records, please do not hesitate to contact me

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016



ACKNOWLEDGEMENTS

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

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Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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IT IS THE PEOPLE’S BUSINESS

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Chapter 1

IT IS THE PEOPLE'S BUSINESS



The right of access

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

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

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

*over the instruments they have created."*¹

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

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

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

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

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

Broad coverage

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

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

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

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

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

Narrow exemptions

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

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

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

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.⁵

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

Public participation in meetings

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

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

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Controversy

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

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

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

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

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely

to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.⁶ Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

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

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



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

Achieving balance

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

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

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

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

Historical note

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

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

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

Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

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

ENDNOTES:

- 1 California Government Code section 54950
- 2 California Constitution, Art. 1, section 3(b)(1)
- 3 California Government Code section 54953(a)
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).
- 5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533
- 6 California Government Code section 54953.7

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Chapter 2

LEGISLATIVE BODIES

What is a “legislative body” of a local agency? 12

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Chapter 2

LEGISLATIVE BODIES

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



What is a “legislative body” of a local agency?

A “legislative body” includes:

- **The “governing body”** of a local agency² and certain of its subsidiary bodies; “or any other local body created by state or federal statute.”² This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A “local agency” is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.³ A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.⁴ The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.⁵ Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.⁶

- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.⁷ Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

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

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

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

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

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

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

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

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

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

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

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

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.¹⁶

What is not a “legislative body” for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.¹⁷ Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.¹⁸
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.¹⁹

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

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

Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

A. *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.²⁰
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.²¹
- County central committees of political parties are also not Brown Act bodies.²²

ENDNOTES:

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127

- 2 California Government Code section 54952(a) and (b)
- 3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805
- 9 California Government Code section 54952(b)
- 10 79 Ops.Cal.Atty.Gen. 69 (1996)
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793
- 12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App.4th 287, 300 fn. 5
- 15 "The Brown Act, Open Meetings for Local Legislative Bodies," California Attorney General's Office (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129
- 19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879
- 21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513
- 22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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Chapter 3

MEETINGS

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Chapter 3

MEETINGS



The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "... and any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body."¹ The term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.²

Brown Act meetings

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

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.³
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.⁴
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.⁵
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.⁶

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:⁷

Individual Contacts

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

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

Conferences

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

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

Community Meetings

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



"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"

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

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.



Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency.⁸ Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside

from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*

Q. The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).⁹

Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

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

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

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.¹⁰ This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

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

Retreats or workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.¹¹



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

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

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting ... use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."¹² The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a “daisy chain” or a “hub and spoke” sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body’s subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members,



communicates with a majority of members (the spokes) one-by-one for discussion, deliberation, or a decision on a proposed action.¹³ Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members’ respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting “with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of

the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”¹⁴

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.¹⁵

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.¹⁶ Such a memo, however, may be a public record.¹⁷

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

“Well, I don’t know,” replied Board Member Aletto. “That’s kind of a sticky proposition. You sure you need my vote?”

“Well, I’ve got Bradley and Cohen lined up and another vote leaning. With you I’d be over the top.”

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

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating

a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

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

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."¹⁸ Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.

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

"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"

"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two of her colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

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

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

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

Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.¹⁹ A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

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

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

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



Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.²⁰ While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

“Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either

audio or video, or both.”²¹ In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:²²

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency’s jurisdiction;
- Additional teleconference locations may be made available for the public;
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

A. *She may not participate or vote because she is not in a noticed and posted teleconference location.*

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

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.²³

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:²⁴

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

Q. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.²⁵

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential

employee from another district.²⁶ A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.²⁷

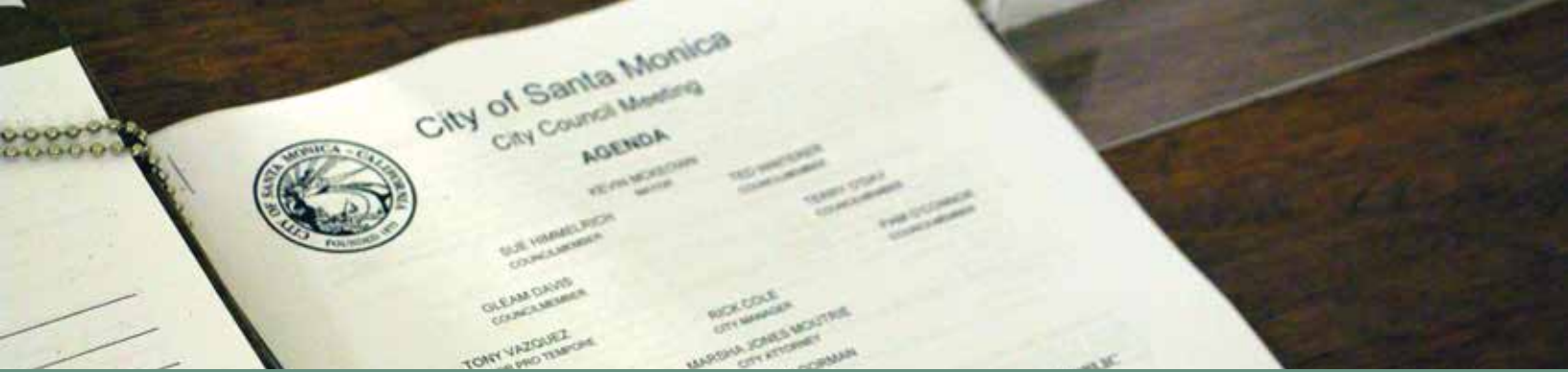
Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.²⁸



Endnotes:

- 1 California Government Code section 54952.2(a)
- 2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 3 California Government Code section 54954(a)
- 4 California Government Code section 54956
- 5 California Government Code section 54956.5
- 6 California Government Code section 54955
- 7 California Government Code section 54952.2(c)
- 8 California Government Code section 54952.2(c)(4)
- 9 California Government Code section 54952.2(c)(6)
- 10 California Government Code section 54953.1
- 11 “*The Brown Act*,” California Attorney General (2003), p. 10
- 12 California Government Code section 54952.2(b)(1)
- 13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 14 California Government Code section 54952.2(b)(2)
- 15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 17 California Government Code section 54957.5(a)
- 18 California Government Code section 54952.2(b)(2)
- 19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 20 California Government Code section 54953(b)(1)
- 21 California Government Code section 54953(b)(4)
- 22 California Government Code section 54953
- 23 California Government Code section 54954(b)
- 24 California Government Code section 54954(b)(1)-(7)
- 25 94 Ops.Cal.Atty.Gen. 15 (2011)
- 26 California Government Code section 54954(c)
- 27 California Government Code section 54954(d)
- 28 California Government Code section 54954(e)

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



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Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

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

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”¹ The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this

provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.² This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.³ While posting an agenda on an agency’s Internet website will not, by itself, satisfy the “freely accessible” requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.⁴

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city’s website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for “substantial compliance” with all agenda posting requirements, including posting to the agency website.⁵ Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.⁶ This inquiry requires a fact-specific examination of whether the agency or its legislative body made “reasonably effective efforts to notify interested persons of a public meeting” through online posting and other available means.⁷ The Attorney General’s opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.⁸ The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."⁹ Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.¹⁰

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

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

- Consideration of a report regarding traffic on Eighth Street; and
- Consideration of contract with ABC Consulting.

Are these descriptions adequate?

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

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

Is this permissible?

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

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

Mailed agenda upon written request

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

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.¹¹



Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed.

Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.¹²

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.¹³ If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.¹⁴ A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.¹⁵

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.¹⁶ News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.



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

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.¹⁷

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.¹⁸ However, they are generally consistent with the Brown Act. An item is probably void if not posted.¹⁹ A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and to address the board on those items.²⁰

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.²¹ Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIII C or XIII D, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.²² As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.



Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:²³

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

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

“I’d like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project,” said Chair Lopez.

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

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

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

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

- First, make two determinations: 1) that there is an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

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

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

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body’s rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.²⁴ However, caution should be used to avoid any discussion or action on such items.

Council Member Jefferson: I would like staff to respond to Resident Joe’s complaints during public comment about the repaving project on Elm Street — are there problems with this project?

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

Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.

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

The right to attend and observe meetings

A number of Brown Act provisions protect the public’s right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise “fulfill any condition precedent” to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.²⁵

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.²⁶ This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.²⁷

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.²⁸



Action by secret ballot, whether preliminary or final, is flatly prohibited.²⁹

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.³⁰

Q: The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A: *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt proceedings.³¹ Ejection is justified only when audience members actually disrupt the proceedings.³² If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.³³

Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.³⁴ A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.³⁵

Q: In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A: *No. The memorandum is a privileged attorney-client communication.*

Q: In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A: *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*



A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.³⁶ A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.³⁷

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.³⁸ The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.³⁹

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.⁴⁰

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.⁴¹

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.⁴²

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

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

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.⁴³



PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

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

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

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

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



The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.⁴⁴

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.⁴⁵

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.⁴⁶

Endnotes:

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327 (1995)
- 3 88 Ops.Cal.Atty.Gen. 218 (2005)
- 4 California Government Code sections 54954.2(a)(1) and 54954.2(d)
- 5 California Government Code section 54960.1(d)(1)
- 6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262
- 7 *North Pacific LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432
- 8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8
- 9 California Government Code section 54954.2(a)(1)
- 10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

- 11 California Government Code section 54954.1
- 12 California Government Code sections 54956(a) and (c)
- 13 California Government Code section 54955
- 14 California Government Code section 54954.2(b)(3)
- 15 California Government Code section 54955.1
- 16 California Government Code section 54956.5
- 17 California Government Code section 54952.3
- 18 Education Code sections 35144, 35145 and 72129
- 19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 20 California Education Code section 35145.5
- 21 California Government Code section 54954.6
- 22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 23 California Government Code section 54954.2(b)
- 24 California Government Code section 54954.2(a)(2)
- 25 California Government Code section 54953.3
- 26 California Government Code section 54961(a); California Government Code section 11135(a)
- 27 California Government Code section 54952.2(c)(2)
- 28 California Government Code section 54953(b)
- 29 California Government Code section 54953(c)
- 30 California Government Code section 54953(c)(2)
- 31 California Government Code section 54957.9.
- 32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption).
- 33 California Government Code section 54957.9
- 34 California Government Code section 54957.5
- 35 California Government Code section 54957.5(d)
- 36 California Government Code section 54957.5(b)
- 37 California Government Code section 54957.5(c)
- 38 California Government Code section 54953.5(b)
- 39 California Government Code section 54957.5(d)
- 40 California Government Code section 54953.5(a)
- 41 California Government Code section 54953.6
- 42 California Government Code section 54954.3(a)
- 43 California Government Code section 54954.3(c)
- 44 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 45 California Government Code section 54954.3(a)
- 46 California Government Code section 54954.3(a)

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



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Chapter 5

CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.¹



As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.² The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.³

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

In this chapter, the grounds for convening a closed session are called “exceptions” because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),⁴ the Brown Act does not authorize closed sessions for other contract negotiations.

Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.⁵ An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.⁶

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a “safe harbor” from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.⁷

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.⁸

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.⁹ The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.¹⁰

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.¹¹ If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.¹² A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.¹³

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.¹⁴ The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.¹⁵ For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.¹⁶

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.¹⁷ In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.¹⁸

Existing litigation

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

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

agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.¹⁹

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.²⁰ The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and

circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

Anticipated initiation of litigation by the local agency

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

Certain actions must be reported in open session at the same meeting following the closed



session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.²¹ Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A “lease” includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body’s negotiator on price and terms of payment.²² Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.²³



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

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

The agency’s negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern²⁴ and the names of the parties with whom its negotiator may negotiate.²⁵

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.²⁶

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

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

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

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

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

Public employment

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.”²⁷ The purpose of this exception — commonly referred to as the “personnel exception” — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.²⁸ The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.²⁹ That authority may be delegated to a subsidiary appointed body.³⁰

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,³¹ and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.³² The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.³³ If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.³⁴

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.³⁵

Q. Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

A. *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.³⁶ An incorrect agenda description can result in invalidation of an action and much embarrassment.

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.³⁷ Action on individuals who are not “employees” must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

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

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.³⁸ However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.³⁹

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

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

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

Labor negotiations

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

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,⁴⁰ on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.⁴¹

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

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

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

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.⁴²

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.⁴³ The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

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

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

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.⁴⁴

Public participation under the Rodda Act also takes another form.⁴⁵ All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.⁴⁶ The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.⁴⁷

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.⁴⁸ Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.⁴⁹

Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.⁵⁰

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

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.⁵¹

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.⁵² Action taken in closed session with respect to such public security issues is not reportable action.



Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.⁵³

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.⁵⁴

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.⁵⁵

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

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

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.⁵⁶



Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,⁵⁷ consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,⁵⁸ hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,⁵⁹ discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations

concerning rates of payment,⁶⁰ and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.⁶¹

PRACTICE TIP: Meetings are either open or closed. There is nothing “in between.”⁶²

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.⁶³

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

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

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.⁶⁴ It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.⁶⁵ Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.⁶⁶

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information received during a closed session regarding pending litigation,⁶⁷ though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.⁶⁸ In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.⁶⁹

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.⁷⁰

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

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

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

The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.⁷¹ The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.

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

ENDNOTES:

- 1 California Government Code section 54962
- 2 California Constitution, Art. 1, section 3
- 3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).
- 4 California Government Code section 54957.1
- 5 California Government Code section 54954.5
- 6 California Government Code section 54954.2
- 7 California Government Code section 54954.5
- 8 California Government Code sections 54956.9 and 54957.7
- 9 California Government Code section 54957.1(a)
- 10 California Government Code section 54957.1(b)
- 11 California Government Code section 54957.2
- 12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707
- 13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 15 82 Ops.Cal.Atty.Gen. 29 (1999)
- 16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471
- 17 “*The Brown Act*,” California Attorney General (2003), p. 40
- 18 California Government Code section 54956.9(g)
- 19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 20 Government Code section 54956.9(e)
- 21 California Government Code section 54957.1
- 22 California Government Code section 54956.8
- 23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).
- 24 73 Ops.Cal.Atty.Gen. 1 (1990)
- 25 California Government Code sections 54956.8 and 54954.5(b)
- 26 California Government Code section 54957.1(a)(1)
- 27 California Government Code section 54957(b)
- 28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).
- 29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

- 31 California Government Code section 54957(b)(3)
- 32 88 Ops.Cal.Atty.Gen. 16 (2005)
- 33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860
- 34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).
- 35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87
- 36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 37 California Government Code section 54957
- 38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 39 California Government Code section 54957.1(a)(5)
- 40 California Government Code section 54957.6
- 41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not “employees” of the district).
- 42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)
- 43 California Government Code section 54957.1(a)(6)
- 44 California Government Code section 3549.1
- 45 California Government Code section 3540
- 46 California Government Code section 3547
- 47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).
- 48 California Education Code section 72122
- 49 California Education Code section 60617
- 50 California Government Code section 54956.96
- 51 California Government Code section 54956.7
- 52 California Government Code section 54957
- 53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354
- 54 California Government Code section 54957.8
- 55 California Government Code section 54962
- 56 California Health and Safety Code section 32106
- 57 California Government Code section 54956.75
- 58 California Government Code section 54956.81
- 59 California Government Code section 54956.86
- 60 California Government Code section 54956.87
- 61 California Government Code section 54956.95
- 62 46 Ops.Cal.Atty.Gen. 34 (1965)
- 63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.

66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

67 80 Ops.Cal.Atty.Gen. 231 (1997)

68 76 Ops.Cal.Atty.Gen. 289 (1993)

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

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Chapter 6

REMEDIES



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

Invalidation

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

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;²
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendaized items are acted on by the governing body during a meeting.³ The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,⁴ the challenger must show prejudice as a result of the alleged violation.⁵ An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.⁶

Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.⁷ Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a “cease and desist” letter to the legislative body, clearly describing the past action and the nature of the alleged violation.⁸ The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.⁹ If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.¹⁰

The legislative body’s unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.¹¹ The unconditional commitment must be substantially in the form set forth in the Brown Act.¹² No legal action may thereafter be commenced regarding the past action.¹³ However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.¹⁴

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.¹⁵

Civil action to prevent future violations

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

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

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.



It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.¹⁶ Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.¹⁷

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

Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.¹⁸ When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.¹⁹

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.²⁰

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.²¹

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.²² If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.²³ In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.²⁴

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

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.²⁵ There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.²⁶

Voluntary resolution

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

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

ENDNOTES:

- 1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54956.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.
- 2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198
- 3 California Government Code section 54960.1 (b) and (c)(1)
- 4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319
- 5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561
- 6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118
- 7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)
- 8 Government Code Sections 54960.2(a)(1), (2)
- 9 Government Code Section 54960.2(b)



- 10 Government Code Section 54960.2(a)(4)
- 11 Government Code Section 54960.2(c)(2)
- 12 Government Code Section 54960.2(c)(1)
- 13 Government Code Section 54960.2(c)(3)
- 14 Government Code Section 54960.2(d)
- 15 Government Code Section 54960.2(e)
- 16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6
- 17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36
- 18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein
- 19 California Government Code section 54960.5
- 20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 21 California Government Code section 54959
- 22 California Government Code section 54952.6
- 23 61 Ops.Cal.Atty.Gen.283 (1978)
- 24 California Government Code section 54959
- 25 California Government Code section 1222 provides that “[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.”
- 26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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The People's Business

A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

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Introduction and Overview

Origins of the Public Records Act

The California Public Records Act (the PRA) was enacted in 1968 to: (1) safeguard the accountability of government to the public; (2) promote maximum disclosure of the conduct of governmental operations; and (3) explicitly acknowledge the principle that secrecy is antithetical to a democratic system of “government of the people, by the people and for the people.”¹ The PRA was enacted against a background of legislative impatience with secrecy in government and was modeled on the federal Freedom of Information Act (FOIA) enacted a year earlier.² When the PRA was enacted, the Legislature had been attempting to formulate a workable means of minimizing secrecy in government. The resulting legislation replaced a confusing mass of statutes and court decisions relating to disclosure of government records.³ The PRA was the culmination of a 15-year effort by the Legislature to create a comprehensive general public records law.

2023 Revisions to the Public Records Act

In 2021, the legislature enacted the CPRA Recodification Act (AB 473). This Act, effective Jan. 1, 2023, renumbered and reorganized the PRA in a new Division 614 of the Government Code, beginning at section 7920.005. Nothing in AB 473 was “intended to substantially change the law relating to inspection of public records.”⁴ The changes were intended to be “entirely nonsubstantive in effect. Every provision of this division and every other provision of [AB 473], shall be interpreted consistent with the nonsubstantive intent of the act.”⁵

1 Gov. Code, § 7920.000 *et. seq.* (formerly Gov. Code, § 6250 *et seq.*); Stats 1968, Ch. 1473; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651–652; 52 Ops.Cal.Atty.Gen 136, 143; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 771–772.

2 *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 772; 5 U.S.C. §552 *et seq.*, 81 Stat. 54; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 447; *CBS, Inc. v. Block*, *supra*, 42 Cal.3d at p. 651. The basic purpose of the FOIA is to expose agency action to the light of public scrutiny. *U.S. Dept. of Justice v. Reporters Com. for Freedom of Press* (1989) 489 US 749, 774.

3 *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 772; *American Civil Liberties Union Federation v. Deukmejian*, *supra*, 32 Cal.3d at p. 447.

4 Gov. Code, § 7920.100.

5 *Ibid.*

Case law interpreting the prior version of the PRA applies to new provisions that restate and continue the previously existing provisions.⁶ AB 473 is “not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by [AB 473].”⁷

Fundamental Right of Access to Government Information

The PRA is an indispensable component of California’s commitment to open government. The PRA expressly provides that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”⁸ The purpose is to give the public access to information that enables them to monitor the functioning of their government.⁹ The concept that access to information is a fundamental right is not new to United States jurisprudence. Two hundred years ago James Madison observed “[k]nowledge will forever govern ignorance and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or tragedy or perhaps both.”¹⁰

The PRA provides for two different rights of access. One is a right to inspect public records: “Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided.”¹¹ The other is a right to prompt availability of copies of public records:

Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.¹²

Agency records policies and practices must satisfy both types of public records access — by permitting inspection and by providing copies of public records — that the PRA guarantees.

Exemptions from Disclosure — Protecting the Public’s Fundamental Right of Privacy and Need for Efficient and Effective Government

The PRA’s fundamental precept is that governmental records shall be disclosed to the public, upon request, unless there is a legal basis not to do so.¹³ The right of access to public records under the PRA is not unlimited; it does not extend to records that are exempt from disclosure. Express legal authority is required to justify denial of access to public records.

6 Gov. Code, § 7920.110, subd. (a).

7 Gov. Code, § 7920.110, subd. (c).

8 Gov. Code, § 7921.000 (formerly Gov. Code, § 6250).

9 *CBS, Inc. v. Block*, *supra*, 42 Cal.3d at p. 651; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1350.

10 *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 772, citing Shaffer et al., *A Look at the California Records Act and Its Exemptions* (1974) 4 Golden Gate L Rev 203, 212.

11 Gov. Code, § 7922.525, subd. (a) (formerly Gov. Code, § 6253, subd. (a)).

12 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

13 *Ibid.*

► **PRACTICE TIP:**

There is no general exemption authorizing non-disclosure of government records on the basis the disclosure could be inconvenient or even potentially embarrassing to a local agency or its officials. Disclosure of such records is one of the primary purposes of the PRA.

The PRA itself currently contains numerous exemptions from disclosure.¹⁴ Despite the Legislature’s goal of accumulating all of the exemptions from disclosure in one place, there are also numerous laws outside the PRA that create exemptions from disclosure. The PRA lists other laws that exempt particular types of government records from disclosure.¹⁵

The exemptions from disclosure contained in the PRA and other laws reflect two recurring interests. Many exemptions are intended to protect privacy rights.¹⁶ Many other exemptions are based on the recognition that, in addition to the need for the public to know what its government is doing, there is a need for the government to perform its assigned functions in a reasonably efficient and effective manner, and to operate on a reasonably level playing field in dealing with private interests.¹⁷

Achieving Balance

The Legislature in enacting the PRA struck a balance among competing, yet fundamental interests: government transparency, privacy rights, and government effectiveness. The legislative findings declare access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state and the Legislature is “mindful of the right of individuals to privacy.”¹⁸ “In the spirit of this declaration, judicial decisions interpreting the [PRA] seek to balance the public right to access to information, the government’s need, or lack of need, to preserve confidentiality, and the individual’s right to privacy.”¹⁹

Approximately half of the current exemptions from disclosure contained in the PRA appear intended primarily to protect privacy interests.²⁰ A significant number of the exemptions appear intended primarily to support effective

14 Gov. Code, § 7921.000 *et. seq.* (formerly Gov. Code, § 6250 *et seq.*). There are currently over 75 exemptions.

15 Gov. Code, § 7930.000 *et. seq.* (formerly Gov. Code, § 6275 *et seq.*).

16 See, e.g., “Personnel Records,” p. 52.

17 See, e.g., “Attorney Client Communications and Attorney Work Product,” p. 31.

18 Gov. Code, § 7920.000 (formerly Gov. Code, § 6250); Cal Const., art. I, § 3(b)(3).

19 *American Civil Liberties Union Foundation v. Deukmejian*, *supra*, 32 Cal.3d at p. 447.

20 See e.g., Gov. Code, §§ 7926.300 (formerly 6253.2); 7924.100-7924.110 (formerly 6253.5); 7924.005 (formerly 6253.6); 7927.700 (formerly 6254, subd. (c)); 7925.000 (formerly 6254, subd. (i)); 7927.100 (formerly 6254, subd. (j)); 7925.005 (formerly 6254, subd. (n)); 7924.505 (formerly 6254, subd. (o)); 7927.000 (formerly 6254, subd. (r)); 7923.800 (formerly 6254, subd. (u)(1)); 7923.805 (formerly 6254, subds. (u)(2)-(u)(3)); 7925.010 (formerly 6254, subd. (x)); 7923.700 (formerly 6254, subd. (z)); 7926.100 (formerly 6254, subd. (ac)); 7929.400 (formerly 6254, subd. (ad)-(ad)(1)); 7929.415 (formerly 6254, subd. (ad)(4)); 7929.420 (formerly 6254, subd. (ad)(5)); 7929.425 (formerly 6254, subd. (ad)(6)); 7927.415 (formerly 6254.1, subd. (a)); 7927.405 (formerly 6254.1 (b)); 7929.600 (formerly 6254.1, subd. (c)); 7924.300-7924.335 (formerly 6254.2); 7928.300 (formerly 6254.3); 7924.000 (formerly 6254.4); 7927.005 (formerly 6254.10); 7924.500 (formerly 6254.11); 7929.610 (formerly 6254.13); 7927.605 (formerly 6254.15); 7927.410 (formerly 6254.16); 7923.755 (formerly 6254.17); 7926.400-7926.430 (formerly 6254.18); 7927.400 (formerly 6254.20); 7928.200-7928.230 (formerly 6254.21); 7922.200 (formerly 6254.29); 7927.105 (formerly 6267); 7928.005 & 7928.010 (formerly 6268).

governmental operation in the public's interest.²¹ A few exemptions appear to focus equally on protecting privacy rights and effective government. Those include: an exemption for law enforcement records; an exemption that incorporates into the PRA exemptions from disclosure in other state and federal laws, including privileges contained in the Evidence Code; and the "public interest" or "catch-all" exemption, where, based on the particular facts, the public interest in not disclosing the record clearly outweighs the public interest in disclosure.²² Additionally, the deliberative process privilege reflects both the public interests in privacy and government effectiveness by affording a measure of privacy to decision-makers that is intended to aid in the efficiency and effectiveness of government decision-making.²³

The balance that the PRA strikes among the often-competing interests of government transparency and accountability, privacy rights, and government effectiveness intentionally favors transparency and accountability. The PRA is intended to reserve "islands of privacy upon the broad seas of enforced disclosure."²⁴ For the past five decades, courts have balanced those competing interests in deciding whether to order disclosure of records.²⁵ The courts have consistently construed exemptions from disclosure narrowly and agencies' disclosure obligations broadly.²⁶ Ambiguities in the PRA must be interpreted in a way that maximizes the public's access to information unless the Legislature has expressly provided otherwise.²⁷

The PRA requires local agencies, as keepers of the public's records, to balance the public interests in transparency, privacy, and effective government in response to records requests. Certain provisions in the PRA help maintain the balancing scheme established under the PRA and the cases interpreting it by prohibiting state and local agencies from delegating their balancing role and making arrangements with other entities that could limit access to public records. For example, state and local agencies may not allow another party to control the disclosure of information otherwise subject to disclosure under the PRA.²⁸ Also, state and local agencies may not provide public records subject to disclosure under the PRA to a private entity in a way that prevents a state or local agency from providing the records directly pursuant to the PRA.²⁹

21 The following exemptions contained in the PRA appear primarily intended to support effective government: Gov. Code, §§ 7927.500 (formerly 6254, subd. (a)); 7927.200 (formerly 6254, subd. (b)); 7929.000 (formerly 6254, subd. (d)); 7927.300 (formerly 6254, subd. (e)); 7929.605 (formerly 6254, subd. (g)); 7928.705 (formerly 6254, subd. (h)); 7928.000 (formerly 6254, subd. (l)); 7928.100 (formerly 6254, subd. (m)); 7928.405-7928.410 (formerly 6254, subd. (p)); 7926.220 (formerly 6254, subd. (q)); 7926.000 (formerly 6254, subd. (s)); 7926.210 (formerly 6254, subd. (t)); 7926.225, subds. (a)-(d) (formerly 6254, subds. (v)(1), (v)(1)(A), (v)(1)(B)); 7926.235 (formerly 6254, subd. (w)); 7926.230 (formerly 6254, subd. (y)); 7929.200 (formerly 6254, subd. (aa)); 7929.205 (formerly 6254, subd. (ab)); 7929.405-7929.410 (formerly 6254, subds. (ad)(2) & (ad)(3)); 7927.600 (formerly 6254.6); 7924.510 (formerly 6254.7); 7922.585 (formerly 6254.9); 7926.215 (formerly 6254.14); 7929.210 (formerly 6254.19); 7926.205 (formerly 6254.22); 7929.215 (formerly 6254.23); 7927.205 (formerly 6254.25); 7928.710 (formerly 6254.26); 7922.205 (formerly 6254.27); 7922.210 (formerly 6254.28).

22 Gov. Code, §§ 7923.600-7923.625, 7927.705 (formerly §§ 6254, subds. (f) and (k); Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).

23 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d at pp. 1339-1344.

24 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 653.

25 *Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d at p. 1344; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1144.

26 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1585; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 772-773.

27 *Sierra Club v. Superior Court of Orange County* (2013) 57 Cal.4th 157, 175-176.

28 Gov. Code, § 7921.005 (formerly Gov. Code, § 6253.3).

29 Gov. Code, § 7921.010 (formerly Gov. Code, § 6270, subd. (a)).

► **PRACTICE TIP:**

Even though contracts or settlement agreements between agencies and private parties may require that the parties give each other notice of requests for the contract or settlement agreement, such agreements cannot purport to permit private parties to dictate whether the agreement is a public record subject to disclosure.

Incorporation of the PRA into the California Constitution

Proposition 59

In November 2004, the voters approved Proposition 59, which amended the California Constitution to include the public's right to access public records: "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."³⁰ As amended, the California Constitution provides each statute, court rule, and other authority "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."³¹ The Proposition 59 amendments expressly retained and did not supersede or modify other existing constitutional, statutory, or regulatory provisions, including the rights of privacy, due process, and equal protection, as well as any constitutional, statutory, or common-law exception to the right of access to public records in effect on the amendments' effective date. That includes any statute protecting the confidentiality of law enforcement and prosecution records.³²

The courts and the California Attorney General have determined that the constitutional provisions added by Proposition 59 maintain the established principles that disclosure obligations under the PRA must be construed broadly, and exemptions construed narrowly.³³ By approving Proposition 59, the voters have incorporated into the California Constitution the PRA policy prioritizing government transparency and accountability, as well as the PRA's careful balancing of the public's right of access to government information with protections for the public interests in privacy and effective government. No case has yet held Proposition 59 substantively altered the balance struck in the PRA between government transparency, privacy protection, and government effectiveness.

Proposition 42

In June 2014, the voters approved Proposition 42, which amended the California Constitution "to ensure public access to the meetings of public bodies and the writings of public officials and agencies."³⁴ As amended, the Constitution requires local agencies to comply with the PRA, the Ralph M. Brown Act (The Brown Act), any subsequent amendments to either act, any successor act, and any amendments to any successor act that contain findings that the legislation furthers the purposes of public access to public body meetings and public official and agency writings.³⁵ As amended, the Constitution also no longer requires the state to reimburse local governments for the cost of complying with

30 Cal. Const., art. I, § 3, subd. (b)(1).

31 Cal. Const., art. I, § 3, subd. (b)(2).

32 Cal. Const. art. I, § 3, subds. (b)(3), (b)(4) & (b)(5).

33 *Sierra Club v. Superior Court of Orange County*, *supra*, 57 Cal.4th at pp. 175–176; *Sutter's Place, v. Superior Court* (2008) 161 Cal.App.4th 1370, 1378–1381; *Los Angeles Unified Sch. Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765; *P.O.S.T. v. Superior Court* (2007) 42 Cal.4th 278, 305; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 750; 89 Ops.Cal.Atty.Gen. 204, 211 (2006); 88 Ops.Cal.Atty.Gen. 16, 23 (2005); 87 Ops.Cal.Atty.Gen. 181, 189 (2004).

34 Cal. Const., art. I, § 3, subd. (b)(7).

35 Cal. Const., art. I, § 3, subd. (b)(7).

legislative mandates in the PRA, the Brown Act, and successor statutes and amendments.³⁶ Following the enactment of Proposition 42, the Legislature has enacted new local mandates related to public records, including requirements for agency data designated as “open data” that is kept on the Internet and requirements to create and maintain “enterprise system catalogs.”³⁷

Expanded Access to Local Government Information

The policy of government records transparency mandated by the PRA is a floor, not a ceiling. Most exemptions from disclosure that apply to the PRA are permissive, not mandatory.³⁸ Local agencies may choose to disclose public records even though they are exempt, although they cannot be required to do so.³⁹ The PRA provides that “except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.”⁴⁰ A number of local agencies have gone beyond the minimum mandates of the PRA by adopting their own “sunshine ordinances” to afford greater public access to public records. Such “sunshine ordinances,” however, do not authorize a locality to enact an ordinance addressing records access that conflicts with the locality’s governing charter.⁴¹

Local agency disclosure of exempt records can promote the government transparency and accountability purposes of the PRA. However, local agencies are also subject to mandatory duties to safeguard some particularly sensitive records.⁴² Unauthorized disclosure of such records can subject local agencies and their officials to civil, and in some cases, criminal liability.

► PRACTICE TIP:

Local agencies that expand on the minimum transparency prescribed in the PRA, which is something that the PRA encourages, should ensure that they do not violate their duty to safeguard certain records, or undermine the public’s interest in effective government.

36 Cal. Const., art. XIII B, § 6, subd. (a)(4). Proposition 42 was a legislatively-referred constitutional amendment in response to public opposition to AB 1464 and SB 1006 approved June, 2012. The 2012 legislation suspended certain PRA and Brown Act provisions and was intended to eliminate the state’s obligation to reimburse local governments for the cost of complying with PRA and Brown Act mandates through the 2015 fiscal year. There is no record of local agencies ceasing to comply with the suspended provisions.

37 Gov. Code, §§ 7922.680, 7922.700-7922.725 (formerly Gov. Code, §§ 6253.10, 6270.5).

38 *Black Panther Party v. Kehoe*, *supra*, 42 Cal.App.3d at p. 656.

39 See Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5) and “Waiver,” p. 28, regarding the effect of disclosing exempt records.

40 Gov. Code, § 7922.505 (formerly Gov. Code, § 6253, subd. (e)).

41 *St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434, 446. (“Because the charter incorporates the [attorney-client] privilege, an ordinance (whether enacted by the City’s board of supervisors or by the voters) cannot eliminate it, either by designating as not confidential a class of material that otherwise would be protected by the privilege, or by waiving the privilege as to that category of documents; only a charter amendment can achieve that result.”).

42 E.g., individually-identifiable medical information protected under state and federal law (Civ. Code, §§ 56.10(a), 56.05(g); 42 U.S.C. § 1320d-1-d-3); child abuse and neglect records (Pen. Code, § 11167.5); elder abuse and neglect records (Welf. & Inst. Code, § 15633); mental health detention records (Welf. & Inst. Code, §§ 5150, 5328).

Equal Access to Government Records

The PRA affords the same right of access to government information to all types of requesters. Every person has a right to inspect any public record, except as otherwise provided in the PRA, including citizens of other states and countries, elected officials, and members of the press.⁴³ With few exceptions, whenever a local agency discloses an exempt public record to any member of the public, unless the disclosure was inadvertent, all exemptions that apply to that particular record are waived and it becomes subject to disclosure to any and all requesters.⁴⁴ Accordingly, the PRA ensures equal access to government information by preventing local agencies from releasing exempt records to some requesters but not to others.

Enforced Access to Public Records

To enforce local agencies' compliance with the PRA's open government mandate, the PRA provides for the award of court costs and attorneys' fees to plaintiffs who successfully seek a court ruling ordering disclosure of withheld public records.⁴⁵ The attorney's fees policy enforcing records transparency is liberally applied.⁴⁶

The PRA at the Crux of Democratic Government in California

Ongoing, important developments in PRA-related constitutional, statutory, and decisional law continue to reflect the central role government's handling of information plays in balancing tensions inherent in democratic society: considerations of privacy and government transparency, accountability, and effectiveness. Controversial records law issues in California have included government's use of social media and new law enforcement technologies, and treatment of related records; management and retention of public officials' emails; open data standards for government information; disclosure of attorney bills; and new legal means for preserving or opposing access to government information.⁴⁷ Regarding all those issues and others, the PRA has been, and continues to be an indispensable and dynamic arena for simultaneously preserving information transparency, privacy, and effective government, which the California Constitutional and statutory frameworks are intended to guarantee, and on which California citizens continue to insist.

43 Gov. Code, §§ 7922.525, 7920.520, 7921.305 (formerly Gov. Code, §§ 6253, subd. (a); 6252, subd. (c); 6252.5); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 610-612. See "Who Can Request Records," p. 17.

44 Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5). Section 7921.505 does not apply to inadvertent disclosure of exempt documents. *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1182-1183; *Newark Unified School Dist. v. Superior Court* (2015) 245 Cal.App.4th 887, 894. See "Waiver," p. 28.

45 Gov. Code, § 7923.115, subds. (a)-(b) (formerly Gov. Code, § 6259, subd. (d)). See "Attorneys Fees and Costs," p. 61.

46 See "Attorneys Fees and Costs," p. 69.

47 *American Civil Liberties Union Foundation of Southern California v. Superior Court* (review granted July 29, 2015, S227106; superseded opinion at 236 Cal. App.4th 673); *Regents of the Univ. of Cal. v. Superior Court* (2013) 222 Cal.App.4th 383, 399; *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608; Gov. Code, §§ 6253.10, 6270.5; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1265; *County of Los Angeles Board of Supervisors v. Superior Court* (review granted July 8, 2015, S226645; superseded opinion at 235 Cal.App.4th 1154).



Chapter 2

The Basics

The PRA “embodies a strong policy in favor of disclosure of public records.”⁴⁸ As with any interpretation or construction of legislation, the courts will “first look at the words themselves, giving them their usual and ordinary meaning.”⁴⁹ Definitions found in the PRA establish the statute’s structure and scope, and guide local agencies, the public, and the courts in achieving the legislative goal of disclosing local agency records while preserving equally legitimate concerns of privacy and government effectiveness.⁵⁰ It is these definitions that form the “basics” of the PRA.

What are Public Records?

The PRA defines “public records” as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁵¹ The term “public records” encompasses more than simply those documents that public officials are required by law to keep as official records. Courts have held that a public record is one that is “necessary or convenient to the discharge of [an] official duty[,]” such as a status memorandum provided to the city manager on a pending project.⁵²

Writings

A writing is defined as “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”⁵³

48 *Lorig v. Medical Board of Cal.* (2000) 78 Cal.App.4th 462, 467; see “Fundamental Right of Access to Government Information,” p. 6.

49 *People v. Lawrence* (2000) 24 Cal.4th 219, 230.

50 See “Exemptions from Disclosure — Protecting the Public’s Fundamental Rights of Privacy and Need for Efficient and Effective Government,” p.6.

51 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

52 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774.

53 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)).

The statute unambiguously states that “[p]ublic records” include “any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.”⁵⁴ The California Supreme Court relied on this definition to state that a public record has four aspects: “it is (1) a writing, (2) with content related to the conduct of the people’s business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency.”⁵⁵ Thus, unless the writing is related “to the conduct of the public’s business” and is “prepared, owned, used or retained by” a local agency, it is not a public record subject to disclosure under the PRA.⁵⁶

Information Relating to the Conduct of Public Business

Public records include “any writing containing information relating to the conduct of the public’s business.”⁵⁷ However, “[c]ommunications that are primarily personal containing no more than incidental mentions of agency business generally will not constitute public records.”⁵⁸ Therefore, courts have observed that although a writing is in the possession of the local agency, it is not automatically a public record if it does not also relate to the conduct of the public’s business.⁵⁹ For example, records containing primarily personal information, such as an employee’s personal address list or grocery list, are considered outside the scope of the PRA.

Prepared, Owned, Used, or Retained

Writings containing information “related to the conduct of the public’s business” must also be “prepared, owned, used or retained by any state or local agency” to be public records subject to the PRA.⁶⁰ What is meant by “prepared, owned, used or retained” has been the subject of several court decisions.

Writings need not always be in the physical custody of, or accessible to, a local agency to be considered public records subject to the PRA. The obligation to search for, collect, and disclose the material requested can apply to records in the possession of a local agency’s consultants, which are deemed “owned” by the public agency and in its “constructive possession” when the terms of an agreement between the city and the consultant provide for such ownership.⁶¹ Thus, where a local agency has a contractual right to control the subconsultants or their files, the records may be considered to be within their “constructive possession.”⁶² However, a mere contractual right to access documents held by a contractor is not sufficient to establish constructive possession when the agency does not have the authority to manage or control the documents.⁶³

54 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252(e)); *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399; *Braun v. City of Taft*, *supra*, 154 Cal.App.3d at p. 340; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 774.

55 *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.

56 *Regents of the University of California v. Superior Court*, *supra*, 222 Cal.App.4th at p. 399.

57 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

58 *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 618-619.

59 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)); *Regents of the University of California v. Superior Court*, *supra*, 222 Cal.App.4th at pp. 403–405; *Braun v. City of Taft*, *supra*, 154 Cal.App.3d at p. 340; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d at p. 774.

60 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

61 *Consolidated Irrigation District v. Superior Court* (2013) 205 Cal.App.4th 697, 710; *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 623.

62 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1428; *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 623.

63 See *Anderson-Barker v. Superior Court* (2019) 31 Cal.App.5th 528, 541 (“[M]ere access to privately held information is not sufficient to establish possession or control of that information.”)

The PRA has also been held to apply to records possessed by *private individuals* who perform official functions for a public agency, but only to the extent that the documents are held by the individual for public functions or historically have been provided to the agency.⁶⁴

Likewise, documents that otherwise meet the definition of public records (including emails and text messages) are considered “retained” by the local agency even when they are actually “retained” on an employee or official’s personal device or account.⁶⁵

The California Supreme Court has provided some guidance on how a local agency can discover and manage public records located on their employees’ non-governmental devices or accounts. The Court did not endorse or mandate any particular search method, and reaffirmed that the PRA does not prescribe any specific method for searching and that the scope of a local agency’s search for public records need only be “calculated to locate responsive documents.”⁶⁶ When a local agency receives a request for records that may be held in an employee’s personal account, the local agency’s first step should be to communicate the request not only to the custodian of records but also to any employee or official who may have such information in personal devices or accounts. The Court states that a local agency may then “reasonably rely” on the employees to search their own personal files, accounts, and devices for responsive materials.⁶⁷

The Court’s guidance, which includes a caveat that they “do not hold that any particular search method is required or necessarily adequate[,]” includes examples of policies and practices in other state and federal courts and agencies, including:⁶⁸

- Reliance on employees to conduct their own searches and record segregation, so long as the employees have been properly trained on what are public records;
- Where an employee asserts to the local agency that he or she does not have any responsive records on his or her personal device(s) or account(s), he or she may be required by a court (as part of a later court action concerning a records request) to submit an affidavit providing the factual basis for determining whether the record is a public or personal record (e.g., personal notes of meetings and telephone calls protected by deliberative process privilege, versus meeting agendas circulated throughout the entire department.)⁶⁹
- Adoption of policies that will reduce the likelihood of public records being held in an employee’s private account, including a requirement that employees only use government accounts, or that they copy or forward all email or text messages to the local agency’s official recordkeeping system.⁷⁰

Documents that a local agency previously possessed but does not actually or constructively possess at the time of the request may not be public records subject to disclosure.⁷¹

64 *Board of Pilot Comm’rs v. Superior Court* (2013) 218 CA4th 577, 593. But see *Regents of Univ. of Cal. v. Superior Court* (2013) 222 Cal.App.4th 383, 399 (document not prepared, owned, used, or retained by public agency is not public record even though it may contain information relating to conduct of public’s business).

65 *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 629; *Community Youth Athletic Center v. City of National City*, *supra*, 220 Cal.App.4th at p. 1428.

66 *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at p. 627.

67 *Id.* at p. 628.

68 *Id.* at pp. 627-629.

69 See *Grand Cent. Partnership, Inc. v. Cuomo* (2d. Cir. 1999) 166 F.3d 473, 481 for expanded discussion on the use of affidavit in FOIA litigation.

70 See 44 U.S.C. § 2911(a).

71 See *Am. Small Bus. League v. United States SBA* (2010) 623 F.3d 1052, (analyzed under FOIA).

Regardless of Physical Form or Characteristics

A public record is subject to disclosure under the PRA “regardless of its physical form or characteristics.”⁷² The PRA is not limited by the traditional notion of “writing.” As originally defined in 1968, the legislature did not specifically recognize advancing technology as we consider it today. Amendments beginning in 1970 have added references to “photographs,” “magnetic or punch cards,” “discs,” and “drums,”⁷³ with the current definition of “writing” adopted by the legislature in 2002.⁷⁴ Records subject to the PRA include records in any media, including electronic media, in which government agencies may possess records. This is underscored by the definition of “writings” treated as public records under the PRA, which includes “transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds or symbols or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”⁷⁵ The legislative intent to incorporate future changes in the character of writings has long been recognized by the courts, which have held that the “definition [of writing] is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.”⁷⁶

Metadata

Electronic records may include “metadata,” or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when, or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. No provision of the PRA expressly addresses metadata, and there are no reported court opinions in California considering whether or the extent to which metadata is subject to disclosure. Evolving law in other jurisdictions has held that local agency metadata is a public record subject to disclosure unless an exemption applies.⁷⁷ There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record’s integrity.

► PRACTICE TIP:

Agencies that receive requests for metadata or requests for records that include metadata should treat the requests the same way they treat all other requests for electronic information and disclose non-exempt metadata.

Agency-Developed Software

The PRA permits government agencies to develop and commercialize computer software and benefit from copyright protections so that such software is not a “public record” under the PRA. This includes computer mapping systems, computer programs, and computer graphics systems.⁷⁸ As a result, public agencies are not required to provide copies

72 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)).

73 Stats. 1970, c. 575, p. 1151, § 2.

74 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)); Stats. 2002, c. 1073.

75 Gov. Code, § 7920.545 (formerly Gov. Code, § 6252, subd. (g)).

76 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 340, citing “Assembly Committee on Statewide Information Policy California Public Records Act of 1968. 1 Appendix to Journal of Assembly 7, Reg. Sess. (1970).”

77 *Lake v. City of Phoenix* (2009) 218 P.3d 1004, 1008; *O’Neill v. City of Shoreline* (2010) 240 P.3d 1149, 1154; *Irwin v. Onondaga County* (2010) 895 N.Y.S.2d 262, 268.

78 Gov. Code, § 7922.585, subds. (a), (b) (formerly Gov. Code, § 6254.9, subds. (a), (b)).

of agency-developed software pursuant to the PRA. The PRA authorizes state and local agencies to sell, lease, or license agency-developed software for commercial or noncommercial use.⁷⁹ The exception for agency-developed software does not affect the public record status of information merely because it is stored electronically.⁸⁰

Computer Mapping (GIS) Systems

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the agency and the public. As with metadata, the PRA does not expressly address GIS information disclosure. However, the California Supreme Court has held that while GIS software is exempt under the PRA, the data in a GIS file format is a public record, and data in a GIS database must be produced.⁸¹

Specifically Identified Records

The PRA also expressly makes particular types of records subject to the PRA, subject to disclosure, or both. For example, the PRA provides that the following are public records:

- Contracts of state and local agencies that require a private entity to review, audit, or report on any aspect of the agency, to the extent the contract is otherwise subject to disclosure under the PRA;⁸²
- Specified pollution information that state or local agencies require applicants to submit, pollution monitoring data from stationary sources, and records of notices and orders to building owners of housing or building law violations;⁸³
- Employment contracts between state and local agencies and any public official or employee;⁸⁴ and
- Itemized statements of the total expenditures and disbursements of judicial agencies provided for under the State Constitution.⁸⁵

What Agencies are Covered?

The PRA applies to state and local agencies. A state agency is defined as “every state office, officer, department, division, bureau, board and commission or other state body or agency.”⁸⁶ A local agency includes a county, city (whether general law or chartered), city and county, school district, municipal corporation, special district, community college district, or political subdivision.⁸⁷ This encompasses any committees, boards, commissions, or departments

79 Gov. Code, § 7922.585, subd. (b) (formerly Gov. Code, § 6254.9, subd. (a)).

80 Gov. Code, § 7922.585, subd. (d) (formerly Gov. Code, § 6254.9, subd. (d)).

81 *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 170. See also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301.

82 Gov. Code, § 7928.700 (formerly Gov. Code, § 6253.31).

83 Gov. Code, § 7924.510 (formerly Gov. Code, § 6254.7). But see *Masonite Corp. v. County of Mendocino Air Quality Management District* (1996) 42 Cal.App.4th 436, 450–453 (regarding trade secret information that may be exempt from disclosure).

84 Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8). But see *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 817 (holding that reference in a public employee’s contract to future personal performance goals, to be set and thereafter reviewed as a part of, and in conjunction with, a public employee’s performance evaluation does not incorporate such documents into the employee’s performance for the purposes of the Act).

85 Gov. Code, § 7928.720 (formerly Gov. Code, § 6261).

86 Gov. Code, § 7920.540, subd. (a) (formerly Gov. Code § 6252, subd. (f)). Excluded from the definition of state agency are those agencies provided for in article IV (except section 20(k)) and article VI of the Cal. Constitution.

87 Gov. Code, § 7920.510 (formerly Gov. Code, § 6252, subd. (a)).

of those entities as well. A local agency also includes “another local public agency.”⁸⁸ Finally, a local agency includes a private entity, including a nonprofit entity, where that entity: (1) was created by the elected legislative body of a local agency to exercise authority that may be lawfully delegated to a private entity; (2) receives funds from a local agency, and whose governing board includes a member of the local agency’s legislative body who is appointed by that legislative body and who is a full voting member of the private entity’s governing board; or (3) is the lessee of a hospital, as described in subdivision (d) of Government Code section 54952.⁸⁹

The PRA does not apply to the state Legislature or the judicial branch.⁹⁰ The Legislative Open Records Act covers the Legislature.⁹¹ Most court records are disclosable as the courts have historically recognized the public’s right of access to public records maintained by the courts under the common law and the First Amendment of the United States Constitution.⁹²

Who Can Request Records?

All “persons” have the right to inspect and copy non-exempt public records. A “person” need not be a resident of California or a citizen of the United States to make use of the PRA.⁹³ “Persons” include corporations, partnerships, limited liability companies, firms, or associations.⁹⁴ Often, requesters include persons who have filed claims or lawsuits against the government, who are investigating the possibility of doing so, or who just want to know what their government officials are up to. With certain exceptions, neither the media nor a person who is the subject of a public record has any greater right of access to public records than any other person.⁹⁵

Local agencies and their officials are entitled to access public records on the same basis as any other person.⁹⁶ Further, local agency officials might be authorized to access public records of their own agency that are otherwise exempt if such access is permitted by law as part of their official duties.⁹⁷ Under such circumstances, however, the local agency shall not discriminate between or among local agency officials as to which writing or portion thereof is to be made available or when it is made available.⁹⁸

88 *The Cmty. Action Agency of Butte Cty. v. Superior Court* (2022) 79 Cal. App. 5th 221, 237 (adopting a four-factor test to determine whether a nonprofit entity is “another local public agency” under the PRA; the factors are: (1) whether the entity performs a government function, (2) the extent to which the government funds the entity’s activities, (3) the extent of government involvement in the entity’s activities, and (4) whether the entity was created by the government).

89 Gov. Code, § 7920.510 (formerly Gov. Code, § 6252, subd. (a)) (“[L]ocal agency includes... [a]n entity that is a legislative body of a local agency pursuant to subdivision (c) or (d) of Section 54952 [of the Brown Act].”). See e.g., 85 Ops. Cal. Atty. Gen. 55 (2002) (PRA covered private nonprofit corporation formed for the purpose of providing programming for a cable television channel set aside for educational use by a cable operator pursuant to its franchise agreement with a city and subsequently designated by the city to provide the programming services).

90 Gov. Code, §§ 7920.510, 7920.510 (formerly Gov. Code, § 6252, subds. (a), (b)); *Michael J. Mack v. State Bar of Cal.* (2001) 92 Cal. App. 4th 957, 962–963.

91 Gov. Code, § 9070 *et. seq.*

92 *Overstock.com v. Goldman Sachs Group, Inc.* (2014) 231 Cal. App. 4th 471, 483–486; *Pantos v. City and County of San Francisco* (1984) 151 Cal. App. 3d 258, 263; *Champion v. Superior Court* (1988) 201 Cal. App. 3d 777, 288; *Craemer v. Superior Court* (1968) 265 Cal. App. 2d 216, 220.

93 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal. App. 3d 762.

94 Gov. Code, § 7920.520 (formerly Gov. Code, § 6252, subd. (c)); *Connell v. Superior Court* (1997) 56 Cal. App. 4th 601.

95 Gov. Code, § 7921.305 (formerly Gov. Code, § 6252.5); *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal. App. 4th 759; *Dixon v. Superior Court* (2009) 170 Cal. App. 4th 1271, 1279.

96 Gov. Code, § 7921.305 (formerly Gov. Code, § 6252.5).

97 *Marylander v. Superior Court* (2002) 81 Cal. App. 4th 1119; *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal. App. 3d 661; *Dixon v. Superior Court* (2009) 170 Cal. App. 4th 1271. See “Information That Must Be Disclosed,” p. 40; “Requests for Journalistic or Scholarly Purposes,” p. 42.

98 Gov. Code, § 7921.310 (formerly Gov. Code, § 6252.7).

Responding to a Public Records Request

Local Agency's Duty to Respond to Public Record Requests

The fundamental purpose of the PRA is to provide access to information about the conduct of the people's business.⁹⁹ This right of access to public information imposes a duty on local agencies to respond to PRA requests and does not "permit an agency to delay or obstruct the inspection or copying of public records."¹⁰⁰ Even if the request does not reasonably describe an identifiable record, the requested record does not exist, or the record is exempt from disclosure, the agency must respond.¹⁰¹

Types of Requests — Right to Inspect or Copy Public Records

There are two ways to gain access under the PRA to a public record: (1) inspecting the record at the local agency's offices or on the local agency's website; or (2) obtaining a copy from the local agency.¹⁰² The local agency may not dictate to the requester which option must be used, that is the requester's decision. Moreover, a requester does not have to choose between inspection and copying but instead can choose both options. For example, a requester may first inspect a set of records, and then, based on that review, decide which records should be copied.

99 Gov. Code, § 7920.000 (formerly Gov. Code § 6250).

100 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)).

101 Gov. Code, §§ 7922.525–7922.545 (formerly Gov. Code, § 6253).

102 Gov. Code, §§ 7922.525; 7922.530, subd. (a); 7922.545 (formerly Gov. Code, § 6253, subds. (a), (b), & (f)).

► PRACTICE TIP:

If the public records request does not make clear whether the requester wants to inspect or obtain a copy of the record or records being sought, the local agency should seek clarification from the requester without delaying the process of searching for, collecting, and redacting or “whiting out” exempt information in the records.

► PRACTICE TIP:

To protect the integrity of the local agency files and preserve the orderly function of the offices, agencies may establish reasonable policies for the inspection and copying of public records.

Right to Inspect Public Records

Public records are open to inspection at all times during the office hours of the local agency and every person has a right to inspect any public record. This right to inspect includes any reasonably segregable portion of a public record after deletion of the portions that are exempted by law.¹⁰³ This does not mean that a requester has a right to demand to see a record and immediately gain access to it. The right to inspect is constrained by an implied rule of reason to protect records against theft, mutilation, or accidental damage; prevent interference with the orderly functioning of the office; and generally avoid chaos in record archives.¹⁰⁴ Moreover, the agency’s time to respond to an inspection request is governed by the deadlines set forth below, which give the agency a reasonable opportunity to search for, collect, and, if necessary, redact exempt information prior to the records being disclosed in an inspection.¹⁰⁵

In addition, in lieu of providing inspection access at the local agency’s office, a local agency may post the requested public record on its website and direct a member of the public to the website. If a member of the public requests a copy of the record because of the inability to access or reproduce the record from the website, the local agency must provide a copy.¹⁰⁶

► PRACTICE TIP:

Local agencies may want to limit the number of record inspectors present at one time at a records inspection. The local agency may also want to prohibit the use of cell phones to photograph records where the inspection is of architectural or engineering plans with copyright protection.

¹⁰³ Gov. Code, § 7922.525 (formerly Gov. Code, § 6253, subd. (a)).

¹⁰⁴ *Bruce v. Gregory* (1967) 65 Cal.2d 666, 676; *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 761; 64 Ops.Cal.Atty.Gen. 317 (1981).

¹⁰⁵ See “Timing of The Response” p. 22.

¹⁰⁶ Gov. Code, §§ 7922.530, subd. (a); 7922.545 (formerly Gov. Code, § 6253, subds. (b), (f)).

Right to Copy Public Records

Except with respect to public records exempt from disclosure by express provisions of law, a local agency, upon receipt of a request for a copy of records that reasonably describes an identifiable record or records, must make the records promptly available to any person upon payment of the appropriate fees.¹⁰⁷ If a copy of a record has been requested, the local agency generally must provide an exact copy except where it is “impracticable” to do so.¹⁰⁸ The term “impracticable” does not necessarily mean that compliance with the public records request would be inconvenient or time-consuming to the local agency. Rather, it means that the agency must provide the best or most complete copy of the requested record that is reasonably possible.¹⁰⁹ As with the right to inspect public records, the same rule of reasonableness applies to the right to obtain copies of those records. Thus, the local agency may impose reasonable restrictions on general requests for copies of voluminous classes of documents.¹¹⁰

The PRA does not provide for a standing or continuing request for documents that may be generated in the future.¹¹¹ However, the Brown Act provides that a person may make a request to receive a mailed copy of the agenda, or all documents constituting the agenda packet for any meeting of the legislative body. This request shall be valid for the calendar year in which it is filed.¹¹² A person may also make a request to receive local agency notices, such as public work contractor plan room documents,¹¹³ and development impact fee,¹¹⁴ public hearing,¹¹⁵ or California Environmental Quality Act notices.¹¹⁶ The local agency may impose a reasonable fee for these requests.

► PRACTICE TIP:

Agencies may consider the use of outside copy services for oversize records or a voluminous record request, provided that the requester consents to it and pays the appropriate fees in advance. Alternatively, local agencies may consider allowing the requester to use his or her own copy service.

Form of the Request

A public records request may be made in writing or orally, in person or by phone.¹¹⁷ Further, a written request may be made in paper or electronic form and may be mailed, emailed, faxed, or personally delivered. A local agency may ask, but cannot require, that the requester put an oral request in writing. In general, a written request is preferable to an oral request because it provides a record of when the request was made and what was requested, and helps the agency respond in a more timely and thorough manner.

107 See “Fees,” p. 27.

108 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

109 *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 759.

110 *Id.* at p. 761; 64 Ops.Cal.Atty.Gen. 317 (1981).

111 Gov. Code, §§ 7920.530; 7920.545; 7922.525 & 7922.530, subd. (b) (formerly Gov. Code, §§ 6252, subds. (e) & (g); and 6253, subds. (a) & (b)).

112 Gov. Code, § 54954.1; see also Gov. Code, § 65092 (standing request for notice of public hearing), Cal. Code Regs., tit. 14, §§ 15072, 15082 and 15087 (standing requests for notice related to environmental documents).

113 Pub. Contract Code, § 20103.7.

114 Gov. Code, § 66016.

115 Gov. Code, § 65092.

116 Pub. Resources Code, § 21092.2.

117 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1392.

► PRACTICE TIP:

Though not legally required, a local agency may find it convenient to use a written form for public records requests, particularly for those instances when a requester “drops in” to an office and asks for one or more records. The local agency cannot require the requester to use a particular form, but having the form, and even having agency staff assist with filling out the form, may help agencies better identify the information sought, follow up with the requester using the contact information provided, and provide more effective assistance to the requester in compliance with the PRA.

Content of the Request

A public records request must reasonably describe an identifiable record or records.¹¹⁸ It must be focused, specific,¹¹⁹ and reasonably clear, so that the local agency can decipher what record or records are being sought.¹²⁰ A request that is so open-ended that it amounts to asking for all of a department’s files is not reasonable. If a request is not clear or is overly broad, the local agency has a duty to assist the requester in reformulating the request to make it clearer or less broad.¹²¹

A request does not need to precisely identify the record or records being sought. For example, a requester may not know the exact date of a record, its title, or author, but if the request is descriptive enough for the local agency to understand which records fall within its scope, the request is reasonable. Requests may identify writings somewhat generally by their content.¹²²

No magic words need to be used to trigger the local agency’s obligation to respond to a request for records. The content of the request must simply indicate that a public record is being sought. Occasionally, a requester may incorrectly refer to the federal Freedom of Information Act (FOIA) as the legal basis for the request. This does not excuse the agency from responding if the request seeks public records. A public records request does not need to state its purpose or the use to which the record will be put by the requester.¹²³ A requester does not have to justify or explain the reason for exercising his or her fundamental right of access.¹²⁴

► PRACTICE TIP:

A public records request is different than a question or series of questions posed to local agency officials or employees. The PRA creates no duty to answer written or oral questions submitted by members of the public. But, if an existing and readily available record contains information that would directly answer a question, it is advisable to either answer the question or provide the record in response to the question.

118 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

119 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 481.

120 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 165.

121 See “Assisting the Requester,” p. 24.

122 *Cal. First Amend. Coalition v. Superior Court*, *supra*, 67 Cal.App.4th at p. 166.

123 See Gov. Code, § 7921.300 (formerly Gov. Code, § 6257.5).

124 Gov. Code, § 7921.000 (formerly Gov. Code, § 6250); Cal. Const., art. I, § 3.

A PRA request applies only to records existing at the time of the request.¹²⁵ It does not require a local agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

Timing of the Response

Inspection of Public Records

Although the law precisely defines the time for responding to a public records request for copies of records, it is less precise in defining the deadline for disclosing records. Because the PRA does not state how soon a requester seeking to inspect records must be provided access to them, it is generally assumed that the standard of promptness set forth for copies of records¹²⁶ applies to inspection. This assumption is bolstered by the provision in the PRA that states, “[n]othing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records,”¹²⁷ which again signals the importance of promptly disclosing records to the requester.

Neither the 10-day response period for responding to a request for a copy of records, nor the additional 14-day extension, may be used to delay or obstruct the inspection of public records.¹²⁸ For example, requests for commonly disclosed records that are held in a manner that allows for prompt disclosure should not be withheld because of the statutory response period.

Copies of Public Records

Time is critical in responding to a request for copies of public records. A local agency must respond promptly, but no later than 10 calendar days from receipt of the request, to notify the requester whether records will be disclosed.¹²⁹ If the request is received after business hours or on a weekend or holiday, the next business day may be considered the date of receipt. The 10-day response period starts with the first calendar day after the date of receipt.¹³⁰ If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.¹³¹

► PRACTICE TIP:

To ensure compliance with the 10-day deadline, it is wise for local agencies to develop a system for identifying and tracking public records requests. For example, a local agency with large departments may find it useful to have a public records request coordinator within each department. It is also very helpful to develop and implement a policy for handling public records requests in order to ensure the agency’s compliance with the law.

125 Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subd. (c)).

126 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)) [“...each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available...”]; 88 Ops. Cal. Att’y Gen. 153 (2005); 89 Ops. Cal. Att’y Gen. 39 (2006).

127 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)).

128 Gov. Code, § 7922.500 (formerly Gov. Code, § 6253, subd. (d)). See also “Extending the Response Times for Copies of Public Records,” p. 23.

129 Gov. Code, § 7922.535, subd. (a) (formerly Gov. Code, § 6253, subd. (c)).

130 Civ. Code, § 10.

131 Civ. Code, § 11.

► PRACTICE TIP:

Watch for shorter statutory time periods for disclosure of particular public records. For example, Statements of Economic Interest (FPPC Form 700) and other campaign statements and filings required by the Political Reform Act of 1974 (Govt Code §§ 81000 et seq) are required to be made available to the public as soon as practicable, and in no event later than the second business day following receipt of the request.¹³²

Extending the Response Times for Copies of Public Records

A local agency may extend the 10-day response period for copies of public records for up to 14 additional calendar days because of the need:

- To search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- To search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;
- To consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two city departments) with substantial interest in the request; or
- In the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.¹³³

No other reasons justify an extension of time to respond to a request for copies of public records. For example, a local agency may not extend the time on the basis that it has other pressing business or that the employee most knowledgeable about the records sought is on vacation or is otherwise unavailable.

If a local agency exercises its right to extend the response time beyond the 10-day period, it must do so in writing, stating the reason or reasons for the extension, and the anticipated date of the response within the 14-day extension period.¹³⁴ The agency does not need the consent of the requester to extend the time for response.

► PRACTICE TIP:

If a local agency is having difficulty responding to a public records request within the 10-day response period and there does not appear to be grounds to extend the response period for an additional 14 days, the agency may obtain an extension by consent of the requester. Often a requester will cooperate with the agency on such matters as the timing of the response, particularly if the requester believes the agency is acting reasonably and conscientiously in processing the request. It is also advisable to document in writing any extension agreed to by the requester.

¹³² Gov. Code, § 81008.

¹³³ Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subds. (c)(1)-(4)).

¹³⁴ Gov. Code, § 7922.535 (formerly Gov. Code, § 6253, subd. (c)).

Timing of Disclosure

The time limit for responding to a public records request is not necessarily the same as the time within which the records must be disclosed to the requester. As a practical matter, records often are disclosed at the same time the local agency responds to the request. But in some cases, that time frame for disclosure is not feasible because of the volume of records encompassed by the request.

► PRACTICE TIP:

When faced with a voluminous public records request, a local agency has numerous options — for example, asking the requester to narrow the request, asking the requester to consent to a later deadline for responding to the request, and providing responsive records (whether redacted or not) on a “rolling” basis, rather than in one complete package. It is sometimes possible for the agency and requester to work cooperatively to streamline a public records request, with the result that the requester obtains the records or information the requester truly wants and the burdens on the agency in complying with the request are reduced. If any of these options are used, it is advisable that it is documented in writing.

Assisting the Requester

Local agencies must assist requesters who are having difficulty making a focused and effective request.¹³⁵ To the extent reasonable under the circumstances, a local agency must:

- Assist the requester in identifying records that are responsive to the request or the purpose of the request, if stated;
- Describe the information technology and physical location in which the record or records exist; and
- Provide suggestions for overcoming any practical basis for denying access to the record or records.¹³⁶

Alternatively, the local agency may satisfy its duty to assist the requester by giving the requester an index of records.¹³⁷ Ordinarily, an inquiry into a requester’s purpose in seeking access to a public record is inappropriate,¹³⁸ but such an inquiry may be proper if it will help assist the requester in making a focused request that reasonably describes an identifiable record or records.¹³⁹

Locating Records

Local agencies must make a reasonable effort to search for and locate requested records, including by asking probing questions of city staff and consultants.¹⁴⁰ No bright-line test exists to determine whether an effort is reasonable. That determination will depend on the facts and circumstances surrounding each request. In general, upon the local agency’s receipt of a public records request, those persons or offices that would most likely be in possession of responsive records should be consulted in an effort to locate the records. For a local agency to have a duty to locate

¹³⁵ Gov. Code, § 7922.600 (formerly Gov. Code, § 6253.1); *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1417.

¹³⁶ Gov. Code, § 7922.600, subds. (a)(1)–(3) (formerly Gov. Code, § 6253.1, subds. (a)(1)–(3)).

¹³⁷ Gov. Code, § 7922.600, subd. (b) (formerly Gov. Code, § 6253.1, subd. 1(d)(3)).

¹³⁸ See Gov. Code, § 7921.300 (formerly Gov. Code, § 6257.5).

¹³⁹ Gov. Code, § 7922.600, subd. (a) (formerly Gov. Code, § 6253.1, subd. (a)).

¹⁴⁰ *Community Youth Athletic Center v. City of National City*, *supra*, 220 Cal.App.4th at pp. 1417–1418; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal. App.4th 159, 166; *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616–127, 629.

records, they must qualify as public records.¹⁴¹ “Thus, unless the writing is related ‘to the conduct of the public’s business’ and is ‘prepared, owned, used or retained by’ a public entity, it is not a public record under the PRA, and its disclosure would not be governed by the PRA. No words in the statute suggest that the public entity has an obligation to obtain documents even though it has not prepared, owned, used or retained them.”¹⁴²

► **PRACTICE TIP:**

To ensure compliance with the PRA, and in anticipation of court scrutiny of agency diligence in locating responsive records, agencies may want to consider adopting policies similar to those required by state and federal E-discovery statutes to prevent records destruction while a request is pending.

The right to access public records is not without limits. A local agency is not required to perform a “needle in a haystack” search to locate the record or records sought by the requester.¹⁴³ Nor is it compelled to undergo a search that will produce a “huge volume” of material in response to the request.¹⁴⁴ On the other hand, an agency typically will endure some burden — at times, a significant burden — in its records search. Usually that burden alone will be insufficient to justify noncompliance with the request.¹⁴⁵ Nevertheless, if the request imposes a substantial enough burden, an agency may decide to withhold the requested records on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure.¹⁴⁶

Types of Responses

After conducting a reasonable search for requested records, a local agency has only a limited number of possible responses. If the search yielded no responsive records, the agency must inform the requester. If the agency has located a responsive record, it must decide whether to: (1) disclose the record; (2) withhold the record; or (3) disclose the record in redacted form.

► **PRACTICE TIP:**

Care should be taken in deciding whether to disclose, withhold, or redact a record. It is advisable to consult with the local agency’s legal counsel before making this decision, particularly when a public records request presents novel or complicated issues or implicates policy concerns or third-party rights.

If a written public records request is denied because the local agency does not have the record or has decided to withhold it, or if the requested record is disclosed in redacted form, the agency’s response must be in writing and must identify by name and title each person responsible for the decision.¹⁴⁷

141 See “What are Public Records?” p. 12.

142 *Regents of the University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 399.

143 *Cal. First Amend. Coalition v. Superior Court*, *supra*, 67 Cal.App.4th at p. 166.

144 *Ibid.* But see *Getz v. Superior Court of El Dorado County* (2021) 72 Cal.App.5th 637 (holding that a request that required a public agency to review over 40,000 emails from specified email addresses was not overly burdensome because the emails requested were easy to locate).

145 *Ibid.*

146 *American Civil Liberties Union Foundation of North California, Inc. v. Deukmejian* (1982) 32 Cal.3d 440, 452–454; *Becerra v. Superior Court* (2020) 44 Cal. App.5th 897, 929–934. See also *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 507; 64 Ops.Cal.Atty.Gen. 317 (1981).

147 Gov. Code, § 7922.540, subds. (a)–(b) (formerly Gov. Code, §§ 6253, subd. (d), 6255, subd. (b)).

► **PRACTICE TIP:**

A local agency should always document that it is supplying the record to the requester. The fact and sufficiency of the response may become points of dispute with the requester.

► **PRACTICE TIP:**

Although not required, any response that denies in whole, or in part, an oral public records request should be put in writing.

If the record is withheld in its entirety or provided to the requester in redacted form, the local agency must state the legal basis under the PRA for its decision not to comply fully with the request.¹⁴⁸ Statements like “We don’t give up those types of records” or “Our policy is to keep such records confidential” will not suffice.

Redacting Records

Some records contain information that must be disclosed, along with information that is exempt from disclosure. A local agency has a duty to provide such a record to the requester in redacted form if the nonexempt information is “reasonably segregable” from that which is exempt,¹⁴⁹ unless the burden of redacting the record becomes too great.¹⁵⁰ What is reasonably segregable will depend on the circumstances. If exempt information is inextricably intertwined with nonexempt information, the record may be withheld in its entirety.¹⁵¹

No Duty to Create a Record or a Privilege Log

A local agency has no duty to create a record that does not exist at the time of the request.¹⁵² There is also no duty to reconstruct a record that was lawfully discarded prior to receipt of the request. However, an agency may be liable for attorney fees when a court determines the agency was not sufficiently diligent in locating requested records, even when the requested records no longer exist.¹⁵³

The PRA does not require that a local agency create a “privilege log” or list that identifies the specific records being withheld.¹⁵⁴ The response only needs to identify the legal grounds for nondisclosure. If the agency creates a privilege log for its own use, however, that document may be considered a public record and may be subject to disclosure in response to a later public records request.

148 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); Gov. Code, § 7922.540, subd. (c).

149 Gov. Code, § 7922.525 (formerly Gov. Code, § 6253, subd. (a)); *American Civil Liberties Union Foundation of North California, Inc. v. Deukmejian*, *supra*, 32 Cal.3d at p. 458.

150 *American Civil Liberties Union Foundation of North California, Inc. v. Deukmejian*, *supra*, 32 Cal.3d at p. 452–454; *Becerra v. Superior Court*, *supra*, 44 Cal. App.5th at p. 939-934.

151 *Ibid.*

152 Gov. Code, § 7920.530, subd. (a) (formerly Gov. Code, § 6252, subd. (e)); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at pp. 616–627, 629; *Sander v. Superior Court* (2018) 26 Cal.App.5th 651. See Chapter 6 concerning duties and obligations with respect to electronic records.

153 *Community Youth Athletic Center v. National City*, *supra*, 220 Cal.App.4th at p. 1447. See “Attorney Fees and Costs,” p. 61.

154 *Haynie v. Superior Court*, *supra*, 26 Cal.4th, at p. 1075.

► **PRACTICE TIP:**

To ensure compliance with the PRA or in anticipation of court scrutiny of the agency's due diligence, the local agency may wish to maintain a separate file for copies of records that have been withheld and those produced (including redacted versions).

Fees

The public records process is in many respects cost-free to the requester. The local agency may only charge a fee for the direct cost of duplicating a record when the requester is seeking a copy,¹⁵⁵ or it may charge a statutory fee, if applicable.¹⁵⁶ A local agency may require payment in advance, before providing the requested copies;¹⁵⁷ however, no payment can be required merely to look at a record where copies are not sought.

Direct cost of duplication is the cost of running the copy machine, and conceivably the expense of the person operating it.¹⁵⁸ "Direct cost" does not include the ancillary tasks necessarily associated with the retrieval, inspection, and handling of the file from which the copy is extracted.¹⁵⁹ For example, if concern for the security of records requires that an agency employee sit with the requester during the inspection, or if a record must be redacted before it can be inspected, the agency may not bill the requester for that expenditure of staff time.

► **PRACTICE TIP:**

The direct cost of duplication charged for a PRA request should be supported by a fee study adopted by a local agency resolution.

Although permitted to charge a fee for duplication costs, a local agency may choose to reduce or waive that fee.¹⁶⁰ For example, the agency might waive the fee in a particular case because the requester is indigent; or it might generally choose to waive fees below a certain dollar threshold because the administrative costs of collecting the fee would exceed the revenue to be collected. An agency may also set a customary copying fee for all requests that is lower than the amount of actual duplication costs.

► **PRACTICE TIP:**

If a local agency selectively waives or reduces the duplication fee, it should apply standards for waiver or reduction with consistency to avoid charges of favoritism or discrimination toward particular requesters.

155 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

156 Gov. Code, § 7922.430, subd. (a) (formerly Gov. Code, § 6253, subd. (b)); 85 Ops.Cal.Atty.Gen. 225 (2002); see, e.g., Gov. Code, § 81008.

157 Gov. Code, § 7922.530, subd. (a) (formerly Gov. Code, § 6253, subd. (b)).

158 *North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144, 148.

159 *Ibid.*; *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 492.

160 Gov. Code, § 7922.505 (formerly Gov. Code, § 6253, subd. (e)); *North County Parents Organization v. Dept. of Education*, *supra*, 23 Cal.App.4th at p. 148.

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy and does not include cost of redaction.¹⁶¹ For example, a city cannot charge requesters for time city employees spent searching for, reviewing, and editing videos to redact exempt, but otherwise producible, data. However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or if production of the record would require data compilation, extraction, or programming. Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.

► **PRACTICE TIP:**

If there is a request for public records pursuant to Government Code section 7922.575 requiring “data compilation, extraction, or programming to produce the record” the local agency should ask the requester to pay the fees in advance, before the “data compilation, extraction, or programming” is actually done.

Waiver

Generally, whenever a local agency discloses an otherwise exempt public record to any member of the public, the disclosure constitutes a waiver of most of the exemptions contained in the PRA for all future requests for the same information. The waiver provision in Government Code section 7921.505 applies to an intentional disclosure of privileged documents, and a local agency’s inadvertent release of attorney-client documents does not waive such privilege.¹⁶² There are, however, a number of statutory exceptions to the waiver provisions, including, among others, disclosures made through discovery or other legal proceedings, and disclosures made to another governmental agency that agrees to treat the disclosed material as confidential.

¹⁶¹ *National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 492.

¹⁶² *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176, 1183; *Newark School District v. Superior Court* (2015) 245 Cal.App.4th 887, 897.

Specific Document Types, Categories, and Exemptions from Disclosure

Overview of Exemptions

This chapter discusses how to address requests for certain specific types and categories of commonly requested records and many of the most frequently raised exemptions from disclosure that may, or in some cases, must be asserted by local agencies.

Transparent and accessible government is the foundational objective of the PRA. This recently constitutionalized right of access to the writings of local agencies and officials was declared by the Legislature in 1968 to be a “fundamental and necessary right.”¹⁶³ While this right of access is not absolute, it must be construed broadly.¹⁶⁴ The PRA contains over 75 express exemptions, many of which are discussed below, including one for records that are otherwise exempt from disclosure by state or federal statutes,¹⁶⁵ and a balancing test, known as the “public interest” or “catchall” provision. This “catchall” provision allows local agencies to justify withholding any record by demonstrating that on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure.¹⁶⁶

When local agencies claim an exemption or prohibition to disclosure of all or a part of a record, they must identify the specific exemption to disclosure in the response.¹⁶⁷ Where a record contains some information that is subject to an

163 See Gov. Code, § 7921.000 (formerly Gov. Code, § 6250).

164 Cal. Const., art. I, § 3(b)(2); *City of San Jose v. Superior Court*, 2 Cal.5th 608, 617.

165 Gov. Code, § 7927.705 (formerly Gov. Code § 6254(k)); *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 67.

166 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); *Long Beach Police Officers Assn. v. City of Long Beach*, *supra*, 59 Cal.4th at p. 67. See also “Public Interest Exemption,” p. 63.

167 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); *Long Beach Police Officers Assn. v. City of Long Beach*, *supra*, 59 Cal.4th at p. 67.

exemption and other information that is not, the local agency may redact the information that is exempt (identifying the exemption), but must otherwise still produce the record. Unless a statutory exemption applies, the public is entitled to access or a copy.¹⁶⁸

► **PRACTICE TIP:**

When evaluating a record to determine whether it falls within an exemption in the PRA, do not overlook exemptions and even prohibitions to disclosure that are contained in other state and federal statutes, including, for example, evidentiary privileges, medical privacy laws, police officer personnel record privileges, official information, information technology or infrastructure security systems, etc. Many of these other statutory exemptions or prohibitions are also discussed below.

Types of Records and Specific Exemptions

Architectural and Official Building Plans

The PRA recognizes exemptions to the disclosure of a record “which is exempted or prohibited [from disclosure] pursuant to federal or state law”¹⁶⁹ Under this rule, architectural and official building plans may be exempt from disclosure, because: (1) architectural plans submitted by third parties to local agencies may qualify for federal copyright protections;¹⁷⁰ (2) local agencies may claim a copyright in many of their own records; or (3) state laws address inspection and duplication of building plans by members of the public.¹⁷¹

“Architectural work,” defined under federal law as the “design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings,”¹⁷² is considered an “original work of authorship,”¹⁷³ which has automatic federal copyright protection.¹⁷⁴ Architectural plans may be inspected, but cannot be copied without the permission of the owner.¹⁷⁵

► **PRACTICE TIP:**

Some requesters will cite the “fair use of copyrighted materials” doctrine as giving them the right to copy architectural plans.¹⁷⁶ The fair use rule is a defense to a copyright infringement action only and not a legal entitlement to obtain copyrighted materials.¹⁷⁷

168 *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329.

169 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

170 17 U.S.C. § 17.

171 Health & Saf. Code, § 19851.

172 17 U.S.C. § 101.

173 17 U.S.C. § 102(A)(8).

174 17 U.S.C. §§ 102(A)(8), 106.

175 17 U.S.C. § 106.

176 17 U.S.C. § 107.

177 See *Harper and Row Publishers, Inc. v. Nation Enterprises* (1985) 471 U.S. 539, 561 (discussing “fair use” defense).

The official copy of building plans maintained by a local agency's building department may be inspected, but cannot be copied without the local agency first requesting the written permission of the licensed or registered professional who signed the document and the original or current property owner.¹⁷⁸ A request made by the building department via registered or certified mail for written permission from the professional must give the professional at least 30 days to respond and be accompanied by a statutorily prescribed affidavit signed by the person requesting copies, attesting that the copy of the plans shall only be used for the maintenance, operation, and use of the building, that the drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed, or registered professional of record, and that a licensed architect who signs and stamps plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent unauthorized changes to or uses of those plans.¹⁷⁹ After receiving this required information, the professional cannot withhold written permission to make copies of the plans.¹⁸⁰ These statutory requirements do not prohibit duplication of reduced copies of plans that have been distributed to local agency decision-making bodies as part of the agenda materials for a public meeting.¹⁸¹

The California Attorney General has determined that interim grading documents, including geology, compaction, and soils reports, are public records that are not exempt from disclosure.¹⁸²

Attorney-Client Communications and Attorney Work Product

The PRA specifically exempts from disclosure “records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, the provisions of the Evidence Code relating to privilege.”¹⁸³ The PRA's exemptions protect attorney-client privileged communications and attorney work product, as well as, more broadly, other work product prepared for use in pending litigation or claims.¹⁸⁴

► PRACTICE TIP:

Penal Code section 832.7 contains specific rules relating to the application of attorney-client privilege, and disclosure of attorney bills and retainer agreements relating to peace officer personnel records.¹⁸⁵

Attorney-Client Privilege

The attorney-client privilege protects from disclosure the entirety of confidential communications between attorney and client, as well as among the attorneys within a firm or in-house legal department representing such client, including factual and other information, not in itself privileged outside of attorney-client communications.¹⁸⁶ The fundamental purpose of the attorney-client privilege is preservation of the confidential relationship between attorney and client. It is not necessary to demonstrate that prejudice would result from disclosure of attorney-client

178 Health & Saf. Code, § 19851.

179 *Ibid.*

180 *Ibid.*

181 Gov. Code, § 54957.5.

182 89 Ops.Cal.Atty.Gen. 39 (2006).

183 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

184 *Fairley v. Superior Court*, *supra*, 66 Cal.App.4th 1414, 1420–1422. See also “Official Information Privilege,” p. 48.

185 See “Peace Officer Personnel Records,” p. 53.

186 *Costco Wholesale Corporation v. Superior Court* (2009) 47 Cal.4th 725, 733; *Fireman's Fund Insurance Company v. Superior Court* (2011) 196 Cal.App.4th 1263, 1272–1275; *Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 49–52.

communications to prevent such disclosure.¹⁸⁷ When the party claiming the privilege shows the dominant purpose of the relationship between the parties to the communication was one of attorney and client, the communication is protected by the privilege.¹⁸⁸ Unlike the exemption for pending litigation, attorney-client privileged information is still protected from disclosure even after litigation is concluded.¹⁸⁹ But note, the attorney-client privilege will likely not protect communication between a public employee and his or her personal attorney if that communication occurs using a public entity's computer system and the public entity has a computer policy that indicates the computers are intended for the public entity's business and are subject to monitoring by the employer.¹⁹⁰

The attorney plaintiff in a wrongful termination suit and the defendant insurer may reveal privileged third-party attorney-client communications to their own attorneys to the extent necessary for the litigation, but may not publicly disclose such communications.¹⁹¹

Attorney Work Product

Any writing that reflects an attorney's impressions, conclusions, opinions, legal research, or theories is not discoverable under any circumstances and is thus exempt from disclosure under the PRA. There is also a qualified privilege against disclosure of materials (e.g., witness statements, other investigative materials) developed by an attorney in preparing a case for trial as thoroughly as possible, with a degree of privacy necessary to uncover and investigate both favorable and unfavorable aspects of a case.¹⁹²

Common Interest Doctrine

The common interest doctrine may also protect communications with third parties from disclosure where the communication is protected by the attorney-client privilege or attorney-work-product doctrine, and maintaining the confidentiality of the communication is necessary to accomplish the purpose for which legal advice was sought. The common interest doctrine is not an independent privilege; rather, it is a nonwaiver doctrine that may be used by plaintiffs or defendants alike.¹⁹³ For the common interest doctrine to attach, the parties to the shared communication must have a reasonable expectation that the information disclosed will remain confidential.¹⁹⁴ Further, the parties must have a common interest in a matter of joint concern. In other words, they must have a common interest in securing legal advice related to the same matter, and the communication must be made to advance their shared interest in securing legal advice on that common matter.¹⁹⁵

187 *Costco Wholesale Corporation v. Superior Court*, *supra*, 47 Cal.4th at p. 740-741.

188 *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1032; *Clark v. Superior Court*, *supra*, 196 Cal.App.4th at p. 51.

189 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371–373. See “Pending Litigation or Claims,” p. 49.

190 *Holmes v. Petrovich Development Co. LLC* (2011) 191 Cal.App.4th 1047, 1071–1072.

191 *Chubb & Son v. Superior Court* (2014) 228 Cal.App.4th 1094, 1106–1109.

192 Code Civ. Proc., § 2018.030, subds. (a) & (b); Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

193 *OXY Resources LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 889.

194 *Id.* at p. 891.

195 Compare *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 914–922 (common interest doctrine inapplicable to communications between developer and city prior to approval of application because, pre-project approval, parties lacked a common interest) with *California Oak Foundation v. County of Tehama* (2009) 174 Cal.App.4th 1217, 1222–1223 (sharing of privileged documents prepared by county's outside law firm regarding CEQA compliance with project applicant was within common interest doctrine).

Attorney Bills and Retainer Agreements

Attorney billing invoices reflecting work in active and ongoing litigation are exempt from disclosure under the attorney-client privilege or attorney-work-product doctrine.¹⁹⁶ Once a matter is concluded, portions of attorney invoices reflecting fee totals must be disclosed unless such totals reveal anything about the legal consultation, such as insight into litigation strategy, the substance of the legal consultation, or clues about legal strategy.¹⁹⁷

Retainer agreements between a local agency and its attorneys may constitute confidential communications that fall within the attorney-client privilege.¹⁹⁸ A local agency's governing body may waive the privilege and elect to produce the agreements.¹⁹⁹

► PRACTICE TIP:

Some agencies simplify redaction of attorney bills and production of non-exempt bill information in response to requests by requiring that non-exempt portions of attorney bills, such as the name of the matter, the invoice amount, and date, be contained in separate documents from privileged bill text.

CEQA Proceedings

Increasingly, potential litigants have been submitting public records requests as a prelude to or during preparation of the administrative record for challenges to the adequacy of an agency's California Environmental Quality Act (CEQA) process or certification of CEQA documents. While there are no specific PRA provisions directly addressing CEQA proceedings, these requests can present multiple challenges as they may seek voluminous amounts of records, such as email communications between staff and consultants, or confidential and privileged documents.

► PRACTICE TIP:

A request to prepare an administrative record for a CEQA challenge does not excuse or justify ignoring or delaying responses to a CEQA-related PRA request. A failure to properly or fully respond to the PRA request can lead to claims of violations of the PRA and a demand for attorneys' fees being included in a CEQA lawsuit. Local agencies should, therefore, exercise the same due diligence when responding to CEQA-related PRA requests as they do with any other type of PRA request. As with any litigation or potential litigation, local agencies should also consider invoking internal litigation holds and evidence preservation practices early on in a contentious CEQA process.²⁰⁰

Two particularly challenging issues that arise with CEQA-related PRA requests are whether and to what extent a subcontractor's files are public records subject to disclosure, and whether the deliberative process privilege or public interest exemption apply to the requested documents.

196 *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 297; *County of Los Angeles Bd. of Supervisors v. Superior Court* (2017) 12 Cal. App.5th 1264, 1273-1274.

197 *County of Los Angeles Bd. of Supervisors v. Superior Court*, *supra*, 12 Cal.App.5th at pp. 1274-1275. See "Pending Litigation or Claims," p. 49.

198 Bus. & Prof. Code, § 6149 (a written fee contract shall be deemed to be a confidential communication within the meaning of section 6068(e) of the Business & Professions Code and section 952 of the Evidence Code); Evid. Code, § 952 ("Confidential communication between client and lawyer"); Evid. Code, § 954 (attorney-client privilege).

199 Evid. Code, § 912. See also Gov. Code, § 7921.505 (formerly Gov. Code, § 6254.5) and "Waiver," p. 28.

200 See *Golden Door Properties, LLC, et al. v. Superior Court* (2020) 53 Cal.App.5th 733.

In determining whether a subcontractor's files are public records in the actual or constructive possession of the local agency, the court will look to the consultant's contract to determine the extent to which, if any, the local agency had control over the selection of subcontractors, and how they performed services required by the primary consultant.²⁰¹

► PRACTICE TIP:

Examine your contracts with consultants and clearly articulate who owns their work product, and that of their subcontractors.

Requests for materials that implicate the deliberative process privilege or public interest exemption are commonly made in CEQA-related PRA requests. While it may seem obvious that local agency staff and their consultants desire and in fact need to engage in candid dialogue about a project and the approaches to be taken, when invoking the deliberative process privilege to protect such communications from disclosure the local agency must clearly articulate why the privilege applies by more than a simple statement that it helps the process.²⁰² Likewise, when invoking the public interest exemption to protect documents from disclosure, local agencies must do more than simply state the conclusion that the public's interest in nondisclosure is clearly outweighed by the public interest in disclosure.²⁰³

► PRACTICE TIP:

When evaluating whether the deliberative process privilege applies to documents covered by a PRA request during a pre-litigation CEQA process, keep in mind the close correlation between the drafts exemption, discussed below, and the deliberative process privilege.

Code Enforcement Records

Local agencies may pursue code enforcement through administrative or criminal proceedings, or a combination of both. Records of code enforcement cases for which criminal sanctions are sought may be subject to the same disclosure rules as police and other law enforcement records, including the rules for investigatory records and files, as long as there is a concrete and definite prospect of criminal enforcement.²⁰⁴ Records of code enforcement cases being prosecuted administratively do not qualify as law enforcement records.²⁰⁵ However, some administrative code enforcement information, such as names and contact information of complainants, may be exempt from disclosure under the official information privilege, the identity of informant privilege, or the public interest exemption.²⁰⁶

Deliberative Process Privilege

The deliberative process privilege is derived from the public interest exemption, which provides that a local agency may withhold a public record if it can demonstrate that "on the facts of a particular case the public interest served

201 *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal.App.4th 697, 710–712.

202 See "Deliberative Process Privilege" p. 34.

203 *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 307. See also, "Public Interest Exemption," p. 63.

204 Gov. Code, §§ 7923.600–7923.625 (formerly Gov. Code, § 6254, subd. (f)); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068–1069; *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 783–784. See "Law Enforcement Records," p. 38.

205 *Haynie v. Superior Court*, *supra*, 26 Cal.4th 1061; *State of California ex rel. Division of Industrial Safety v. Superior Court*, *supra*, 43 Cal.App.3d at pp. 783–784.

206 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008. See "Official Information Privilege," p. 48, "Identity of Informants," p. 37, and "Public Interest Exemption," p. 63.

by not making the record public clearly outweighs the public interest served by disclosure of the record.”²⁰⁷ The deliberative process privilege was intended to address concerns that frank discussion of legal or policy matters might be inhibited if subject to public scrutiny, and to support the concept that access to a broad array of opinions and the freedom to seek all points of view, to exchange ideas, and to discuss policies in confidence are essential to effective governance in a representative democracy. Therefore, California courts invoke the privilege to protect communications to decisionmakers before a decision is made.²⁰⁸

In evaluating whether the deliberative process privilege applies, the court will still perform the balancing test prescribed by the public interest exemption.²⁰⁹ In doing so, courts focus “less on the nature of the records sought and more on the effect of the records’ release.”²¹⁰ Therefore, the key question in every deliberative process privilege case is “whether the disclosure of materials would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.”²¹¹ “Accordingly, the ... courts have uniformly drawn a distinction between predecisional communications, which are privileged [citations]; and communications made after the decision and designed to explain it, which are not.”²¹² Protecting the predecisional deliberative process gives the decision-maker “the freedom ‘to think out loud,’ which enables him [or her] to test ideas and debate policy and personalities uninhibited by the danger that his [or her] tentative but rejected thoughts will become subjects of public discussion. Usually, the information is sought with respect to past decisions; the need is even stronger if the demand comes while policy is still being developed.”²¹³

Courts acknowledge that even a purely factual document would be exempt from public scrutiny if it is “actually ... related to the process by which policies are formulated” or “inextricably intertwined” with “policy-making processes.”²¹⁴ For example, the California Supreme Court applied the deliberative process privilege in determining that the Governor’s appointment calendars and schedules were exempt from disclosure under the PRA even though the information in the appointment calendars and schedules was based on fact.²¹⁵ The Court reasoned that such disclosure could inhibit private meetings and chill the flow of information to the executive office.²¹⁶

Drafts

The PRA exempts from disclosure “[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.”²¹⁷ The “drafts” exemption provides a measure of privacy for writings concerning pending local agency action. The exemption was adapted from the FOIA, which exempts from

207 *Times Mirror Company v. Superior Court* (1991) 53 Cal.3d 1325, 1338; Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)); Evid. Code §1040. See also, *Labor and Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12.

208 *Ibid.*; 5 U.S.C. § 552(b)(5). In some cases, pre-decisional communications may also be subject to the official information privilege found in Evidence Code section 1040. See “Official Information Privilege,” p. 48.

209 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 172.

210 *Times Mirror Company v. Superior Court*, *supra*, 53 Cal.3d at pp. 1338, 1342.

211 *Id.* at p. 1342, citing *Dudman Communications v. Dept. of Air Force* (D.C.Cir.1987) 815 F.2d 1565, 1568.

212 *NLRB v. Sears, Roebuck & Co.* (1975) 421 U.S. 132, 151–152. See also *Times Mirror v. Superior Court (State of California)* (1991) 53 Cal.3d 1325, 1341.

213 *Times Mirror Company v. Superior Court*, *supra*, 53 Cal.3d at p.1341, citing *Cox, Executive Privilege* (1974) 122 U Pa L Rev 1383, 1410.

214 *Jordan v. United States Dept. of Justice* (D.C.Cir.1978) 591 F.2d 753, 774; *Ryan v. Department of Justice* (D.C.Cir.1980) 617 F.2d 781, 790; *Soucie v. David* (D.C.Cir.1971) 448 F.2d 1067, 1078.

215 *Times Mirror Company v. Superior Court*, *supra*, 53 Cal.3d at p. 1338.

216 *Ibid.*

217 Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a)).

disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.”²¹⁸ The FOIA “memorandums” exemption is based on the policy of protecting the decision-making processes of government agencies, and in particular the frank discussion of legal or policy matters that might be inhibited if subjected to public scrutiny.²¹⁹

The “drafts” exemption in the PRA has essentially the same purpose as the “memorandums” exemption in the FOIA. The key question under the FOIA test is whether the disclosure of materials would expose a local agency’s decision-making process in such a way as to discourage candid discussion within the local agency and thereby undermine the local agency’s ability to perform its functions.²²⁰ To qualify for the “drafts” exemption the record must be a preliminary draft, note, or memorandum; that is not retained by the local agency in the ordinary course of business; and the public interest in withholding the record must clearly outweigh the public interest in disclosure.²²¹

The courts have observed that preliminary materials that are not customarily discarded or that have not in fact been discarded pursuant to policy or custom must be disclosed.²²² Records that are normally retained do not qualify for the exemption. This is in keeping with the purpose of the FOIA “memorandums” exemption of prohibiting the “secret law” that would result from confidential memos retained by local agencies to guide their decision-making.

► PRACTICE TIP:

By adopting written policies or developing consistent practices of discarding preliminary deliberative writings, local agencies may facilitate candid internal policy debate. Consider including in such policies when a document should be considered to be “discarded,” which might prevent the need to search through bins of documents segregated and approved for destruction under the policies, yet awaiting appropriate shredding and disposal. Such policies and practices may exempt from disclosure even preliminary drafts that have not yet been discarded, so long as the drafts are not maintained by the local agency in the ordinary course of business, and the public interest in nondisclosure clearly outweighs the public interest in disclosure.

Elections

Voter Registration Information

Voter registration information, including the home street address, telephone number, email address, precinct number, or other number specified by the Secretary of State for voter registration purposes is confidential and cannot be disclosed except as specified in section 2194 of the Elections Code.²²³ Similarly, the signature of the voter shown on the voter registration card is confidential and may not be disclosed to any person, except as provided in the Elections Code.²²⁴ Voter registration information may be provided to any candidate for federal, state, or local office; to any committee for or against an initiative or referendum measure for which legal publication is made; and to any person

218 5 U.S.C. § 552, subd. (b)(5).

219 *Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d 1325, 1339–1340.

220 *Id.* at p. 1342.

221 *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704, 711–712; Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a)).

222 *Citizens for a Better Environment v. Department of Food and Agriculture*, *supra*, 171 Cal.App.3d at p. 714.

223 Gov. Code, § 7924.000, subd. (a)(1) (formerly Gov. Code, § 6254.4, subd. (a)).

224 Gov. Code, § 7924.000, subd. (c) (formerly Gov. Code, § 6254.4, subd. (d)).

for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.²²⁵

A California Driver's License, California ID card, or other unique identifier used by the State of California for purposes of voter identification shown on the affidavit of voter registration of a registered voter or added to voter registration records to comply with the requirements of the federal Help America Vote Act of 2002, is confidential and may not be disclosed to any person.²²⁶

When a person's vote is challenged, the voter's home address or signature may be released to the challenger, elections officials, and other persons as necessary to make, defend against, or adjudicate a challenge.²²⁷

A person may view the signature of a voter to determine whether the signature matches a signature on an affidavit of registration or a petition. The signature cannot be copied, reproduced, or photographed in any way.²²⁸

Information or data compiled by local agency officers or employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets is not a disclosable public record and may not be provided to any person other than those local agency officers or employees who are responsible for receiving and processing those requests.²²⁹

Initiative, Recall, and Referendum Petitions

Nomination documents and signatures filed in lieu of filing fee petitions may be inspected, but not copied or distributed.²³⁰ Similarly, any petition to which a voter has affixed his or her signature for a statewide, county, city, or district initiative, referendum, recall, or matters submitted under the Elections Code, is not a disclosable public record and is not open to inspection except by the local agency officers or employees whose duty it is to receive, examine, or preserve the petitions.²³¹ This prohibition extends to all memoranda prepared by county and city elections officials in the examination of the petitions indicating which voters have signed particular petitions.²³²

If a petition is found to be insufficient, the proponents and their representatives may inspect the memoranda of insufficiency to determine which signatures were disqualified and the reasons for the disqualification.²³³

Identity of Informants

A local agency also has a privilege to refuse to disclose and to prevent another from disclosing the identity of a person who has furnished information in confidence to a law enforcement officer or representative of a local agency charged with administration or enforcement of the law alleged to be violated.²³⁴ This privilege applies where the information purports to disclose a violation of a federal, state, or another public entity's law, and where the public's interest in

225 Elec. Code, § 2194.

226 Elec. Code, § 2194, subd. (b).

227 Elec. Code, § 2194, subd. (c)(1).

228 Elec. Code, § 2194, subd. (c)(2).

229 Gov. Code, § 7924.005 (formerly Gov. Code, § 6253.6).

230 Elec. Code, § 17100.

231 Elec. Code, §§ 17200, 17400.

232 Gov. Code, § 7924.110, subd. (a)(5) (formerly Gov. Code, § 6253.5, subd. (a)).

233 Gov. Code, § 7924.110, subd. (b)(2) (formerly Gov. Code, § 6253.5, subd. (a)).

234 Evid. Code, § 1041.

protecting an informant's identity outweighs the necessity for disclosure.²³⁵ This privilege extends to disclosure of the contents of the informant's communication if the disclosure would tend to disclose the identity of the informant.²³⁶

Information Technology Systems Security Records

An information security record is exempt from disclosure if, on the facts of a particular case, disclosure would reveal vulnerabilities to attack, or would otherwise increase the potential for an attack on a local agency's information technology system.²³⁷

Disclosure of records stored within a local agency's information technology system that are not otherwise exempt under the law do not fall within this exemption.²³⁸

Law Enforcement Records

Overview

As an exemption to the general rule of disclosure under the PRA, law enforcement records are generally exempt from disclosure to the public.²³⁹ That is, in most instances, the actual investigation files and records are themselves exempt from disclosure, but the PRA does require local agencies to disclose certain information derived from those files and records.²⁴⁰ For example, the names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (e.g., if there is a specific threat to an officer or an officer is working undercover).²⁴¹

The type of information that must be disclosed differs depending on whether it relates to, for example, calls to the police department for assistance, the identity of an arrestee, information relating to a traffic accident, or certain types of crimes, including car theft, burglary, or arson. The identities of victims of certain types of crimes, including minors and victims of sexual assault, are required to be withheld if requested by the victim or the victim's guardian, if the victim is a minor.²⁴² Those portions of any file that reflect the analysis and conclusions of the investigating officers may also be withheld.²⁴³ Certain information that may be required to be released may be withheld where the disclosure would endanger a witness or interfere with the successful completion of the investigation. These exemptions extend indefinitely, even after the investigation is closed.²⁴⁴

Release practices vary by local agency. Some local agencies provide a written summary of information being disclosed, some release only specific information upon request, while others release reports with certain matters redacted. Other local agencies release reports upon request with no redactions except as mandated by statute. Some local agencies also release 911 tapes and booking photos, although this is not required under the PRA.²⁴⁵

235 Evid. Code, § 1041; *People v. Navarro* (2006) 138 Cal.App.4th 146, 164.

236 *People v. Hobbs* (1994) 7 Cal.4th 948, 961–962.

237 Gov. Code, § 7929.210, subd. (a) (formerly Gov. Code, § 6254.19).

238 Gov. Code, § 7929.210, subd. (b) (formerly Gov. Code, § 6254.19). See also Gov. Code, § 7929.200 (formerly Gov. Code, § 6254, subd. (aa)).

239 Gov. Code, § 7923.600, subd. (a) (formerly Gov. Code § 6254, subd. (f)); *Williams v. Superior Court* (1993) 5 Cal.4th 337, 348.

240 *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1068; 65 Ops.Cal.Atty.Gen. 563 (1982).

241 *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 63–68.

242 Gov. Code, § 7923.615, subd. (b) (formerly § 6254, subd. (f)(2)).

243 *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174.

244 *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1052; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 361–362; *Office of the Inspector General v. Superior Court* (2010) 189 Cal.App.4th 695 (Office of the Attorney General has discretion to determine which investigatory records are subject to disclosure in connection with its investigations, and investigatory records in that context may include some documents that were not prepared as part of, but became subsequently relevant to, the investigation).

245 *Haynie v. Superior Court, supra*, 26 Cal.4th 1061 (911 tapes); 86 Ops.Cal.Atty.Gen. 132 (2003) (booking photos).

► **PRACTICE TIP:**

If it is your local agency's policy to release police reports upon request, it is helpful to establish an internal process to control the release of the identity of minors or victims of certain types of crimes, or to ensure that releasing the report would not endanger the safety of a person involved in an investigation or endanger the completion of the investigation.

Recent changes to the PRA have made video or audio recordings that relate to "critical incidents" available to the public within specified timeframes.²⁴⁶ A video or audio recording relates to a critical incident if it depicts an incident involving (1) the discharge of a firearm at a person by a peace officer or custodial officer or (2) an incident in which the use of force by a peace officer or custodial officers against a person resulted in death or in great bodily injury.²⁴⁷

Recent changes to the Penal Code have also made records related to certain types of police incidents and police misconduct available to the public, notwithstanding the law enforcement record exemption in the PRA.²⁴⁸

► **PRACTICE TIP:**

The term "great bodily injury" is not defined by the recent amendments to the Government Code or the Penal Code referenced above. The Penal Code does contain a definition of great bodily injury (GBI) in the context of an enhancement statute for felonies not having bodily harm as an element. Penal Code section 12022.7 defines GBI as "a significant or substantial physical injury." Case law interpreting this section may be helpful in determining what constitutes GBI, and therefore what records are subject to release, depending on the particular facts of an injury.

State law also requires police agencies to report annually to the California Department of Justice use of force incidents that caused serious bodily injury to a civilian, among other incidents. This report may be a helpful tool in determining which incidents are subject to release for purposes of the Public Records Act.

Exempt Records

The PRA generally exempts most law enforcement records from disclosure, including, among others:

- Complaints to or investigations conducted by a local or state police agency;
- Records of intelligence information or security procedures of a local or state police agency;
- Any investigatory or security files compiled by any other local or state police agency;
- Customer lists provided to a local police agency by an alarm or security company; and
- Any investigatory or security files compiled by any state or local agency for correctional, law enforcement, or licensing purposes.²⁴⁹

²⁴⁶ Gov. Code, § 7923.625 (formerly § 6254, subd. (f)(4)).

²⁴⁷ Gov. Code, § 7923.625, subd. (e) (formerly § 6254, subd. (f)(4)(C)).

²⁴⁸ See "Peace Officer Personnel Records," p. 53.

²⁴⁹ Gov. Code, § 7923.600 subd. (a) (formerly § 6254, subd. (f)); *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1276 (coroner and autopsy reports).

► PRACTICE TIP:

Many departments that choose not to release entire reports develop a form that can be filled out with the requisite public information.

The burden of proof is on the agency asserting the exemption and the exemptions should be narrowly construed.²⁵⁰

In addition to the above categories, and notwithstanding the changes to the PRA and Penal Code making additional police records available to the public, the public interest catchall exemption may still apply to police records, if on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.²⁵¹

Information that Must be Disclosed

Under the Public Records Act, there are four general categories of information contained in law enforcement investigatory files that must be disclosed: information which must be disclosed to victims, their authorized representatives and insurance carriers, information relating to arrestees, information relating to complaints or requests for assistance, and audio or video recordings that relate to critical incidents.

Disclosure to Victims, Authorized Representatives, and Insurance Carriers

Except where disclosure would endanger the successful completion of an investigation or a related investigation, or endanger the safety of a witness, certain information relating to specific listed crimes must be disclosed upon request to:

- A victim;
- The victim's authorized representative;
- An insurance carrier against which a claim has been or might be made; or
- Any person suffering bodily injury, or property damage or loss.

The type of crimes listed in this subsection to which this requirement applies include arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime defined by statute.²⁵²

The type of information that must be disclosed under this section (except where it endangers safety of witnesses or the investigation itself) includes:

- Name and address of persons involved in or witnesses to incident (other than confidential informants);
- Description of property involved;
- Date, time, and location of incident;
- All diagrams;
- Statements of parties to incident; and
- Statements of all witnesses (other than confidential informants).²⁵³

250 *Ventura County Deputy Sheriffs' Assn. v. County of Ventura* (2021) 61 Cal.App.5th 585, 592.

251 *Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 923-929. See "Public Interest Exception," p. 63 for a discussion of this balancing test.

252 Gov. Code, § 7923.605, subd. (a) (formerly § 6254, subd. (f)).

253 Gov. Code, § 7923.605, subd. (a) (formerly § 6254, subd. (f)); *Buckheit v. Dennis* (ND Cal. 2012) 2012 U.S. Dist. LEXIS 49062 (noting that Government Code section 6254, subd. (f) requires disclosure of certain information to a victim. Suspects are not entitled to that same information).

Local agencies may not require a victim or a victim's authorized representative to show proof of the victim's legal presence in the United States to obtain the information required to be disclosed to victims.²⁵⁴ However, if a local agency does require identification for a victim or authorized representative to obtain information disclosable to victims, the local agency must, at a minimum, accept a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship, or a current Matricula Consular card.²⁵⁵

The Vehicle Code addresses the release of traffic accident information. A law enforcement agency to whom an accident was reported is required to disclose the entire contents of a traffic accident report to persons who have a "proper interest" in the information, including, but not limited to, the driver(s) involved in the accident, or the authorized representative, guardian, or conservator of the driver(s) involved; the parent of a minor driver; any named injured person; the owners of vehicles or property damaged by the accident; persons who may incur liability as a result of the accident; and any attorney who declares under penalty of perjury that he or she represents any of the persons described above.²⁵⁶ The local enforcement agency may recover the actual cost of providing the information.

Information Regarding Arrestees

The PRA mandates that the following information be released pertaining to every individual arrested by the local law enforcement agency, except where releasing the information would endanger the safety of persons involved in an investigation or endanger the successful completion of the investigation or a related investigation:

- Full name and occupation of the arrestee;
- Physical description including date of birth, color of eyes and hair, sex, height, and weight;
- Time, date, and location of arrest;
- Time and date of booking;
- Factual circumstances surrounding arrest;
- Amount of bail set;
- Time and manner of release or location where arrestee is being held; and
- All charges the arrestee is being held on, including outstanding warrants and parole or probation holds.²⁵⁷

As previously stated, a PRA request applies only to records existing at the time of the request.²⁵⁸ It does not require a local agency to produce records that may be created in the future. Further, a local agency is not required to provide requested information in a format that the local agency does not use.

► PRACTICE TIP:

Most police departments have some form of a daily desk or press log that contains all or most of this information.

254 Gov. Code, § 7923.655 subd. (a) (formerly § 6254.30).

255 Gov. Code, § 7923.655 subd. (b) (formerly § 6254.30).

256 Veh. Code, § 20012.

257 Gov. Code, § 7923.610 subd. (a)-(i) (formerly § 6254, subd. (f)(1)).

258 Gov. Code, § 7922.535 subd. (a) (formerly § 6253, subd. (c)).

Local agencies are only required to disclose arrestee information pertaining to “contemporaneous” police activity.²⁵⁹ The legislature has not defined the term “contemporaneous” in the context of arrest logs, but the purpose of the disclosure requirement is “only to prevent secret arrests and provide basic law enforcement information to the press.”²⁶⁰ For example, a request for 11 or 12 month old arrest information would not serve the purpose of preventing clandestine police activity, therefore those records are exempt from disclosure.²⁶¹

Complaints or Requests for Assistance

The Penal Code provides that except as otherwise required by the criminal discovery provisions, no law enforcement officer or employee of a law enforcement agency may disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim of or witness to the alleged offense.²⁶²

Subject to the restrictions imposed by the Penal Code, the following information must be disclosed relative to complaints or requests for assistance received by the law enforcement agency:

- The time, substance, and location of all complaints or requests for assistance received by the agency, and the time and nature of the response thereto;²⁶³
- To the extent the crime, alleged or committed, or any other incident is recorded, the time, date, and location of occurrence, and the time and date of the report;²⁶⁴
- The factual circumstances surrounding crime/incident;²⁶⁵
- A general description of injuries, property, or weapons involved;²⁶⁶ and
- The names and ages of victims, except the names of victims of certain listed crimes²⁶⁷ may be withheld upon request of the victim or parent of a minor victim.²⁶⁸

Requests for Journalistic or Scholarly Purposes

Where a request states, under penalty of perjury, that (1) it is made for a scholarly, journalistic, political, or governmental purpose, or for an investigative purpose by a licensed private investigator, and (2) it will not be used directly or indirectly, or furnished to another, to sell a product or service, the PRA requires the disclosure of the name and address of every individual arrested by the local agency and the current address of the victim of a crime, except for specified crimes.²⁶⁹

259 *Kinney v. Superior Court* (2022) 77 Cal.App.5th 168.

260 *Id.* at pp. 180-181

261 *Id.* at p. 181

262 Pen. Code, § 841.5, subd. (a).

263 Gov. Code, § 7923.615, subd. (a)(2)(A) (formerly Gov. Code, § 6254, subd. (f)(2)).

264 Gov. Code, § 7923.615, subd. (a)(2)(B) (formerly Gov. Code, § 6254, subd. (f)(2)).

265 Gov. Code, § 7923.615, subd. (a)(2)(D) (formerly Gov. Code, § 6254, subd. (f)(2)).

266 Gov. Code, § 7923.615, subd. (a)(2)(E) (formerly Gov. Code, § 6254, subd. (f)(2)).

267 These listed crimes include various Penal Code sections which relate to topics such as sexual abuse, child abuse, hate crimes, and stalking.

268 Gov. Code, § 7923.615, subd. (a)(2)(C), (b) (formerly § 6254, subd. (f)(2)).

269 Gov. Code, § 7923.620 (formerly § 6254, subd. (f)); Pen. Code, § 841.5; *Los Angeles Police Dept. v. United Reporting Pub. Corp.* (1999) 528 U.S. 32.

Video or Audio Recordings that Relate to Critical Incidents

Beginning on July 1, 2019, video or audio that relates to critical incidents may only be withheld under certain circumstances and timeframes.²⁷⁰

A video or audio recording relates to a critical incident if it depicts any of the following incidents: (1) an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or (2) an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.²⁷¹

Disclosure of such video or audio may be delayed for up to 45 days, during an active criminal or administrative investigation into the incident, if the agency determines that disclosure would substantially interfere with the investigation.²⁷² After 45 days, and up to one year after the incident, disclosure may continue to be delayed if the agency can demonstrate that disclosure would substantially interfere with the investigation. After one year from the date of the incident, the agency may continue to delay disclosure only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation.²⁷³

If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.²⁷⁴

Video or audio may be redacted if the agency determines that a reasonable expectation of privacy outweighs the public interest in disclosure. However, the redactions should be limited to protect those privacy interests and shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.²⁷⁵ If protecting the privacy interest is not possible through redaction, and the privacy interest outweighs the public interest in disclosure, the agency may withhold the video or audio from the public.²⁷⁶ However, the video or audio shall be disclosed promptly, upon request, to the subject of the recording or their representative as described in the statute.²⁷⁷

Staff time incurred in searching for, reviewing, and redacting video or audio is not chargeable to the PRA requester.²⁷⁸

Coroner Photographs or Video

No copies, reproductions, or facsimiles of a photograph, negative, print, or video recording of a deceased person taken by or for the coroner (including by local law enforcement personnel) at the scene of death, or in the course of a postmortem examination or autopsy, may be disseminated except as provided by statute.²⁷⁹

270 Gov. Code, § 7923.625 (formerly § 6254, subd. (f)(4)).

271 Gov. Code, § 7923.625, subd. (e) (formerly § 6254, subd. (f)(4)(C)).

272 Gov. Code, § 7923.625, subd. (a)(1) (formerly § 6254, subd. (f)(4)(A)(i)).

273 Gov. Code, § 7923.625, subd. (a)(2) (formerly § 6254, subd. (f)(4)(A)(ii)).

274 Gov. Code, § 7923.625, subd. (a)(2) (formerly § 6254, subd. (f)(4)(A)(ii)).

275 Gov. Code, § 7923.625, subd. (b)(1) (formerly § 6254, subd. (f)(4)(B)(i)).

276 Gov. Code, § 7923.625, subd. (b)(2) (formerly § 6254, subd. (f)(4)(B)(ii)).

277 Gov. Code, § 7923.625, subd. (b)(2)(A-C) (formerly § 6254, subd. (f)(4)(B)(ii)(I-III)).

278 *National Lawyers Guild v. City of Hayward* (2020) 9 Cal. 5th 488.

279 Code Civ. Proc., § 129.

Automated License Plate Readers Data

Automated License Plate Reader (ALPR) scan data is not considered “records of investigations” because the scans are not the result of any targeted inquiry into any particular crime or crimes.²⁸⁰ As such, this data is not subject to the law enforcement records exemption.

Mental Health Detention Information

All information and records obtained in the course of providing services to a mentally disordered individual who is gravely disabled or a danger to others or him or herself, and who is detained and taken into custody by a peace officer, are confidential and may only be disclosed to enumerated recipients and for the purposes specified in state law.²⁸¹ Willful, knowing release of confidential mental health detention information can create liability for civil damages.²⁸²

► PRACTICE TIP:

All information obtained in the course of a mental health detention (often referred to as a “5150 detention”) is confidential, including information in complaint or incident reports that would otherwise be subject to disclosure under the PRA.

Elder Abuse Records

Reports of suspected abuse or neglect of an elder or dependent adult, and information contained in such reports, are confidential and may only be disclosed as permitted by state law.²⁸³ The prohibition against unauthorized disclosure applies regardless of whether a report of suspected elder abuse or neglect is from someone who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not for compensation (a mandated reporter), or from someone else.²⁸⁴ Unauthorized disclosure of suspected elder abuse or neglect information is a misdemeanor.²⁸⁵

Juvenile Records

Records or information gathered by law enforcement agencies relating to the detention of, or taking of, a minor into custody or temporary custody are confidential and subject to release only in certain circumstances and by certain specified persons and entities.²⁸⁶ Juvenile court case files are subject to inspection only by specific listed persons and are governed by both statute and state court rules.²⁸⁷

280 *American Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal. 5th 1032.

281 Welf. & Inst. Code, §§ 5150, 5328.

282 Welf. & Inst. Code, § 5330.

283 Welf. & Inst. Code, § 15633.

284 Welf. & Inst. Code, § 15633.

285 Welf. & Inst. Code, § 15633.

286 Welf. & Inst. Code, §§ 827, 828; see Welf. & Inst. Code, § 827.9 (applies to Los Angeles County only). See also *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767 (release of information regarding minor who has been temporarily detained and released without any further proceedings.)

287 Welf. & Inst. Code, § 827.

► **PRACTICE TIP:**

Some local courts have their own rules regarding inspection and they may differ from county to county and may change from time to time. Care should be taken to periodically review the rules as the presiding judge of each juvenile court makes their own rules.

Different provisions apply to dissemination of information gathered by a law enforcement agency relating to the taking of a minor into custody where it is provided to another law enforcement agency, including a school district police or security department, or other agency or person who has a legitimate need for information for purposes of official disposition of a case.²⁸⁸ In addition, a law enforcement agency must release the name of and descriptive information relating to any juvenile who has escaped from a secure detention facility.²⁸⁹

Child Abuse Reports

Reports of suspected child abuse or neglect, including reports from those who are “mandated reporters,” such as teachers and public school employees and officials, physicians, children’s organizations, and community care facilities, and child abuse and neglect investigative reports that result in a summary report being filed with the Department of Justice, are confidential and may only be disclosed to the persons and agencies listed in state law.²⁹⁰ Unauthorized disclosure of confidential child abuse or neglect information is a misdemeanor.²⁹¹

Library Patron Use Records

All patron use records of any library that is supported in whole or in part by public funds are confidential and may not be disclosed except to persons acting within the scope of their duties within library administration, upon written authorization from the person whose records are sought, or by court order.²⁹² The term “patron use records” includes written or electronic records that identify the patron, the patron’s borrowing information, or use of library resources, including database search records and any other personally identifiable information requests or inquiries.²⁹³ This exemption does not extend to statistical reports of patron use or records of fines collected by the library.²⁹⁴

Library Circulation Records

Library circulation records that are kept to identify the borrowers, and library and museum materials presented solely for reference or exhibition purposes, are exempt from disclosure.²⁹⁵ Further, all registration and circulation records of any library that is (in whole or in part) supported by public funds are confidential.²⁹⁶ The confidentiality of library circulation records does not extend to records of fines imposed on borrowers.²⁹⁷

288 Welf & Inst. Code, § 828, subd. (a); Cal. Rules of Court, rule 5.552(b).

289 Welf & Inst. Code, § 828, subd. (b).

290 Pen. Code, §§ 11165.6, 11165.7, 11167.5, 11169.

291 Pen. Code, § 11167.5, subd. (a).

292 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

293 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

294 Gov. Code, § 7927.105 (formerly Gov. Code, § 6267).

295 Gov. Code, § 7927.100, subd. (a) (formerly Gov. Code, § 6254, subd. (j)).

296 Gov. Code, § 7927.105, subd. (c) (formerly Gov. Code, § 6254, subd. (j)).

297 Gov. Code, § 7927.100, subd. (b) (formerly Gov. Code, § 6254, subd. (j)).

Licensee Financial Information

When a local agency requires that applicants for licenses, certificates, or permits submit personal financial data, that information is exempt from disclosure.²⁹⁸ One frequent example of this is the submittal of sales or income information under a business license tax requirement. However, this exemption is construed narrowly and does not apply to financial information filed by an existing licensee or franchisee to justify a rate increase, because the franchisee is not merely applying for a license but is contractually assuming a city function which requires monitoring and regular review.²⁹⁹

Medical Records

California's Constitution protects a person's right to privacy in his or her medical records.³⁰⁰ Therefore, the PRA exempts from disclosure "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."³⁰¹ In addition, the PRA exempts from disclosure "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law,"³⁰² including, but not limited to, those described in the Confidentiality of Medical Information Act,³⁰³ physician/patient privilege,³⁰⁴ the Health Data and Advisory Council Consolidation Act,³⁰⁵ and the Health Insurance Portability and Accountability Act.³⁰⁶

► PRACTICE TIP:

Both Gov. Code sections 7927.700 and 7927.705 probably apply to records protected under the physician/patient privilege, the Confidentiality of Medical Information Act, the Health Data and Advisory Council Consolidation Act, and the Health Insurance Portability and Accountability Act. In addition, individually identifiable health information is probably also exempt from disclosure under the "public interest" exemption in Government Code section 7922.000.

Health Data and Advisory Council Consolidation Act

Any organization that operates, conducts, owns, or maintains a health facility, hospital, or freestanding ambulatory surgery clinic must file reports with the state that include detailed patient health and financial information.³⁰⁷ Patient medical record numbers, and any other data elements of these reports that could be used to determine the identity of an individual patient are exempt from disclosure.³⁰⁸

298 Gov. Code, § 7925.005 (formerly Gov. Code, § 6254, subd. (n)).

299 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 779–780.

300 Cal. Const., art. I, § 1; *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 41.

301 Gov. Code, § 7927.700 (formerly Gov. Code, § 6254, subd. (c)).

302 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

303 Civ. Code, §§ 56 *et seq.*

304 Evid. Code, §§ 990 *et seq.*

305 Health & Saf. Code, §§ 128675 *et seq.*

306 42 U.S.C. § 1320d.

307 Health & Saf. Code, §§ 128735, 128736, 128737.

308 Health & Saf. Code, § 128745, subd. (c)(6).

Physician/Patient Privilege

Patients may refuse to disclose, and prevent others from disclosing, confidential communications between themselves and their physicians.³⁰⁹ The privilege extends to confidential patient/physician communication that is disclosed to third parties where reasonably necessary to accomplish the purpose for which the physician was consulted.³¹⁰

► PRACTICE TIP:

Patient medical information provided to local agency emergency medical personnel to assist in providing emergency medical care may be subject to the physician/patient privilege if providing the privileged information is reasonably necessary to accomplish the purpose for which the physician was, or will be, consulted, including emergency room physicians.

Confidentiality of Medical Information Act

Subject to certain exceptions, health care providers, health care service plan providers, and contractors are prohibited from disclosing a patient's individually identifiable medical information without first obtaining authorization.³¹¹ Employers must establish appropriate procedures to ensure the confidentiality and appropriate use of individually identifiable medical information.³¹² Local agencies that are not providers of health care, health care service plans, or contractors as defined in state law may possess individually identifiable medical information protected under state law that originated with providers of health care, health care service plans, or contractors.³¹³

Health Insurance Portability and Accountability Act

Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) in 1996 to improve portability and continuity of health insurance coverage and to combat waste, fraud, and abuse in health insurance and health care delivery through the development of a health information system and establishment of standards and requirements for the electronic transmission of certain health information.³¹⁴ The U.S. Department of Health and Human Services Secretary (HHS) has issued privacy regulations governing use and disclosure of individually identifiable health information by "covered entities" — essentially health plans, health care clearinghouses, and any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA.³¹⁵ Persons³¹⁶ who knowingly and in violation of federal law use or cause to be used a unique health identifier, obtain individually identifiable health information relating to an individual, or disclose

309 Evid. Code, § 994.

310 Evid. Code, § 992.

311 Civ. Code, §§ 56.10, subd. (a); 56.05, subd. (g). "Provider of health care" as defined means persons licensed under Business & Professions Code section 500 *et seq.*, or Health & Safety Code section 1797 and following, and clinics, health dispensaries, or health facilities licensed under Health and Safety Code section 1200 *and following*. "Health care service plan" as defined means entities regulated under Health & Safety Code section 1340 and following. "Contractor" as defined means medical groups, independent practice associations, pharmaceutical benefits managers, and medical service organizations that are not providers of health care or health care service plans.

312 Civ. Code, § 56.20.

313 Civ. Code, § 56.05, subd. (g).

314 Health Insurance Portability and Accountability Act of 1996, Pub L No. 104-191, § 261 (Aug. 24, 1996) 110 Stat 1936; 42 U.S.C. 1320d.

315 42 U.S.C. § 1320d-1–d-3, Health and Human Services Summary of the Privacy Rule, May, 2003. The final privacy regulations were issued in December, 2000 and amended in August, 2002. The definitions of "health information" and "individually identifiable health information" in the privacy regulations are in 45 C.F.R. 160.103. The general rules governing use and disclosure of protected health information are in 45 C.F.R. 164.502.

316 Persons (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d-9(b)(3)) and the individual obtained or disclosed such information without authorization. 42 U.S.C. § 1320d-6 (a).

individually identifiable health information to another person are subject to substantial fines and imprisonment of not more than one year, or both, and to increased fines and imprisonment for violations under false pretenses or with the intent to use individually identifiable health information for commercial advantage, personal gain, or malicious harm.³¹⁷ Federal law also permits the Health and Human Services Secretary to impose civil penalties³¹⁸

Workers' Compensation Benefits

Records pertaining to the workers' compensation benefits for an individually identified employee are exempt from disclosure as "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy."³¹⁹ The PRA further prohibits the disclosure of records otherwise exempt or prohibited from disclosure pursuant to federal and state law.³²⁰ State law prohibits a person or public or private entity who is not a party to a claim for workers' compensation benefits from obtaining individually identifiable information obtained or maintained by the Division of Workers' Compensation on that claim.³²¹

Certain information may be subject to disclosure once an application for adjudication has been filed.³²² If the request relates to pre-employment screening, the administrative director must notify the person about whom the information is requested and include a warning about discrimination against persons who have filed claims for workers' compensation benefits. Further, a residential address cannot be disclosed, except to law enforcement agencies, the district attorney, other governmental agencies, or for journalistic purposes. Individually identifiable information is not subject to subpoena in a civil proceeding without notice and a hearing at which the court is required to balance the respective interests — privacy and public disclosure. Individually identifiable information may be used for certain types of statistical research by specifically listed persons and entities.³²³

Official Information Privilege

A local agency may refuse to disclose official information.³²⁴ "Official information" is statutorily defined as "information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed to the public prior to the time the claim of privilege is made."³²⁵ However, the courts have somewhat expanded on the statutory definition by determining that certain types of information, such as police investigative files and medical information, are "by [their] nature confidential and widely treated as such" and thus protected from disclosure by the privilege.³²⁶ Therefore, "official information" includes information that is protected by a state or federal statutory

317 42 U.S.C. § 1320d-6. Federal law defines "individually identifiable health information" as any information collected from an individual that is created or received by a health care provider, health plan, employer or health care clearing house, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

318 42 U.S.C. § 1320d-5.

319 Gov. Code, § 7927.700 (formerly Gov. Code, § 6254, subd. (c)).

320 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)).

321 Lab. Code, § 138.7, subd. (a). This state statute defines "individually identifiable information" to mean "any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity."

322 Lab. Code, §§ 5501.5, 138.7.

323 Lab Code, §138.7.

324 Evid. Code, § 1040.

325 Evid. Code, § 1040, subd. (a).

326 *Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363, 373–374.

privilege or information, the disclosure of which is against the public interest, because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.³²⁷

The local agency has the right to assert the official information privilege both to refuse to disclose and to prevent another from disclosing official information.³²⁸

Where the disclosure is prohibited by state or federal statute, the privilege is absolute, unless there is an exception.³²⁹ In all other respects, it is conditional and requires a judge to weigh the necessity for preserving the confidentiality of information against the necessity for disclosure in the interest of justice.³³⁰ This is similar to the weighing process provided for in the PRA — allowing nondisclosure when the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.³³¹ As part of the weighing process a court will look at the consequences to the public, including the effect of the disclosure on the integrity of public processes and procedures.³³² This is typically done through *in camera* judicial review.³³³

There are a number of cases interpreting this statute.³³⁴ While many of the cases interpreting this privilege involve law enforcement records, other cases arise out of licensing and accreditation-type activities. The courts address these types of cases on an individualized basis and further legal research should be done within the context of particular facts.

► **PRACTICE TIP:**

Although there is no case law directly on point, this privilege, along with the informant privilege, may be asserted to protect the identities of code enforcement complainants and whistleblowers.

Pending Litigation or Claims

The PRA exempts from disclosure records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to the California Government Claims Act, until the pending litigation or claim has been finally adjudicated or otherwise settled.³³⁵ Although the phrase “pertaining to” pending litigation or claims might seem broad, the courts nevertheless have construed the exemption narrowly, consistent with the underlying policy of the PRA to promote access to public records. Therefore, the claim itself is not exempt from disclosure — the exemption applies only to documents specifically prepared by, or at the direction of, the local agency for use in existing or anticipated litigation.³³⁶

327 *White v. Superior Court* (2002) 102 Cal.App.4th.Supp. 1, 6.

328 Evid. Code, § 1040, subd. (b).

329 See Evid. Code § 1040, subd. (c) (notwithstanding any other law, the Employment Development Department shall disclose to law enforcement agencies, in accordance with subdivision (i) of Section 1095 of the Unemployment Insurance Code, information in its possession relating to any person if an arrest warrant has been issued for the person for commission of a felony).

330 See also exception in Evid. Code § 1040, subd. (c).

331 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).

332 *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 126.

333 The term “*in camera*” refers to a review of the document in the judge’s chambers outside the presence of the requesting party.

334 *Department of Motor Vehicles v. Superior Court*, *supra*, 100 Cal.App.4th 363; *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal. App.4th 810; *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759.

335 Gov. Code, § 7927.200 (formerly Gov. Code, § 6254, subd. (b)).

336 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420–1421; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1420.

It may sometimes be difficult to determine whether a particular record was prepared specifically for use in litigation or for other purposes related to the underlying incident. For example, an incident report may be prepared either in anticipation of defending a potential claim, or simply for risk management purposes. In order for the exemption to apply, the local agency would have to prove that the dominant purpose of the record was to be used in defense of litigation.³³⁷

Attorney billing invoices reflecting work in active and ongoing litigation are exempt from disclosure under the attorney-client privilege or attorney work product doctrine.³³⁸ The Supreme Court reasoned that the content of such invoices is so closely related to attorney-client communications that its disclosure may reveal legal strategy or consultation. Once a matter is concluded, however, portions of attorney invoices reflecting fee totals (not billing entries or portions of invoices that describe the work performed for a client) must be disclosed unless such totals reveal anything about the legal consultation such as insight into litigation strategy, the substance of the legal consultation, or clues about legal strategy.³³⁹ This is a factual analysis that weighs various factors.

It is important to remember that even members of the public that have filed a claim against or sued a local agency are entitled to use the PRA to obtain documents that may be relevant to the claim or litigation. The mere fact that the person might also be able to obtain the documents in discovery is not a ground for rejecting the request under the PRA.³⁴⁰

The pending litigation exemption does not prevent members of the public from obtaining records submitted to the local agency pertaining to existing or anticipated litigation, such as a claim for monetary damages filed prior to a lawsuit, because the records were not prepared by the local agency.³⁴¹ Moreover, while medical records are subject to a constitutional right of privacy, and generally exempt from production under the PRA and other statutes,³⁴² an individual may be deemed to have waived the right to confidentiality by submitting medical records to the public entity in order to obtain a settlement.³⁴³

Once the claim or litigation is no longer “pending,” records previously shielded from disclosure by the exemption must be produced, unless covered by another exemption. For example, the public may obtain copies of depositions from closed cases,³⁴⁴ and documents concerning the settlement of a claim that are not shielded from disclosure by other exemptions.³⁴⁵ Exemptions that may be used to withhold documents from disclosure after the claim or litigation is no longer pending include the exemptions for law enforcement investigative reports, medical records, and attorney-client privileged records and attorney work product.³⁴⁶ Particular records or information relevant to settlement of a closed claim or case may also be subject to nondisclosure under the public interest exemption to the extent the local agency can show the public interest in nondisclosure clearly outweighs the public interest in disclosure.³⁴⁷

337 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1420; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1419.

338 *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 297; *County of Los Angeles Bd. of Supervisors v. Superior Court* (2017) 12 Cal.App.5th 1264, 1273-1274.

339 *County of Los Angeles Bd. of Supervisors v. Superior Court*, *supra*, 12 Cal.App.5th at pp. 1274-1275. See “Attorney Bills and Retainer Agreements,” p. 33.

340 *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77.

341 *Poway Unified Sch. Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1502-1505.

342 See “Medical Records,” p. 46.

343 *Poway Unified Sch. Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1505.

344 *City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083, 1089.

345 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901.

346 See, e.g., *D.I. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.

347 See Gov. Code, §7922.000 (formerly Gov. Code, § 6255).

► **PRACTICE TIP:**

In responding to a request for documents concerning settlement of a particular matter, it is critical to pay close attention to potential application of other exemptions under the PRA. Additionally, if the settlement is approved by the legislative body during a closed session, release of the settlement documents are governed by the Brown Act. It is recommended that you seek the advice of your local agency counsel.

There is considerable overlap between the pending litigation exemption and both the attorney-client privilege³⁴⁸ and attorney-work-product doctrine.³⁴⁹ However, the exemption for pending litigation is not limited solely to documents that fall within either the attorney-client privilege or attorney-work-product doctrine.³⁵⁰ Moreover, while the exemption for pending litigation expires once the litigation is no longer pending, the attorney-client privilege and attorney-work-product doctrine continue indefinitely.³⁵¹

Personal Contact Information

Court decisions have ruled that individuals have a substantial privacy interest in their personal contact information. However, a fact-specific analysis must be conducted to determine whether the public interest exemption protects this information from disclosure, i.e., whether the public interest in nondisclosure clearly outweighs the public interest in disclosure.³⁵² Application of this balancing test has yielded varying results, depending on the circumstances of the case.

For example, courts have allowed nondisclosure of the names, addresses, and telephone numbers of airport noise complainants.³⁵³ In that instance, the anticipated chilling effect on future citizen complaints weighed heavily in the court's decision. On the other hand, the courts have ordered disclosure of information contained in applications for licenses to carry firearms, except for information that indicates when or where the applicant is vulnerable to attack or that concern the applicant's medical or psychological history or that of members of his or her family.³⁵⁴ Courts have also ordered disclosure of the names and addresses of residential water customers who exceeded their water allocation under a rationing ordinance,³⁵⁵ and the names of donors to a university affiliated foundation, even though those donors had requested anonymity.³⁵⁶

► **PRACTICE TIP:**

In situations where personal contact information clearly cannot be kept confidential, inform the affected members of the public that their personal contact information is subject to disclosure under the PRA.

348 Evid. Code, § 950 *et seq*; *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725.

349 Code Civ. Proc., § 2018.030.

350 *City of Los Angeles v. Superior Court*, *supra*, 41 Cal.App.4th 1083, 1087.

351 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373 (attorney-client privilege); *Fellows v. Superior Court* (1980) 108 Cal.App.3d 55, 61–63 (work-product doctrine); *Costco Wholesale Corp. v. Superior Court*, *supra*, 47 Cal.4th 725. *But see Los Angeles County Board of Supervisors v. Superior Court* (2016) 2 Cal.5th 282 (holding that the attorney-client privilege protects the confidentiality of invoices for work in pending and active legal matters, but that the privilege may not encompass invoices for legal matters that concluded long ago).

352 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255, subd. (a)).

353 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1012.

354 Gov. Code, § 7923.800 (formerly Gov. Code, § 6254, subd. (u)(1)).

355 *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1581–1582.

356 *California State Univ. v. Superior Court* (2001) 90 Cal.App.4th 810, 816.

Posting Personal Contact Information of Elected/Appointed Officials on the Internet

The PRA prohibits a state or local agency from posting on the Internet the home address or telephone number of any elected or appointed officials without first obtaining their written permission.³⁵⁷ The prohibition against posting home addresses and telephone numbers of elected or appointed officials on the Internet does not apply to a comprehensive database of property-related information maintained by a state or local agency that may incidentally contain such information, where the officials are not identifiable as such from the data, and the database is only transmitted over a limited-access network, such as an intranet, extranet, or virtual private network, but not the Internet.³⁵⁸

The PRA also prohibits someone from knowingly posting on the Internet the home address or telephone number of any elected or appointed official, or the official's "residing spouse" or child, and either threatening or intending to cause imminent great bodily harm.³⁵⁹ Similarly, the PRA prohibits soliciting, selling, or trading on the Internet the home address or telephone number of any elected or appointed official with the intent of causing imminent great bodily harm to the official or a person residing at the official's home address.³⁶⁰

In addition, the PRA prohibits a person, business, or association from publicly posting or displaying on the Internet the home address or telephone number of any elected or appointed official where the official has made a written demand to the person, business, or association not to disclose his or her address or phone number.³⁶¹

Personnel Records

The PRA exempts from disclosure "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."³⁶² In addition, the public interest exemption may protect certain personnel records from disclosure.³⁶³ In determining whether to allow access to personnel files, the courts have determined that the tests under each exemption are essentially the same: the extent of the local agency employee's privacy interest in certain information and the harm from its unwarranted disclosure is weighed against the public interest in disclosure. The public interest in disclosure will be considered in the context of the extent to which the disclosure of the information will shed light on the local agency's performance of its duties.³⁶⁴

Decisions from the California Supreme Court have determined that local agency employees do not have a reasonable expectation of privacy in their name, salary information, and dates of employment. This interpretation also applies to police officers absent unique, individual circumstances.³⁶⁵

357 See Gov. Code, § 7920.500 (formerly Gov. Code, § 6254.21, subd. (f)) (containing a non-exhaustive list of individuals who qualify as "elected or appointed official[s]").

358 91 Ops.Cal.Atty.Gen. 19 (2008).

359 Gov. Code, § 7928.210 (formerly Gov. Code, § 6254.21, subd. (b)).

360 Gov. Code, § 7928.230 (formerly Gov. Code, § 6254.21, subd. (d)).

361 See Gov. Code, §§ 7928.215-7928.225 (formerly Gov. Code, § 6254.21, subd. (c)).

362 Gov. Code, § 7920.520 (formerly Gov. Code, § 6254, subd. (c)).

363 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255(a)); *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755. See also, *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272.

364 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 335; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 300; *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 231; *BRV, Inc. v. Superior Court*, *supra*, 143 Cal.App.4th 742, 755; *American Fed'n of State, County & Mun. Employees (AFSCME), Local 1650 v. Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913, 914-916.

365 *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court*, *supra*, 42 Cal.4th 319, 327; *Commission on Peace Officer Standards & Training v. Superior Court*, *supra*, 42 Cal.4th 278, 289-293.

In situations involving allegations of non-law enforcement local agency employee misconduct, courts have considered the following factors in determining whether disclosure of employment investigation reports or related records would constitute an unwarranted invasion of personal privacy:

- Are the allegations of misconduct against a high-ranking public official or a local agency employee in a position of public trust and responsibility (e.g., teachers, public safety employees, employees who work with children)?
- Are the allegations of misconduct of a substantial nature or trivial?
- Were findings of misconduct sustained or was discipline imposed?

Courts have upheld the public interest against disclosure of “trivial or groundless” charges.³⁶⁶ In contrast, when “the charges are found true, or discipline is imposed,” the public interest likely favors disclosure.³⁶⁷ In addition, “where there is reasonable cause to believe the complaint to be well founded, the right of public access to related public records exists.”³⁶⁸ However, even if the local agency employee is exonerated of wrongdoing, disclosure may be warranted if the allegations of misconduct involve a high-ranking public official or local agency employee in a position of public trust and responsibility, given the public’s interest in understanding why the employee was exonerated and how the local agency employer treated the accusations.³⁶⁹

With respect to personnel investigation reports, although the PRA’s personnel exemption may not exempt such a report from disclosure, the attorney-client privilege or attorney-work-product doctrine may apply.³⁷⁰ Further, discrete portions of the personnel report may still be exempt from disclosure and redacted, such as medical information contained in a report or the names of third-party witnesses.³⁷¹

The courts have permitted persons who believe their rights may be infringed by a local agency decision to disclose records to bring a “reverse PRA action” to seek an order preventing disclosure of the records.³⁷²

Peace Officer Personnel Records

With certain exceptions under Penal Code section 832.7, peace officer personnel records, including internal affairs investigation reports regarding alleged misconduct, are both confidential and privileged.³⁷³ Records outside of these certain exemptions fall within the category of records, “the disclosure of which is exempted or prohibited pursuant to federal or state law”³⁷⁴ Records of an independent investigation into a complaint of alleged harassment by an elected county sheriff, including the complaint and the report, are not protected peace officer personnel records

366 *AFSCME, Local 1650 v. Regents of Univ. of Cal.* (1978) 80 Cal.App.3d 913, 918.

367 *Ibid.*

368 *Ibid.*

369 *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 223–224; *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1275–1276; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 759; *Bakersfield City Sch. Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045–1047; *AFSCME, Local 1650 v. Regents of University of California* (1978) 80 Cal.App.3d 913, 918.

370 See “Attorney-client Communications and Attorney Work Product,” page 31; *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1035–1036. But see *BRV, Inc. v. Superior Court*, *supra*, 143 Cal.App.4th 742, where on the facts of that case, an investigation report that arguably was privileged was ordered disclosed.

371 *BRV, Inc. v. Superior Court*, *supra*, 143 Cal.App.4th 742, 759 (permitting redaction of names, home addresses, phone numbers, and job titles “of all persons mentioned in the report other than [the subject of the report] or elected members” of the school board); *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, *supra*, 202 Cal.App.4th 1250, 1276 (permitting redaction of the identity of the complainant and other witnesses, as well as other personal information in the investigation report).

372 *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, *supra*, 202 Cal.App.4th 1250, 1264–1271. See also “Reverse PRA Litigation,” p. 67.

373 Pen. Code § 832.7(a). See also *Towner v. County of Ventura* (2021) 63 Cal.App.5th 761. For definition of “Personnel Records” see Pen. Code, § 832.8.

374 Gov. Code, § 7927.705 (formerly Gov. Code, § 6254, subd. (k)); Pen. Code, §§ 832.7–832.8; *International Fed’n of Prof. & Tech. Eng’rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 341; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1431.

under Section 6254(k) of the PRA, or Sections 832.7 and 832.8 of the Penal Code, or protected citizen complaint records under Section 832.5 of the Penal Code, because an elected sheriff is not an employee of the county, but rather accountable directly to the county voters.³⁷⁵

Except as discussed below, the discovery and disclosure of the personnel records of peace officers are governed exclusively by statutory provisions contained in the Evidence Code and Penal Code. Peace officer personnel records and records of citizen complaints “...or information obtained from these records...” are confidential and “shall not” be disclosed in any criminal or civil proceeding except by discovery pursuant to statutorily prescribed procedures.³⁷⁶ The appropriate procedure for obtaining information in the protected peace officer personnel files is to file a motion commonly known as a “*Pitchess*” motion, which by statute entails a two-part process involving first a determination by the court regarding good cause and materiality of the information sought and a subsequent confidential review by the court of the files, where warranted.³⁷⁷

Notwithstanding the general confidentiality of peace officer personnel records or the law enforcement records exemption under the PRA, agencies must release all records, including investigative reports, related to certain incidents or allegations.³⁷⁸ These include:

- Records relating to the reports, investigations, or findings regarding an incident involving the discharge of a firearm at a person by an officer.³⁷⁹
- Records relating to the reports, investigations, or findings regarding an incident involving the use of force against a person by an officer that resulted in death or great bodily injury.³⁸⁰
- Records relating to a sustained finding that an officer used unreasonable or excessive force.³⁸¹
- Records relating to a sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.³⁸²
- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that an officer engaged in sexual assault involving a member of the public.³⁸³
- Records relating to a sustained finding of dishonesty by an officer related to the reporting, investigation, or prosecution of a crime, or directly related to the reporting or investigation of misconduct by another officer.³⁸⁴
- Records relating to a sustained finding that an officer engaged in conduct involving prejudice or discrimination against a person based on a protected status, as listed in the statute.³⁸⁵

375 *Essick v. County of Sonoma* (2022) 80 Cal.App.5th 562.

376 Pen. Code, § 832.7; Evid. Code, §§ 1043, 1046.

377 See, e.g., *People v. Mooc* (2001) 26 Cal.4th 1216; *People v. Thompson* (2006) 141 Cal.App.4th 1312; *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135.

378 Pen. Code § 832.7 subd. (b)(3).

379 Pen. Code, § 832.7, subd. (b)(1)(A)(i).

380 Pen. Code, § 832.7, subd. (b)(1)(A)(ii).

381 Pen. Code, § 832.7, subd. (b)(1)(A)(iii).

382 Pen. Code, § 832.7, subd. (b)(1)(A)(iv).

383 Pen. Code, § 832.7, subd. (b)(1)(B)(i).

384 Pen. Code, § 832.7, subd. (b)(1)(C).

385 Pen. Code, § 832.7, subd. (b)(1)(D).

- Records relating to a sustained finding that an officer made an unlawful arrest or conducted an unlawful search.³⁸⁶

For purposes of disclosure, a finding is “sustained” if there has been a final determination that the actions of the peace officer or custodial officer violated law or department policy following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code.³⁸⁷

While some of the exceptions to the general confidentiality provisions were enacted effective January 1, 2019, the statute applies retroactively, even to those incidents that occurred prior to 2019.³⁸⁸

An agency is required to disclose non-confidential police records retained by the agency, regardless of whether the agency prepared, owned, or used the records.³⁸⁹

In general, records subject to disclosure under Penal Code section 832.7 subdivision (b) shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.³⁹⁰ However, disclosure may be delayed based on specified circumstances, where there is an active criminal or administrative investigation.³⁹¹ Unless the agency determines that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer or someone else, the time to provide the records can only be extended to 60 days.³⁹² If disclosure would reasonably be expected to interfere with criminal enforcement, the disclosure can be delayed up to 60 days, the agency must provide a written determination that includes the basis for its determination and the estimated date of disclosure.³⁹³ This written determination must be renewed every 180 days.³⁹⁴ Under no circumstances can disclosure be delayed for more than 18 months.³⁹⁵

In addition, there are other procedural and substantive requirements regarding records that are subject to disclosure under Penal Code section 832.7(b), as follows:

- If the incident is subject to disclosure, records relating to an incomplete investigation must be disclosed if a peace officer resigned during the investigation.³⁹⁶
- Records from separate or prior investigations shall not be released unless they are independently subject to disclosure.³⁹⁷
- For investigations or incidents that involve multiple officers, care should be given to follow the statutory requirements for portions that may be released and those that must remain confidential.³⁹⁸

386 Pen. Code, § 832.7, subd. (b)(1)(C).

387 Pen. Code, § 832.8, subd. (b). See also *Collondrez v. City of Rio Vista* (2021) 61 Cal.App.5th 1039 (Officer had an opportunity for administrative appeal but settled and withdrew the appeal; the disciplinary decision was subject to disclosure as a final determination with a sustained finding).

388 *Ventura County Deputy Sheriffs’ Assn. v. County of Ventura* (2021) 61 Cal.App.5th 585.

389 *Becerra v. Superior Court* (2020) 44 Cal.App.5th 897.

390 Pen. Code, § 832.7, subd. (b)(11).

391 Pen. Code, § 832.7, subd. (b)(8).

392 *Ibid.*

393 *Ibid.*

394 *Ibid.*

395 *Ibid.*

396 Pen. Code, § 832.7, subd. (b)(3).

397 Pen. Code, § 832.7, subd. (b)(4).

398 Pen. Code, § 832.7, subd. (b)(5).

- Redactions are limited to certain listed purposes only.³⁹⁹ For example, the identity of whistleblowers, complainants, victims, and witnesses are required to remain confidential.⁴⁰⁰
- The local agency may charge only the direct cost of duplication for the production of these records and may not charge for searching or redacting records.⁴⁰¹
- Attorney-client privilege will not prohibit the disclosure of factual information provided by the local agency to its attorney, or factual information discovered in any investigation conducted by, or on behalf of, the local agency's attorney. Additionally, the privilege will not cover attorney billing records unless the records relate to a legal consultation between the local agency and its attorney in active and ongoing litigation.⁴⁰²
- Prior to hiring a lateral police officer, the hiring agency must review any investigations of misconduct maintained by the officer's current or prior employer.⁴⁰³

Although the PRA is not a retention statute, Penal Code section 832.7 requires that records with no sustained finding of misconduct be retained for at least five years and records related to sustained misconduct must be retained for a minimum of 15 years.

Confidential peace officer personnel files are not protected from disclosure when the district attorney, attorney general, or grand jury are investigating the conduct of the officers.⁴⁰⁴ The other notable exception arises where an officer publishes factual information concerning a disciplinary action that is known by the officer to be false. If the information is published in the media, the employing agency may disclose factual information about the discipline to refute the employee's false statements.⁴⁰⁵

Peace officer "personnel records" include personal data, medical history, appraisals, and discipline; complaints and investigations relating to events perceived by the officer or relating to the manner in which his or her duties were performed; and any other information the disclosure of which would constitute an unwarranted invasion of privacy.⁴⁰⁶ The names, salary information, and employment dates and departments of peace officers have been determined to be disclosable records absent unique circumstances.⁴⁰⁷ Additionally, official service photographs of peace officers are subject to disclosure and are not exempt or privileged as personnel records unless disclosure would pose an unreasonable risk of harm to the peace officer.⁴⁰⁸ The names of officers involved in a police shooting are subject to disclosure, unless disclosure would endanger an officer's safety (*e.g.*, if there is a specific threat to an officer or an

³⁹⁹ Pen. Code, § 832.7, (b)(6)-(7).

⁴⁰⁰ Pen. Code, § 832.7, subd. (b)(6).

⁴⁰¹ Pen. Code, § 832.7, subd. (b)(10).

⁴⁰² Pen. Code, § 832.7, subd. (b)(12).

⁴⁰³ Pen. Code, § 832.12, subd. (b).

⁴⁰⁴ Pen. Code, § 832.7, subd. (a); but see *Towner v. County of Ventura* (2021) 63 Cal.App.5th 761 (District Attorney must maintain confidentiality of the nonpublic files absent compliance with statutorily required judicial review.)

⁴⁰⁵ Pen. Code, § 832.7, subd. (d).

⁴⁰⁶ Pen. Code, § 832.8.

⁴⁰⁷ *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court*, *supra*, 42 Cal.4th 319, 327; *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 289-293.

⁴⁰⁸ *Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695, 700-705.

officer is working undercover).⁴⁰⁹ Video captured by a dashboard camera is not a personnel record protected from disclosure.⁴¹⁰

While the Penal and Evidence Code privileges are not per se applicable in federal court, federal common law does recognize a qualified privilege for “official information” and considers government personnel files to be “official information.”⁴¹¹ Moreover, independent reports regarding officer-involved shootings are not exempt from disclosure, though portions of the report culled from personnel information or officers’ statements made in the course of an internal affairs investigation of the shooting are protected and may be redacted from the report.⁴¹² Such a qualified privilege in federal court results in a very similar weighing of the potential benefits of disclosure against potential disadvantages.⁴¹³

Employment Contracts, Employee Salaries, & Pension Benefits

Every employment contract between a local agency and any public official or local agency employee is a public record which is not subject to either the personnel exemption or the public interest exemption.⁴¹⁴ Thus, for example, one court has held that two letters in a city firefighter’s personnel file were part of his employment contract and could not be withheld under either the local agency employee’s right to privacy in his personnel file or the public interest exemption.⁴¹⁵

With or without an employment contract, the names and salaries (including performance bonuses and overtime) of local agency employees, including peace officers, are subject to disclosure under the PRA.⁴¹⁶ Public employees do not have a reasonable expectation that their salaries will remain a private matter. In addition, there is a strong public interest in knowing how the government spends its money. Therefore, absent unusual circumstances, the names and salaries of local agency employees are not subject to either the personnel exemption or the public interest exemption.⁴¹⁷

In addition, the courts have held that local agencies are required to disclose the identities of pensioners and the amount of pension benefits received by such pensioners, reasoning that the public interest in disclosure of the names of pensioners and data concerning the amounts of their pension benefits outweighs any privacy interests the pensioners may have in such information.⁴¹⁸ On the other hand, the courts have found that personal information provided to a retirement system by a member or on a member’s behalf, such as a member’s personal email address, home address, telephone number, social security number, birthday, age at retirement, benefits election, and health

409 *Long Beach Police Officers Ass’n v. City of Long Beach* (2014) 59 Cal.4th 59, 75; 91 Ops.Cal.Atty.Gen. 11 (2008) (the names of peace officers involved in critical incidents, such as ones involving lethal force, are not categorically exempt from disclosure, however, the balancing test may be applied under the specific factual circumstances of each case to weigh the public interests at stake).

410 *City of Eureka v. Superior Court* (2016) 1 Cal.App.5th 755, 763–765. See also “Law Enforcement Records,” p. 38.

411 *Sanchez v. City of Santa Ana* (9th Cir. 1990) 936 F.2d 1027, 1033–1034, cert denied (1991) 502 U.S. 957; *Miller v. Pancucci* (C.D.Cal. 1992) 141 F.R.D. 292, 299–300.

412 *Pasadena Peace Officers Ass’n v. Superior Court* (2015) 240 Cal.App.4th 268, 288–290. See also “Law Enforcement Records,” p. 38.

413 Evid. Code, § 1043 *et seq.*; *Guerra v. Bd. of Trustees* (9th Cir. 1977) 567 F.2d 352; *Kerr v. United States Dist. Court for Northern Dist.* (9th Cir. 1975) 511 F.2d 192, *aff’d*, (1976) 426 U.S. 394; *Garrett v. City and County of San Francisco* (9th Cir. 1987) 818 F.2d 1515.

414 Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8); Gov. Code, § 53262, subd. (b).

415 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332.

416 *International Fed’n of Prof. & Tech. Eng’rs, Local 21, AFL-CIO v. Superior Court*, *supra*, 42 Cal.4th 3 at p. 327.

417 *Commission on Peace Officer Standards & Training v. Superior Court*, *supra*, 42 Cal.4th 278, 299, 303.

418 *Sacramento County Employees’ Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440, 472.

reports concerning the member, to be exempt from disclosure under the PRA.⁴¹⁹ With regard to the California Public Employees' Retirement System (CalPERS), the identities of and amount of benefits received by CalPERS pensioners are subject to public disclosure.⁴²⁰

► PRACTICE TIP:

If a member of the public requests information regarding CalPERS from a local agency, make sure to check the terms of any agreement that may exist between the agency and CalPERS for confidentiality requirements.

Contractor Payroll Records

State law establishes requirements for maintaining and disclosing certified payroll records for workers employed on public works projects subject to payment of prevailing wages.⁴²¹ State law requires contractors to make certified copies of payroll records available to employees and their representatives, representatives of the awarding body, the Department of Industrial Relations, and the public.⁴²² Requests are to be made through the awarding agency or the Department of Industrial Relations, and the requesting party is required to reimburse the cost of preparation to the contractor, subcontractors, and the agency through which the request is made prior to being provided the records.⁴²³ Contractors are required to file certified copies of the requested records with the requesting entity within ten days after receipt of a written request.⁴²⁴

However, state law also limits access to contractor payroll records. Employee names, addresses, and social security numbers must be redacted from certified payroll records provided to the public or any local agency by the awarding body or the Department of Industrial Relations.⁴²⁵ Only the social security numbers are to be redacted from certified payroll records provided to joint labor-management committees established pursuant to the federal Labor Management Cooperation Act of 1978.⁴²⁶ The name and address of the contractor or subcontractor may not be redacted.⁴²⁷

The Department of Industrial Relations Director has adopted regulations governing release of certified payroll records and applicable fees.⁴²⁸ The regulations: (1) require that requests for certified payroll records be in writing and contain certain specified information regarding the awarding body, the contract, and the contractor; (2) require awarding

419 *Sonoma County Employees' Retirement Ass'n v. Superior Court* (2011) 198 Cal.App.4th 986, 1004.

420 Gov. Code, § 20230. See also *SDCERS v. Superior Court* (2011) 196 Cal.App.4th 1228, 1238–1239, citing with approval 25 Ops. Cal. Atty. Gen. 90 (1955), which exempts from disclosure employee election of benefits. For peace officer election of benefits see Pen. Code, §§ 832.7 – 832.8 and *International Fed'n of Prof. & Tech. Eng'rs, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 343.

421 Lab. Code, § 1776.

422 Lab. Code, § 1776, subd. (b).

423 Lab. Code, § 1776, subd. (c).

424 Contractors and subcontractors that fail to do so may be subject to a penalty of \$25 per worker for each calendar day until compliance is achieved. Lab. Code, § 1776, subds. (d) & (g).

425 Lab. Code, § 1776, subd. (e); *Trustees of Southern Cal. IBEW-NECA Pension Plan v. Los Angeles Unified School District* (2010) 187 Cal.App.4th 621.

426 Lab. Code, § 1776, subd. (e).

427 Lab. Code, § 1776, subd. (e).

428 Lab. Code, § 1776, subd. (i); see Lab. Code, § 16400 *et seq.*

agency acknowledgement of requests; (3) specify required contents of awarding agency requests to contractors for payroll records; and (4) set fees to be paid in advance by persons seeking payroll records.⁴²⁹

Test Questions and Other Examination Data

The PRA exempts from disclosure test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided in the portions of the Education Code that relate to standardized tests.⁴³⁰ Thus, for example, a local agency is not required to disclose the test questions it uses for its employment examinations. State law provides that standardized test subjects may, within 90 days after the release of test results to the test subject, have limited access to test questions and answers upon request to the test sponsor.⁴³¹ This limited access may be either through an in-person examination or by release of certain information to the test subject.⁴³² The Education Code also requires that test sponsors prepare and submit certain reports regarding standardized tests and test results to the California Postsecondary Education Commission.⁴³³ All such reports and information submitted to the Commission are public records subject to disclosure under the PRA.⁴³⁴

Public Contracting Documents

Contracts with local agencies are generally disclosable public records, and the public has an interest in knowing whether public resources are being spent for the benefit of the community as a whole or the benefit of only a limited few.⁴³⁵ When the bids or proposals leading up to the contract become disclosable depends largely upon the type of contract.

Local agencies may award certain types of contracts (for example, contracts for the construction of public works, and for the procurement of goods and non-professional services) to the lowest responsive, responsible bidder through a competitive bidding process.⁴³⁶ Local agencies usually receive bids for these contracts under seal and then publicly open the bids at a designated time and place. These bids are public records and disclosable as soon as they are opened.

Other local agency contracts (for example, for acquisition of professional services or disposition of property) may be awarded to the successful proposer who is identified through a competitive proposal process. As part of this process, local agencies solicit proposals, evaluate them, and then negotiate with the “winning” proposer. While the public has a strong interest in scrutinizing the process leading to the selection of the winning proposer, a local agency’s interest in keeping these proposals confidential frequently outweighs the public’s interest in disclosure until negotiations with the winning proposer are complete.⁴³⁷ Disclosing the details of all the competing proposals can interfere with the local agency’s selection process and impair its ability to secure the best possible deal on its constituents’ behalf.

429 8 C.C.R. §§ 16400, 16402.

430 Gov. Code, § 7929.605 (formerly Gov. Code, § 6254, subd. (g)).

431 Ed. Code, § 99157, subd. (a); *Brutsch v. City of Los Angeles* (1982) 3 Cal.App.4th 354.

432 Ed. Code, §§ 99157, subds. (a) & (b).

433 Ed. Code, §§ 99153, 99154.

434 Ed. Code, § 99162.

435 *Cal. State Univ., Fresno Ass’n, Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 833.

436 Pub. Contract Code, § 22038.

437 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1077.

Some local agencies pre-qualify prospective bidders through a request for qualifications process. The pre-qualification packages submitted, including questionnaire answers and financial statements, are exempt from disclosure.⁴³⁸ Nevertheless, documents containing the names of contractors applying for pre-qualification status are public records and must be disclosed.⁴³⁹ In addition, the contents of pre-qualification packages may be disclosed to third parties during the verification process, in an investigation of substantial allegations or at an appeal hearing.

► **PRACTICE TIP:**

Local agencies should clearly advise bidders and proposers in their Requests for Bids and Requests for Proposals what bid and proposal documents will be disclosable public records and when they will be disclosable to the public.

Real Estate Appraisals and Engineering Evaluations

The PRA requires the disclosure of the contents of real estate appraisals, or engineering or feasibility estimates, and evaluations made for or by a local agency relative to the acquisition of property, or to prospective public supply and construction contracts, but only when all of the property has been acquired or when agreement on all terms of the contract have been obtained.⁴⁴⁰ By its plain terms, this exemption only applies while the acquisition or prospective contract is pending. Once all the property is acquired or agreement on all terms of the contract have been obtained, the exemption will not apply. In addition, this exemption is not intended to supersede the law of eminent domain.⁴⁴¹ Thus, for example, this exemption would not apply to appraisals of owner-occupied residential property of four units or less, where disclosure of such appraisals is required by the Eminent Domain Law or related laws such as the California Relocation Assistance Act.⁴⁴²

► **PRACTICE TIP:**

If the exemption for real estate appraisals and engineering evaluations does not clearly apply, consider whether the facts of the situation justify withholding the record under Government Code section 7922.000.

Recipients of Public Assistance

The PRA does not require disclosure of certain types of information related to those who are receiving public assistance. For example, disclosure of information regarding food stamp recipients is prohibited.⁴⁴³ Subject to certain exceptions, disclosure of certain confidential information pertaining to applicants for or recipients of public social services for any purpose unconnected with the administration of the welfare department also is prohibited.⁴⁴⁴

438 Pub. Contract Code, §§ 10165, 10506.6, 10763, 20101, 20111.5, 20209.7, 20209.26, 20651.5.

439 Pub. Contract Code, § 20101, subd. (a).

440 Gov. Code, § 7928.705. (formerly Gov. Code, § 6254, subd. (h)).

441 Gov. Code, § 7928.705. (formerly Gov. Code, § 6254, subd. (h)).

442 Gov. Code, § 7267.2, subd. (c).

443 Welf. & Inst. Code, § 18909.

444 Welf. & Inst. Code, § 10850. See also *Jonon v. Superior Court* (1979) 93 Cal.App.3d 683, 690 (rejecting claim that all information received by a welfare agency was privileged).

Leases and lists or rosters of tenants of the Housing Authority are confidential and must not be open to inspection by the public, but must be supplied to the respective governing body on request.⁴⁴⁵ A Housing Authority has a duty to make available public documents and records of the Authority for inspection, except any applications for eligibility and occupancy which are submitted by prospective or current tenants of the Authority.⁴⁴⁶

The PRA exempts from disclosure records of the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information in accordance with section 18081 of the Health and Safety Code.⁴⁴⁷

Taxpayer Information

Where information that is required from any taxpayer in connection with the collection of local taxes is received in confidence and where the disclosure of that information would result in unfair competitive disadvantage to the person supplying the information, the information is exempt from disclosure.⁴⁴⁸ Sales and use tax records may be used only for administration of the tax laws. Unauthorized disclosure or use of confidential information contained in these records can give rise to criminal liability.⁴⁴⁹

► PRACTICE TIP:

Make sure to check your local agency's codes and ordinances with respect to local taxes when determining what information submitted by the taxpayer is confidential.

Trade Secrets and Other Proprietary Information

As part of the award and administration of public contracts, businesses will often give local agencies information that the businesses would normally consider to be proprietary. There are three exemptions that businesses often use to attempt to protect this proprietary information — the official information privilege, the trade secret privilege, and the public interest exemption.⁴⁵⁰

However, California's strong public policy in favor of disclosure of public records precludes local agencies from protecting most business information. Both the official information privilege and the public interest exemption require that the public interest in nondisclosure outweigh the public interest in disclosure. While these provisions were designed to protect legitimate privacy interests, California courts have consistently held that when individuals or businesses voluntarily enter into the public sphere, they diminish their privacy interests.⁴⁵¹ Courts have further found that the public interest in disclosure overrides alleged privacy interests. For example, a court ordered a university to release the names of anonymous contributors who received license agreements for luxury suites at the school's sports arena. Another court ordered a local agency to release a waste disposal contractor's private financial statements used by the local agency to approve a rate increase.⁴⁵²

445 Health & Saf. Code, § 34283.

446 Health & Saf. Code, § 34332, subd. (c).

447 Gov. Code, § 7927.415 (formerly Gov. Code, § 6254.1).

448 Gov. Code, § 7925.000 (formerly Gov. Code, § 6254, subd. (i)); see also Rev. & Tax. Code, § 7056.

449 Rev. & Tax. Code, §§ 7056, 7056.5.

450 See, e.g., *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

451 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 834; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 347; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d 762, 781.

452 *Cal. State Univ., Fresno Ass'n., Inc. v. Superior Court*, *supra*, 90 Cal.App.4th 810; *San Gabriel Tribune v. Superior Court*, *supra*, 143 Cal.App.3d 762.

The trade secret privilege is for information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁴⁵³

However, even when records contain trade secrets, local agencies must determine whether disclosing the information is in the public interest. When businesses give local agencies proprietary information, courts will examine whether disclosure of that information serves the public interest.⁴⁵⁴

The PRA contains several exemptions that address specific types of information that are in the nature of trade secrets, including pesticide safety and efficacy information,⁴⁵⁵ air pollution data,⁴⁵⁶ and corporate siting information (financial records or proprietary information provided to government agencies in connection with retaining, locating, or expanding a facility within California).⁴⁵⁷

Other exemptions cover types of information that could include but are not limited to trade secrets — for example, certain information on plant production, utility systems development data, and market or crop reports.⁴⁵⁸

► PRACTICE TIP:

Issues concerning trade secrets and proprietary information tend to be complex and fact specific. Consider seeking the advice of your local agency counsel in determining whether records requested are exempt from disclosure.

Utility Customer Information

Personal information expressly protected from disclosure under the PRA includes names, credit histories, usage data, home addresses, and telephone numbers of local agencies' utility customers.⁴⁵⁹ This exception is not absolute, and customers' names, utility usage data, and home addresses may be disclosable under certain scenarios. For example, disclosure is required when requested by a customer's agent or authorized family member,⁴⁶⁰ or an officer or employee of another governmental agency when necessary for performance of official duties,⁴⁶¹ by court order or request of a law enforcement agency relative to an ongoing investigation,⁴⁶² when the local agency determines the

453 Civ. Code, § 3426.1, subd. (d). This trade secret definition is set forth in the Uniform Trade Secrets Act ("UTSA"). However, Civil Code section 3426.7, subd. (c) states that any determination as to whether disclosure of a record under the Act constitutes a misappropriation of a trade secret shall be made pursuant to the law in effect before the operative date of the UTSA. At that time, California used the Restatement definition of a trade secret, which was lengthy. See *Uribe v. Howie* (1971) 19 Cal.App.3d 194. Accordingly, it is not clear that the trade secret definition that applies generally under the UTSA is the trade secret definition that applies in the context of a public records request.

454 *Uribe v. Howie*, *supra*, 19 Cal.App.3d at p. 213.

455 Gov. Code, § 7924.305 (formerly Gov. Code, § 6254.2).

456 Gov. Code, § 7924.510 (formerly Gov. Code, § 6254.7).

457 Gov. Code, § 7927.605 (formerly Gov. Code, § 6254.15).

458 Gov. Code, § 7924.305, subd. (d) (formerly Gov. Code, § 6254, subd. (e)).

459 Gov. Code, § 7927.410 (formerly Gov. Code, § 6254.16).

460 Gov. Code, § 7927.410, subd. (a) (formerly Gov. Code, § 6554.16, subd. (a)).

461 Gov. Code, § 7927.410, subd. (b) (formerly Gov. Code, § 6254.16, subd. (b)).

462 Gov. Code, § 7927.410, subd. (c) (formerly Gov. Code, § 6254.16, subd. (c)).

customer used utility services in violation of utility policies,⁴⁶³ or if the local agency determines the public interest in disclosure clearly outweighs the public interest in nondisclosure.⁴⁶⁴

Utility customers who are local agency elected or appointed officials with authority to determine their agency's utilities usage policies have lesser protection of their personal information because their names and usage data are disclosable upon request.⁴⁶⁵

Public Interest Exemption

The PRA establishes a "public interest" or "catchall" exemption that permits local agencies to withhold a record if the agency can demonstrate that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.⁴⁶⁶ Weighing the public interest in nondisclosure and the public interest in disclosure under the public interest exemption is often described as a balancing test.⁴⁶⁷ The PRA does not specifically identify the public interests that might be served by not making the record public under the public interest exemption, but the nature of those interests may be inferred from specific exemptions contained in the PRA. The scope of the public interest exemption is not limited to specific categories of information or established exemptions or privileges. Each request for records must be considered on the facts of the particular case in light of the competing public interests.⁴⁶⁸

The records and situations to which the public interest exemption may apply are open-ended and, when it applies, the public interest exemption alone is sufficient to justify nondisclosure of local agency records. The courts have relied exclusively on the public interest exemption to uphold nondisclosure of:

- Local agency records containing names, addresses, and phone numbers of airport noise complainants;
- Proposals to lease airport land prior to conclusion of lease negotiations;
- Information kept in a public defender's database about police officers; and
- Individual teacher test scores, identified by name, designed to measure each teacher's effect on student performance on standardized tests.⁴⁶⁹

The public interest exemption is versatile and flexible, in keeping with its purpose of addressing circumstances not foreseen by the Legislature. For example, in one case, the court held local agencies could properly consider the burden of segregating exempt from nonexempt records when applying the balancing test under the public interest exemption.⁴⁷⁰ In that case, the court held that the substantial burden of redacting exempt information from law enforcement intelligence records outweighed the marginal and speculative benefit of disclosing the remaining nonexempt information. In another case, the court applied the balancing test to the time of disclosure to hold that

463 Gov. Code, § 7927.410, subd. (d) (formerly Gov. Code, § 6254.16, subd. (d)).

464 Gov. Code, § 7927.410, subd. (f) (formerly Gov. Code, § 6254.16, subd. (f)).

465 Gov. Code, § 7927.410, subd. (e) (formerly Gov. Code, § 6264.16, subd. (e)).

466 Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1337–1339.

467 *CBS Broadcasting, Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 908.

468 *Times Mirror Co. v. Superior Court*, *supra*, 53 Cal.3d at p. 1338.

469 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065; *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001; *Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222.

470 *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.

public disclosure of competing proposals for leasing city airport property could properly await conclusion of the negotiation process.⁴⁷¹

The requirement that the public interest in nondisclosure must “clearly outweigh” the public interest in disclosure for records to qualify as exempt under the public interest exemption is important and emphasized by the courts. Justifying nondisclosure under the public interest exemption demands a clear overbalance on the side of confidentiality.⁴⁷² Close calls usually do not qualify for an exemption. There are a number of examples of cases where a clear overbalance was not present to support nondisclosure under the public interest exemption. The courts have held that the following are all subject to disclosure under the public interest exemption balancing test:

- The identities of individuals granted criminal conviction exemptions to work in licensed day care facilities and the facilities employing them;
- Records relating to unpaid state warrants;
- Court records of a settlement between the insurer for a school district and a minor sexual assault victim;
- Applications for concealed weapons permits;
- Letters appointing then rescinding an appointment to a local agency position;
- The identities and license agreements of purchasers of luxury suites in a university arena; and
- GIS base map information.⁴⁷³

The public interest exemption balancing test weighs only public interests — the public interest in disclosure and the public interest in nondisclosure. Agency interests or requester interests that are not also public interests are not considered.⁴⁷⁴ For example, the courts have held that the public’s interest in information regarding peace officers retained in a database by the public defender in the representation of its clients is slight, and the private interests of the requesters (the police officers listed in the database) were not to be considered in determining whether the database was exempt from disclosure.⁴⁷⁵

471 *Michaelis, Montanari & Johnson v. Superior Court*, *supra*, 38 Cal.4th 1065.

472 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 657.

473 *CBS Broadcasting Inc., v. Superior Court* (2001) 91 Cal.App.4th 892; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601; *Copley Press, Inc., v. Superior Court* (1998) 63 Cal.App.4th 367; *CBS, Inc. v. Block* (1986) 42 Cal.App.3d 646; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *California State University, Fresno Assn. v. Superior Court* (2001) 90 Cal.App.4th 810; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157; *County of Santa Clara v. Superior Court* (2009) 170 Cal. App.4th 1301. See also “Computer Mapping (GIS) Systems,” p. 74.

474 *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001, 1015–1016.

475 *Ibid.*

Judicial Review and Remedies

Overview

The PRA establishes an expedited judicial process to resolve disputes over the public’s right to inspect or receive copies of public records.⁴⁷⁶ In contrast to other governmental transparency laws, such as the Brown Act,⁴⁷⁷ the PRA establishes no criminal penalties for a local agency’s noncompliance. Rather, the PRA is enforced primarily through an expedited civil judicial process in which any person may ask a judge to enforce their right to inspect or to receive a copy of any public record or class of public records.⁴⁷⁸ Whether the PRA provides the exclusive judicial remedy for resolving a claim that a local agency has unlawfully refused to disclose a particular record or class of records remains unresolved.⁴⁷⁹ This chapter discusses the special rules that apply to lawsuits brought to enforce the PRA.

The Trial Court Process

Under the PRA, any person may file a civil action for injunctive or declaratory relief, or writ of mandate, to enforce their right to inspect or receive a copy of any public record or class of public records.⁴⁸⁰ Local agencies are “persons” under the PRA and may maintain an action to compel disclosure of records from another public entity.⁴⁸¹ While the PRA clearly provides specific relief when a local agency denies access or copies of public records, it does not preclude a taxpayer lawsuit seeking declaratory or injunctive relief to challenge the legality of a local agency’s policies or practices

476 Gov. Code, §§ 7923.000, 7923.005 (formerly Gov. Code, § 6258); Gov. Code, §§ 7923.100, 7923.105, 7923.110, 7923.115, 7923.500 (formerly Gov. Code, § 6259).

477 Gov. Code, §§ 54950 *et. seq.*

478 Gov. Code, §§ 7923.000, 7923.005 (formerly Gov. Code, § 6258).

479 *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 66 fn. 2; *County of Santa Clara v. Superior Court* (2009) 171 Cal. App. 4th 119, 128, 130 (taxpayer lawsuit may be brought to challenge legality of entity’s policies or practices for responding to public records requests generally).

480 Gov. Code, § 7923.000 (formerly Gov. Code, § 6258).

481 *Los Angeles Unified Sch. Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 771.

for responding to public records requests generally.⁴⁸² As a condition to obtaining an injunction, the party seeking injunctive relief may be required to post an undertaking in an amount determined by the court.⁴⁸³

A local agency may not commence an action for declaratory relief to determine its obligation to disclose records under the PRA.⁴⁸⁴ The rationale for this rule is that allowing a local agency to seek declaratory relief to determine whether it must disclose records would require the person requesting documents to defend civil actions they did not commence and discourage them from requesting records.⁴⁸⁵ That would frustrate the purpose of furthering the fundamental right of every person in the state to have prompt access to information in the possession of local agencies. However, agencies may seek injunctive relief to preclude review and dissemination of, and to recover, inadvertently released exempt records, including attorney-client and work-product privileged records.⁴⁸⁶

An action under the PRA may be filed in any court of competent jurisdiction, which typically is the superior court in the county where the records or some part of them are maintained.⁴⁸⁷

Timing

The PRA does not contain a specific time period in which the action or responsive pleadings must be filed. Therefore, any action must be filed in a manner consistent with traditional actions for injunctive or declaratory relief, or writ of mandate, and is subject to any limitations periods or equitable concepts, such as laches, applicable to those actions. In a typical action under the PRA, the parties will file written arguments with the court to explain why the records should be disclosed or can be withheld. The court will also hold a hearing to give the parties an opportunity to argue the case. The judge in each case will establish the deadlines for briefing the issues and for hearings with the object of securing a decision at the earliest possible time.⁴⁸⁸

Discovery

The PRA is considered a “special proceeding of a civil nature[,]” and as such, the Civil Discovery Act applies to actions brought under the PRA.⁴⁸⁹ Any discovery sought must still, however, be relevant to the subject matter of the pending action and the trial court has the discretion to restrict discovery to that which is likely to aid in the resolution of the particular issues presented in the proceeding.

A local agency that receives a request for records that would traditionally be sought through a formal discovery mechanism must handle the request in a manner consistent with the PRA rather than pursuant to discovery statutes.⁴⁹⁰ However, under the California Environmental Quality Act, a litigant may not use the PRA to avoid the statutory duty to pay for preparation of the administrative record.⁴⁹¹

482 *County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 130.

483 Code Civ. Proc. §529(a). See *Stevenson v. City of Sacramento* (2020) 55 Cal.App.5th 545 (Public Records Act litigants seeking an injunction are not exempt from requirement to post undertaking and that requirement is not an unlawful prior restraint under the First Amendment).

484 *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 426.

485 *Id.* at p. 423.

486 *Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176; *Newark Unified Sch. Dist. v. Superior Court* (2016) 245 Cal.App.4th 887.

487 Gov. Code, § 7923.100 (formerly Gov. Code, § 6259, subd. (a)).

488 Gov. Code, § 7923.005 (formerly Gov. Code, § 6258).

489 *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272.

490 *Bertoli v. City of Sebastopol* (2015) 233 Cal. App. 4th 353, 370–371.

491 *St. Vincent’s v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1019, fn.9.

Burden of Proof

In general, a plaintiff bears the burden of proving the plaintiff made a request for reasonably identifiable public records to a local agency and the agency improperly withheld or failed to conduct a reasonable search for the requested records.⁴⁹² A local agency may assert, as affirmative defenses, and bears the burden of proving that: (i) a request was unclear and the agency provided adequate assistance to the requestor to identify records but was still unable to identify any records; (ii) the withholding was justified under the PRA,⁴⁹³ or (iii) the local agency undertook a reasonable search for records but was unable to locate the requested records.⁴⁹⁴

In Camera Review

The judge must decide the case based on an *in camera* review of the record or records — that is, in the judge’s chambers and out of the presence and hearing of others — (if such review is permitted by the rules of evidence),⁴⁹⁵ the papers filed by the parties, any oral argument, and additional evidence as the court may allow.⁴⁹⁶ However, a judge cannot compel *in camera* disclosure of records claimed to be protected from disclosure by the attorney-client privilege for the purpose of determining whether the privilege applies.⁴⁹⁷

Decision and Order

If the court determines, based upon a verified petition, that certain public records are being improperly withheld, the court will order the officer or person withholding the records to disclose the public record or show cause why he or she should not do so.⁴⁹⁸ If the court determines the local agency representative was justified in refusing to disclose the record, the court shall return the record to the local agency representative without disclosing its content, together with an order supporting the decision refusing disclosure.⁴⁹⁹ The court may also order some of the records to be disclosed while upholding the decision to withhold other records. In addition, the court may order portions of the records be redacted and compel disclosure of the remaining portions.

Reverse PRA Litigation

While there is no specific statutory authority for such an action, a person who believes their rights would be infringed by a local agency decision to disclose documents may bring a “reverse PRA action” to seek an order enjoining disclosure.⁵⁰⁰ A records requester may join in a reverse PRA action as a real party or an intervener.⁵⁰¹

492 *Fredericks v. Superior Court* (2015) 233 Cal. App. 4th 209, 227 [“[A] person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies”], disapproved on other grounds at *Natl. Lawyers Guild v. City of Hayward* (2020) 9 Cal. 5th 488, 508 fn. 9 (disapproving *Fredericks* to the extent it suggested an agency can recover redaction costs); *American Civil Liberties Union of N. Cal. v. Superior Court* (2011) 202 Cal. App. 4th 55, 85 [“Government agencies are, of course, entitled to a presumption that they have reasonably and in good faith complied with the obligation to disclose responsive information.”]

493 See, e.g., *Los Angeles Unified School Dist. v. Superior Court*, *supra*, 151 Cal.App.4th at p. 767.

494 *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1420.

495 Evid. Code, § 915.

496 Gov. Code, § 7923.105 (formerly Gov. Code, § 6259, subd. (a)).

497 *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 737.

498 Gov. Code, § 7923.100 (formerly Gov. Code, § 6259, subd. (a)).

499 Gov. Code, § 7923.110 (formerly Gov. Code, § 6259, subd. (b)).

500 *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1264, 1267.

501 *Id.* at p. 1269.

► PRACTICE TIP:

A local agency that receives a request for records that are or could be statutorily exempt from disclosure (under the PRA or otherwise) might consider notifying affected parties prior to disclosing the records. For example, “affected parties” would be individuals or organizations for whom disclosure could constitute an unwarranted intrusion of privacy if the requested documents contain potentially confidential information, such as trade secrets or confidential information of employees, contractors, or other third-party stakeholders. The notification prior to disclosing the records would allow the third parties to file a reverse PRA action to enjoin the local agency from disclosing the records.

A party bringing a reverse PRA action to prevent disclosure may be subject to paying the requestor’s attorney fees under the private attorney general statute if the requestor prevails.⁵⁰² An agency, however, is not subject to paying the requestor’s attorney fees in a reverse PRA action.⁵⁰³

Appellate Review

Petition for Review

The PRA establishes an expedited judicial review process. A trial court’s order is not considered to be a final judgment subject to the traditional and often lengthy appeal process. In place of a traditional appeal, such orders are subject to immediate review through the filing of a petition to the appellate court for the issuance of an extraordinary writ.⁵⁰⁴

Because the trial court’s decision is not a final judgment for which there is an absolute right of appeal, the appellate court may decline to review the case without a hearing or without issuance of a detailed written opinion.⁵⁰⁵ However, the intent of substituting writ review for the traditional appeal process is to provide for expedited appellate review, not an abbreviated review. Therefore, an appellate court may not deny an apparently meritorious writ petition that has been timely presented and is procedurally sufficient merely because the petition presents no important issue of law or because it considers the case less worthy of its attention.⁵⁰⁶ This manner of providing for appellate review through an extraordinary writ procedure rather than a traditional appeal has been held to be constitutional.⁵⁰⁷

Timing

A party seeking review of a trial court’s order must file a petition for review with the appellate court within 20 days after being served with a written notice of entry of the order, or within such further time, not exceeding an additional 20 days, as the trial court may for good cause allow.⁵⁰⁸ If the written notice of entry of the order is served by mail, the period within which to file the petition is increased by five days.⁵⁰⁹

502 *City of Los Angeles v. Metropolitan Water Dist.* (2019) 42 Cal.App.5th 290 (awarding attorney fees to newspaper that had requested records and intervened in case); *Pasadena Police Officers Ass’n v. City of Pasadena* (2018) 22 Cal.App.5th 147, 160 (same).

503 *National Conference of Black Mayors v. Chico Community Publ’g, Inc.* (2018) 25 Cal.App.5th 570.

504 Gov. Code, § 7923.500, subd. (a) (formerly Gov. Code, § 6259, subd. (c)). But see *Mincal Consumer Law Group v. Carlsbad Police Department* (2013) 214 Cal. App.4th 259, 265 (under limited circumstances, an appellate court may exercise its discretion to treat an appeal from a non-appellable order as a petition for writ relief).

505 Cal. Rule of Court, Rule 8.487(a)(4). See generally *Omaha Indem. Co. v. Sup. Ct. (Greinke)* (1989) 209 Cal.App.3d 1266, 1271-74 (summary denial without written opinion); *Lewis v. Sup. Ct. (Green)* (1999) 19 Cal.4th 1232, 1260 (summary denial without hearing).

506 *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 113–114.

507 *Id.* at p. 115.

508 Gov. Code, § 7923.500, subd. (b) (formerly Gov. Code, § 6259, subd. (c)).

509 Gov. Code, § 7923.500, subd. (c) (formerly Gov. Code, § 6259, subd. (c)).

Once a court of appeal accepts a petition for review, the appellate process proceeds in much the same fashion as a traditional appeal. Unless the parties stipulate otherwise, the appellate court will establish a briefing schedule and may set the matter for oral arguments once briefing is complete.

Requesting a Stay

If a party wishes to prevent the disclosure of records pending appellate review of the trial court's decision, then that party must seek a stay of the trial court's order or judgment.⁵¹⁰ In cases when the trial court's order requires disclosure of records prior to the time when a petition for review must be filed, the party seeking a stay may apply to the trial court for a stay of the order or judgment. Where there is sufficient time for a party to file a petition for review prior to the date for disclosure, that party may seek a stay from the appellate court. The trial and appellate courts may only grant a stay when the party seeking the stay demonstrates that: (1) the party will sustain irreparable damage because of the disclosure; and (2) it is probable the party will succeed on the merits of the case on appeal.⁵¹¹

Scope and Standard of Review

On appeal, the appellate court will conduct an independent review of the trial court's ruling, upholding the factual findings made by the trial court if they are based on substantial evidence.⁵¹²

The decision of the appellate court, whether to deny review or on the merits of the case, is subject to discretionary review by the California Supreme Court through a petition for review.

Appeal of Other Decisions under the PRA

While the trial court's decision regarding disclosure of records is not subject to the traditional appeal process, other decisions of the trial court related to a lawsuit under the PRA are subject to appeal. Thus, a trial court's decision to grant or deny a motion for attorneys' fees and costs under the PRA is subject to appeal and is not subject to the extraordinary writ process.⁵¹³ Similarly, an award of sanctions in a public records case is subject to appeal rather than a petition for an extraordinary writ.⁵¹⁴

Attorneys' Fees and Costs

Attorneys' fees may be awarded to a prevailing party in an action under the PRA. If the plaintiff prevails in the litigation, the judge must award court costs and reasonable attorneys' fees to the plaintiff.⁵¹⁵ A member of the public may be entitled to an award of attorneys' fees and costs even when he or she is not the named "plaintiff" in a lawsuit under the PRA, if the party is the functional equivalent of a plaintiff.⁵¹⁶ Records requesters that participate in a reverse-PRA lawsuit are not entitled to an award of attorneys' fees for successfully opposing such litigation.⁵¹⁷ Successful local agency defendants may obtain an award of attorneys' fees and court costs against an unsuccessful plaintiff only when the court finds the plaintiff's case was clearly frivolous.⁵¹⁸ Unless a plaintiff's case is "utterly devoid of merit or taken for

510 Gov. Code, § 7923.500, subd. (d) (formerly Gov. Code, § 6259, subd. (c)).

511 Gov. Code, § 7923.500, subd. (d) (formerly Gov. Code, § 6259, subd. (c)).

512 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336.

513 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1388.

514 *Butt v. City of Richmond* (1996) 44 Cal.App.4th 925, 929.

515 Gov. Code, § 7923.115, subd. (a) (formerly Gov. Code, § 6259, subd. (d)); *Garcia v. Governing Board of Bellflower Unified School District* (2013) 220 Cal.App.4th 1058, 1065; *Los Angeles Times v. Alameda Corridor Transportation Authority*, *supra*, 88 Cal.App.4th at p. 1385.

516 *Fontana Police Dep't. v. Villegas-Banuelos* (1999) 74 Cal.App.4th 1249, 1253.

517 *Marken v. Santa Monica-Malibu Unified School Dist.*, *supra*, 202 Cal.App.4th at p. 1268.

518 Gov. Code, § 7923.115, subd. (b) (formerly Gov. Code, § 6259, subd. (d)).

improper motive,” a court is unlikely to find a plaintiff’s case frivolous and award attorneys’ fees to an agency.⁵¹⁹ Only one reported case has upheld an award of attorneys’ fees to a local agency based on a frivolous request.⁵²⁰

Eligibility to Recover Attorneys’ Fees

In determining whether a plaintiff has prevailed, courts have applied several variations of analysis similar to that used under the private attorney general laws, *i.e.*, whether the party has succeeded on any issue in the litigation and achieved some of the public benefits sought in the lawsuit. Some courts, however, have determined a plaintiff may still be a prevailing party entitled to attorneys’ fees under the PRA even without a favorable ruling or other court action.⁵²¹ Trial courts have discretion to deny fees when a plaintiff obtains a result so minimal or insignificant as to justify a finding that the plaintiff did not prevail, which may occur when the requester obtains only partial relief.⁵²²

Generally, if a local agency makes a timely, diligent effort to respond to a vague document request, a plaintiff will not be awarded attorneys’ fees as the prevailing party, even in litigation resulting in issuance of a writ.⁵²³ However, where the court determines a local agency was not sufficiently diligent in locating all requested records and issues declaratory relief, stating there has in fact been a violation of the PRA, even if the records sought no longer exist and cannot be produced, the court may still award attorneys’ fees on the basis of the statutory policies underlying the PRA.⁵²⁴

The trial court has significant discretion when determining the appropriate amount of attorneys’ fees to award.⁵²⁵ Any award of costs and fees must be paid by the agency, and must not become a personal liability of the agency employees or officials who decide not to disclose requested records.⁵²⁶

519 *Crews v. Willows Unified School Dist. et al.* (2013) 217 Cal.App.4th 1368.

520 *Butt v. City of Richmond*, *supra*, 44 Cal.App.4th at p. 932.

521 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 482–483; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 901–902.

522 *Riskin v. Downtown L.A. Prop. Owners Ass’n* (2022) 76 Cal.App.5th 438, 441, 446–449.

523 *Motorola Comm’n & Elecs., Inc. v. Dep’t of Gen. Servs.* (1997) 55 Cal.App.4th 1340, 1350–51.

524 *Community Youth Athletic Center v. City of National City*, *supra*, 220 Cal.App.4th at p. 1446.

525 *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1394.

526 Gov. Code, § 7923.115, subd. (a) (formerly Gov. Code, § 6259, subd. (d)).

Records Management

In addition to the PRA, other California laws support and complement California’s commitment to open government and the right of access to public records. These laws include, among others, open meeting laws under the Ralph M. Brown Act, records retention requirements, and California and federal laws prohibiting the spoliation of public records that might be relevant in litigation involving the local agency. Proper records management policies and practices facilitate efficient and effective compliance with these laws.

Public Meeting Records

Under the Brown Act,⁵²⁷ any person may request a copy of a local agency meeting agenda and agenda packet by mail.⁵²⁸ If a local agency has an Internet website, the legislative body or its designee must email a copy of, or a website link to, the agenda or agenda packet if a person requests delivery by email.⁵²⁹ If requested, the agenda materials must be made available in appropriate alternative formats to persons with disabilities.⁵³⁰ If a local agency receives a written request to send agenda materials by mail, the materials must be mailed when the agenda is either posted or distributed to a majority of the agency’s legislative body, whichever occurs first.⁵³¹ Requests for mailed copies of agenda materials are valid for the calendar year in which they are filed, but must be renewed after January 1 of each subsequent year.⁵³² Local agency legislative bodies may establish a fee for mailing agenda materials.⁵³³ The fee may not exceed the cost of providing the service.⁵³⁴ Failure of a requester to receive agenda materials is not a basis for invalidating actions taken at the meeting for which agenda materials were not received.⁵³⁵

⁵²⁷ Gov. Code, § 54950.5 *et. seq.* See *Open and Public: A Guide to the Ralph M. Brown Act*, available at www.calcities.org/BrownActGuide.

⁵²⁸ Gov. Code, § 54954.1.

⁵²⁹ *Ibid.*

⁵³⁰ *Ibid.*

⁵³¹ *Ibid.*; see *Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.

⁵³² Gov. Code, § 54954.1.

⁵³³ *Ibid.*

⁵³⁴ *Ibid.*

⁵³⁵ *Ibid.*

Writings that are distributed to all or a majority of all members of a legislative body in connection with a matter subject to discussion or consideration at a public meeting of the local agency are public records subject to disclosure, unless specifically exempted by the PRA, and must be made available upon request without delay.⁵³⁶ When non-exempt writings are distributed during a public meeting, in addition to making them available for public inspection at the meeting (if prepared by the local agency or a member of its legislative body) or after the meeting (if prepared by another person), they must be made available in appropriate alternative formats upon request by a person with a disability.⁵³⁷ The local agency may charge a fee for a copy of the records; however, no surcharge may be imposed on persons with disabilities.⁵³⁸ When records relating to agenda items are distributed to a majority of all members of a legislative body less than 72 hours prior to the meeting, the records must be made available for public inspection in a designated location at the same time they are distributed.⁵³⁹ The address of the designated location shall be listed in the meeting agenda.⁵⁴⁰ The local agency may also post the information on its website in a place and manner which makes it clear the records relate to an agenda item for an upcoming meeting.⁵⁴¹

Maintaining Electronic Records

“Public records,” as defined by the PRA, includes “any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.”⁵⁴² The PRA does not require a local agency to keep records in an electronic format. But, if a local agency has an existing, non-exempt public record in an electronic format, the PRA does require the agency make those records available in any electronic format in which it holds the records when requested.⁵⁴³ The PRA also requires the local agency to provide a copy of such records in any alternative electronic format requested, if the alternative format is one the agency uses for itself or for provision to other agencies.⁵⁴⁴ The PRA does not require a local agency to release a public record in the electronic form in which it is held if the release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.⁵⁴⁵ Likewise, the PRA does not permit public access to records held electronically, if access is otherwise restricted by statute.⁵⁴⁶

536 Gov. Code, § 54957.5, subd. (a).

537 Gov. Code, § 54957.5, subd. (c).

538 Gov. Code, § 54957.5, subd. (d). *See* Chapter 3.

539 Gov. Code, § 54957.5, subds. (b)(1), (b)(2).

540 Gov. Code, § 54957.5, subd. (b)(2).

541 Gov. Code, § 54957.5, subd. (b)(2).

542 Gov. Code, § 7920.530 (formerly Gov. Code, § 6252, subd. (e)).

543 Gov. Code, § 7922.570, subd. (b)(1) (formerly Gov. Code, § 6253.9, subd. (a)(1)).

544 Gov. Code, § 7922.570, subd. (b)(2) (formerly Gov. Code, § 6253.9, subd. (a)(2)).

545 Gov. Code, § 7922.580, subd. (c) (formerly Gov. Code, § 6253.9, subd. (f)).

546 Gov. Code, § 7922.580, subd. (d) (formerly Gov. Code, § 6253.9, subd. (g)).

► **PRACTICE TIP:**

Local agencies should consider adopting electronic records policies governing such issues as: what electronic records (e.g., emails, texts, and social media) and what attributes of the electronically stored information and communications are considered “retained in the ordinary course of business” for purposes of the PRA; whether personal electronic devices (such as computers, tablets, cell phones) and personal email accounts may be used to store or send electronic communications concerning the local agency, or whether the agency’s devices must be used; and privacy expectations. Local agencies should consult with information technology officials to understand what information is being stored electronically and the technological limits of their systems for the retention and production of electronic records.

Duplication costs of electronic records are limited to the direct cost of producing the electronic copy.⁵⁴⁷ However, requesters may be required to bear additional costs of producing a copy of an electronic record, such as programming and computer services costs, if the request requires the production of electronic records that are otherwise only produced at regularly scheduled intervals, or production of the record would require data compilation, extraction, or programming.⁵⁴⁸ Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.⁵⁴⁹

Metadata

Electronic records may include “metadata,” or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when, or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. Although no provision of the PRA expressly addresses metadata, and there are no reported court opinions in California considering whether or to what extent metadata is subject to disclosure, other jurisdictions have held that metadata is a public record subject to disclosure, unless an exemption applies.⁵⁵⁰ There are no reported California court opinions providing guidance on whether agencies have a duty to disclose metadata when an electronic record contains exempt information that cannot be reasonably segregated without compromising the record’s integrity.

Computer Software

The PRA permits government agencies to develop and commercialize computer software and to benefit from copyright protections for agency-developed software. Computer software developed by state or local agencies, including computer mapping systems, computer programs, and computer graphics systems, is not a public record subject to disclosure.⁵⁵¹ As a result, public agencies are not required to provide copies of agency-developed software pursuant to the PRA. The PRA authorizes state and local agencies to sell, lease, or license agency-developed software for

547 Gov. Code, § 7922.575, subd. (a) (formerly Gov. Code, § 6253.9, subd. (a)(2)).

548 Gov. Code, § 7922.575, subd. (b) (formerly Gov. Code, § 6253.9, subd. (b)).

549 Gov. Code, § 7922.580, subd. (a) (formerly Gov. Code, § 6253.9, subd. (c)).

550 *Lake v. City of Phoenix*, (Ariz. 2009) 218 P.3d 1004, 1008; *O’Neill v. City of Shoreline* (Wash. 2010) 240 P.3d 1149, 1152–1154; *Irwin v. Onondaga County* (N.Y. 2010) 895 N.Y.S.2d 262, 265.

551 Gov. Code, § 7922.585, subds. (a), (b) (formerly Gov. Code, § 6254.9, subds. (a), (b)).

commercial or noncommercial use.⁵⁵² The exception for agency-developed software does not affect the exempt status of records merely because it is stored electronically.⁵⁵³

Computer Mapping (GIS) Systems

While computer mapping systems developed by local agencies are not public records subject to disclosure, such systems generally include geographic information system (GIS) data. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the local agency and the public. As with metadata, the PRA does not expressly address GIS information disclosure. However, the California Supreme Court has held, that while GIS software is exempt under the PRA, the data in a GIS file format is a public record, and data in a GIS database must be produced.⁵⁵⁴

Public Contracting Records

State and local agencies subject to the Public Contract Code that receive bids for construction of a public work or improvement, must, upon request from a contractor plan room service, provide an electronic copy of a project's contract documents at no charge to the contractor plan room.⁵⁵⁵ The Public Contract Code does not define the term "contractor plan room," but the term commonly refers to a clearinghouse that contractors can use to identify potential bidding opportunities and obtain bid documents. The term may also refer to an online resource for a contractor to share plans and information with subcontractors.

Electronic Discovery

The importance of maintaining a written document retention policy is evident by revisions to the Federal Rules of Civil Procedure, and California's Civil Discovery Act and procedures, relative to electronic discovery.⁵⁵⁶ Those provisions and discovery procedures require parties in litigation to address the production and preservation of electronic records. Those rule changes may require a local agency to alter its routine management or storage of electronic information, and illustrate the importance of having and following formal document retention policies.

Once a local agency knows or receives notice that information is relevant to litigation (e.g., a litigation hold notice or a document preservation notice), it has a duty to preserve that information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems (through a litigation hold) to preserve information relevant to the litigation and avoid the potential imposition of sanctions.

⁵⁵² Gov. Code, § 7922.585, subd. (b) (formerly Gov. Code, § 6254.9, subd. (a)).

⁵⁵³ Gov. Code, § 7922.585, subd. (d) (formerly Gov. Code, § 6254.9, subd. (d)).

⁵⁵⁴ *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 170 See also *County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1323–1336.

⁵⁵⁵ Pub. Contract Code, §§ 10111.2, 20103.7.

⁵⁵⁶ Fed. Rules Civ. Proc., rule 26, 28 U.S.C.; Cal. Rules of Court, rule 3.724(8); Code Civ. Proc. §§ 2016.020, 2031.020–2031.320.

Record Retention and Destruction Laws

The PRA is not a records retention statute. The PRA does not prescribe what type of information a public agency may gather or keep, or provide a method for correcting records.⁵⁵⁷ Its sole function is to provide access to public records.⁵⁵⁸ Other provisions of state law govern retention of public records.⁵⁵⁹

Local agencies generally must retain public records for a minimum of two years.⁵⁶⁰ However, some records may be destroyed sooner. For example, duplicate records that are less than two years old may be destroyed if no longer required.⁵⁶¹ Similarly, the retention period for “recordings of telephone and radio communications” is 100 days⁵⁶² and “routine video monitoring” need only be retained for one year, and may be destroyed or erased after 90 days if another record, such as written minutes, is kept of the recorded event. “Routine video monitoring” is defined as “video recording by a video or electronic imaging system designed to record the regular and ongoing operations of a [local agency] ..., including mobile in-car video systems, jail observation and monitoring systems, and building security recording systems.”⁵⁶³ The Attorney General has opined that recordings by security cameras on public buses and other transit vehicles constitute “routine video monitoring.”⁵⁶⁴ Whether additional recording technology used for law and parking enforcement such as body cameras and Vehicle License Plate Recognition (“VLPR”) systems also constitute routine video monitoring is an open question and may depend upon its use. While the technology is very similar to in-car video systems, recordings targeting specific activity may not be “routine.” The retention statutes do not provide a specific retention period for e-mails, texts, or forms of social media.

By contrast, state law does not permit destruction of records affecting title to or liens on real property, court records, records required to be kept by statute, and the minutes, ordinances, or resolutions of the legislative body or city board or commission.⁵⁶⁵ In addition, employers are required to maintain personnel records for at least three years after an employee’s termination, subject to certain exceptions, including peace officer personnel records, pre-employment records, and where an applicable collective bargaining agreement provides otherwise.⁵⁶⁶ Complaints and any reports or findings relating to those complaints must be retained for no less than five years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct.⁵⁶⁷

To ensure compliance with these laws, most local agencies adopt records retention schedules as a key element of a records management system.

557 *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661, 668.

558 *Ibid.*

559 For example, an agency cannot destroy records that qualify for inclusion in an administrative record in a writ proceeding. *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733.

560 Gov. Code, § 34090, subd. (d).

561 Gov. Code, § 34090.7.

562 Gov. Code, § 34090.6.

563 Gov. Code, §§ 34090.6, 34090.7.

564 85 Ops.Cal.Atty.Gen. 256, 258 (2002).

565 Gov. Code, § 34090, subds. (a), (b), (c) & (e).

566 Lab. Code, § 1198.5, subd. (c)(1).

567 Pen. Code, § 832.5.

Records Covered by the Records Retention Laws

There is no definition of “public records” or “records” in the records retention provisions governing local agencies.⁵⁶⁸ The Attorney General has opined that the definition of “public records” for purposes of the records retention statutes is “a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept; or (2) because it is necessary or convenient to the discharge of the public officer’s duties and was made or retained for the purpose of preserving its informational content for future reference.”⁵⁶⁹ Under that definition, local agency officials retain some discretion concerning what agency records must be kept pursuant to state records retention laws. Similarly, the PRA allows for local agency discretion concerning what preliminary drafts, notes, or interagency or intra-agency memoranda are retained in the ordinary course of business.⁵⁷⁰

► PRACTICE TIP:

Though there is no definition of “records” for purposes of the retention requirements applicable to local agencies, the retention requirements and the disclosure requirements of the PRA should complement each other. Local agencies should exercise caution in deviating too far from the definition of “public records” in the PRA in interpreting what records should be retained under the records retention statutes.

⁵⁶⁸ 64 Ops.Cal.Atty.Gen. 317, 323 (1981).

⁵⁶⁹ *Id.* at p. 324.

⁵⁷⁰ Gov. Code, § 7927.500 (formerly Gov. Code, § 6254, subd. (a)). See “Drafts,” p. 35.

Frequently Requested Information and Records

This table is intended as a general guide on the applicable law and is not intended to provide legal advice. The facts and circumstances of each request should be carefully considered in light of the applicable law. A local agency's legal counsel should always be consulted when legal issues arise.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
AGENDA MATERIALS DISTRIBUTED TO A LEGISLATIVE BODY RELATING TO AN OPEN SESSION ITEM	Yes	Gov. Code, § 54957.5. For additional information, see p. 71 of <i>"The People's Business: A Guide to the California Public Records Act," "the Guide."</i>
AUDIT CONTRACTS	Yes	Gov. Code, § 7928.700 (formerly Gov. Code, § 6253.31).
AUDITOR RECORDS	Yes, with certain exceptions	Gov. Code, § 36525(b).
AUTOMATED TRAFFIC ENFORCEMENT SYSTEM (RED LIGHT CAMERA) RECORDS	No	Veh. Code, § 21455.5(f)(1).
AUTOPSY REPORTS	No	Gov. Code, § 7923.600 (formerly Gov. Code, § 6254(f)); <i>Dixon v. Superior Court</i> (2009) 170 Cal.App.4th 1271.
CALENDARS OF ELECTED OFFICIALS	Perhaps not, but note that there is no published appellate court decision on this issue post- Prop. 59. ¹	See <i>Times Mirror Co. v. Superior Court</i> (1991) 53 Cal.3d 1325 and <i>Rogers v. Superior Court</i> (1993) 19 Cal.App.4th 469 for a discussion of the deliberative process privilege. For additional information, see p. 34 of the Guide.
CLAIMS FOR DAMAGES	Yes	<i>Poway Unified School District v. Superior Court</i> (1998) 62 Cal. App.4th 1496.
CORONER PHOTOS OR VIDEOS	No	Civ. Proc. Code, § 129.
DOG LICENSE INFORMATION	Unclear	See conflict between Health & Safety Code, § 121690(h) which states that license information is confidential, and Food and Agr. Code, § 30803(b) stating license tag applications shall remain open for public inspection.
ELECTION PETITIONS (INITIATIVE, REFERENDUM AND RECALL PETITIONS)	No, except to proponents if petition found to be insufficient	Gov. Code, § 7924.100-7924.110 (formerly Gov. Code, § 6253.5); Elec. Code, §§ 17200, 17400, and 18650; Evid. Code, § 1050. For additional information, see p. 37 of the Guide.
EMAILS AND TEXT MESSAGES OF LOCAL AGENCY STAFF AND/OR OFFICIALS	Yes	Emails and text messages relating to local agency business on local agency and/or personal accounts and devices are public records. Gov. Code, § 7920.530 (formerly Gov. Code § 6252(e)); <i>City of San Jose v. Superior Court</i> (2017) 2 Cal. 5th 608. For additional information, see pp. 12-14 of the Guide.
EMPLOYMENT AGREEMENTS/CONTRACTS	Yes	Gov. Code, § 7928.400 (formerly Gov. Code, § 6254.8). Gov. Code, § 53262(b). For additional information, see p. 57 of the Guide.
EXPENSE REIMBURSEMENT REPORT FORMS	Yes	Gov. Code, § 53232.3(e).
FORM 700 (STATEMENT OF ECONOMIC INTERESTS) AND CAMPAIGN STATEMENTS	Yes ²	Gov. Code, § 81008.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
GEOGRAPHIC INFORMATION SYSTEM (GIS) MAPPING SOFTWARE AND DATA	No as to proprietary software. Yes as to GIS base map information.	Gov. Code, § 7922.585 (formerly Gov. Code, § 6254.9); 88 Ops. Cal. Atty. Gen. 153 (2005); see <i>Sierra Club v. Superior Court</i> (2013) 57 Cal.4th 157 for data as a public record; see also <i>County of Santa Clara v. Superior Court</i> (2009) 170 Cal.App.4th 1301 for GIS basemap as public record; for additional information, see p. 16 of the Guide.
GRADING DOCUMENTS INCLUDING GEOLOGY REPORTS, COMPACTION REPORTS, AND SOILS REPORTS SUBMITTED IN CONJUNCTION WITH AN APPLICATION FOR A BUILDING PERMIT	Yes	89 Ops. Cal. Atty. Gen. 39 (2006); but see Gov. Code, § 7927.300 (formerly Gov. Code, § 6254(e)). For additional information, see p. 30 of the Guide.
JUVENILE COURT RECORDS	No	<i>T.N.G. v. Superior Court</i> (1971) 4 Cal.3d 767; Welf. & Inst. Code, §§ 827 and 828. For additional information, see p. 44 of the Guide.
LEGAL BILLING STATEMENTS	Generally, yes, as to amount billed and/or after litigation has ended. No, if pending or active litigation and the billing entries are closely related to the attorney-client communication. For example, substantive billing detail which reflects an attorney's impressions, conclusions, opinions or legal research or strategy.	Gov. Code, § 7927.705 (formerly Gov. Code, § 6254(k)); Evid. Code, § 950, et seq.; <i>County of Los Angeles Board of Supervisors v. Superior Court</i> (2016) 2 Cal.5th 282; <i>Smith v. Laguna Sun Villas Community Assoc.</i> (2000) 79 Cal.App.4th 639; <i>United States v. Amlani</i> , 169 F.3d 1189 (9th Cir. 1999). But see Gov. Code, § 7927.200 (formerly Gov. Code, § 6254(b)) as to the disclosure of billing amounts reflecting legal strategy in pending litigation. <i>County of Los Angeles v. Superior Court</i> (2012) 211 Cal.App.4th 57 (Pending litigation exemption does not protect legal bills reflecting the hours worked, the identity of the person performing the work, and the amount charged from disclosure; only work product or privileged descriptions of work may be redacted). For additional information, see p. 33 of the Guide.
LIBRARY PATRON USE RECORDS	No	Gov. Code, §§ 7927.100, 7927.105 (formerly Gov. Code, §§ 6254(j), 6267). For additional information, see p. 40 of the Guide.
MEDICAL RECORDS	No	Gov. Code, § 7927.700 (formerly Gov. Code, § 6254(c)). For additional information, see p. 46 of the Guide.
MENTAL HEALTH DETENTIONS (5150 REPORTS)	No	Welf. & Inst. Code, § 5328. For additional information, see p. 44 of the Guide.
MINUTES OF CLOSED SESSIONS	No	Gov. Code, § 54957.2(a). For additional information, see p. 43 of <i>Open and Public: A Guide to the Ralph M. Brown Act</i> , available at www.cacities.org/BrownActGuide .
NOTICES/ORDERS TO PROPERTY OWNER RE: HOUSING/BUILDING CODE VIOLATIONS	Yes	Gov. Code, § 7924.700 (formerly Gov. Code, § 6254.7(c)). For additional information, see p. 1 of the Guide.
OFFICIAL BUILDING PLANS (ARCHITECTURAL DRAWINGS AND PLANS)	Inspection only. Copies provided under certain circumstances.	Health & Saf. Code, § 19851; see also 17 U.S.C. §§ 101 and 102. For additional information, see p. 30 of the Guide.
PERSONAL FINANCIAL RECORDS	No	Gov. Code, §§ 7470, 7471, 7473; see also Gov. Code, § 7925.005 (formerly Gov. Code, § 6254(n)). For additional information, see p. 46 of the Guide.
PERSONNEL		For additional information, see p. 52 of the Guide.
<ul style="list-style-type: none"> Employee inspection of own personnel file 	Yes, with exceptions.	For additional information, see pp. 29-31 of the Guide. Lab. Code, § 1198.5; Gov. Code, § 36501.5. For peace officers, see Gov. Code, § 3306.5. For firefighters, see Gov. Code, § 3256.5.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
<ul style="list-style-type: none"> Investigatory reports 	It depends.	<i>City of Petaluma v. Superior Court</i> (2016) 248 Cal.App.4th 1023; <i>Marken v. Santa Monica-Malibu Unified Sch. Dist.</i> (2012) 202 Cal. App.4th 1250; <i>Sanchez v. County of San Bernardino</i> (2009) 176 Cal. App.4th 516; <i>BRV, Inc. v. Superior Court</i> (2006) 143 Cal.App.4th 742.
<ul style="list-style-type: none"> Name and pension amounts of public agency retirees 	Yes. However, personal or individual records, including medical information, remain exempt from disclosure.	<i>Sacramento County Employees Retirement System v. Superior Court</i> (2011) 195 Cal.App.4th 440; <i>San Diego County Employees Retirement Association v. Superior Court</i> (2011) 196 Cal.App.4th 1228; <i>Sonoma County Employees Retirement Assn. v. Superior Court</i> (2011) 198 Cal.App.4th 986.
<ul style="list-style-type: none"> Names and salaries (including performance bonuses and overtime) of public employees, including peace officers 	Yes, absent unique, individual circumstances. However, other personal information such as social security numbers, home telephone numbers and home addresses are generally exempt from disclosure per Gov. Code, § 6254(c).	<i>International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court</i> (2007) 42 Cal.4th 319; <i>Commission on Peace Officers Standards and Training v. Superior Court</i> (2007) 42 Cal.4th 278.
<ul style="list-style-type: none"> Officer's personnel file, including internal affairs investigation reports 	No, except for specified allegations and/or findings.	With certain exceptions, peace officer personnel records, including internal affairs reports regarding alleged misconduct, are confidential. Pen. Code, §§ 832.7 and 832.8; Evid. Code, §§ 1043-1045; <i>International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court</i> (2007) 42 Cal.4th 319; <i>City of Hemet v. Superior Court</i> (1995) 37 Cal.App.4th 1411. For additional information, see p. 53 of the Guide.
<ul style="list-style-type: none"> Test Questions, scoring keys, and other examination data. 	No	Gov. Code, § 7929.605 (formerly Gov. Code, § 6254(g)).
POLICE/LAW ENFORCEMENT		For additional information, see p. 38 of the Guide.
<ul style="list-style-type: none"> Arrest Information 	Yes	Gov. Code, § 7923.610 (formerly Gov. Code, § 6254(f)(1)); <i>Kinney v. Superior Court</i> (2022) 77 Cal.App.5th 168; <i>County of Los Angeles v. Superior Court (Kusar)</i> (1993) 18 Cal.App.4th 588.
<ul style="list-style-type: none"> Charging documents and court filings of the DA 	Yes	<i>Weaver v. Superior Court</i> (2014) 224 Cal.App.4th 746.
<ul style="list-style-type: none"> Child abuse reports 	No	Pen. Code, §11167.5.
<ul style="list-style-type: none"> Citizen complaint policy 	Yes	Pen. Code, § 832.5(a)(1).
<ul style="list-style-type: none"> Citizen complaints 	No	Pen. Code, § 832.5.
<ul style="list-style-type: none"> Citizen complaints – annual summary report to the Attorney General 	Yes	Pen. Code, § 832.5.
<ul style="list-style-type: none"> Citizen complainant information – names addresses and telephone numbers 	No	<i>City of San Jose v. San Jose Mercury News</i> (1999) 74 Cal.App.4th 1008. For additional information see p. 42 of the Guide.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
• Concealed weapon permits and applications	Yes, except for information that indicates when or where the applicant is vulnerable to attack and medical/psychological history	Gov. Code, § 7923.800 (formerly Gov. Code, § 6254(u)(1)); <i>CBS, Inc. v. Block</i> (1986) 42 Cal.3d 646.
• Contact information – names, addresses and phone numbers of crime victims or witnesses	No	Gov. Code, § 7923.615 (formerly Gov. Code, § 6254(f)(2)). For additional information, see p. 42 of the Guide.
• Criminal history	No	Pen. Code, § 13300 et seq.; Pen. Code, § 11106 et seq.
• Criminal investigative reports including booking photos, audio recordings, dispatch tapes, 911 tapes and in-car video	No	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)); <i>Haynie v. Superior Court</i> (2001) 26 Cal.4th 1061.
• Crime reports	Yes	Gov. Code, §§ 7923.600-7923.625, 7922.000 (formerly 6254(f), 6255).
• Crime reports, including witness statements	Yes, but only to crime victims and their representatives	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)). Gov. Code, § 13951.
Police/Law Enforcement, CONTINUED		
• Elder abuse reports	No	Welf. and Inst. Code, §15633
• Gang intelligence information	No	Gov. Code, §§ 7923.600-7923.625 (formerly Gov. Code, § 6254(f)); 79 Ops.Cal.Atty Gen. 206 (1996).
• In custody death reports to AG	Yes	Gov. Code, § 12525
• Juvenile court records	No	<i>T.N.G. v. Superior Court</i> (1971) 4 Cal.3d 767; Welf. & Inst. Code, §§ 827 and 828. For additional information, see p. 44 of the Guide.
• List of concealed weapon permit holders	Yes	Gov. Code, § 7923.800 (formerly Gov. Code, § 6254(u)(1)); <i>CBS, Inc. v. Block</i> (1986) 42 Cal.3d 646.
• Mental health detention(5150) reports	No	Welf. & Inst. Code, § 5328. For additional information, see p. 44 of the Guide.
• Names of officers involved in critical incidents	Yes, absent unique, individual circumstances	<i>Pasadena Peace Officers Ass’n v Superior Court</i> (2015) 240 Cal. App.4th 268; <i>Long Beach Police Officers Association v. City of Long Beach</i> (2014) 59 Cal.4th 59; <i>Commission on Peace Officer Standards and Training v. Superior Court</i> (2007) 42 Cal.4th 278; <i>New York Times v. Superior Court</i> (1997) 52 Cal.App.4th 97; 91 Ops. Cal.Atty.Gen. 11 (2008).
• Official service photographs of peace officers	Yes, unless disclosure would pose an unreasonable risk of harm to the officer	<i>Ibarra v. Superior Court</i> (2013) 217 Cal.App.4th 695.
• Peace officer’s name, employing agency and employment dates	Yes, absent unique, individual circumstances	<i>Commission on Peace Officer Standards and Training v. Superior Court</i> (2007) 42 Cal.4th 278.
• Traffic accident reports	Yes, but only to certain parties	Veh. Code, §§ 16005, 20012 [only disclose to those needing the information, such as insurance companies, and the individuals involved].

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
PUBLIC CONTRACTS		
• Bid Proposals, RFP proposals	Yes, except competitive proposals may be withheld until negotiations are complete to avoid prejudicing the public	<i>Michaelis v. Superior Court</i> (2006) 38 Cal. 4th 1065; but see Gov. Code, § 7922.000 (formerly Gov. Code, § 6255) and Evid. Code, § 1060. For additional information, see p. 59 of the Guide.
• Certified payroll records	Yes, but records must be redacted to protect employee names, addresses, and social security number from disclosure	Labor Code, § 1776.
• Financial information submitted for bids	Yes, except some corporate financial information may be protected	Gov. Code, §§ 7927.500, 7928.705, 7927.705, 7927.605, and 7922.000 (formerly Gov. Code, §§ 6254(a), (h), and (k), 6254.15, and 6255); <i>Schnabel v. Superior Court of Orange County</i> (1993) 5 Cal.4th 704, 718. For additional information, see p. 60 of the Guide.
• Trade secrets	No	Evid. Code, § 1060; Civ. Code, § 3426, et seq. For additional information, see p. 61 of the Guide.
PURCHASE PRICE OF REAL PROPERTY	Yes, after the agency acquires the property	Gov. Code, § 7275.
REAL ESTATE		For additional information, see p. 60 of the Guide.
• Property information (such as selling assessed value, square footage, number of rooms)	Yes	88 Ops.Cal.Atty.Gen. 153 (2005).
• Appraisals and offers to purchase	Yes, but only after conclusion of the property acquisition	Gov. Code, § 7928.705 (formerly Gov. Code, § 6254(h)). Note that Gov. Code, § 7267.2 requires release of more information to the property owner while the acquisition is pending.
REPORT OF ARREST NOT RESULTING IN CONVICTION	No, except as to peace officers or peace officer applicants	Lab. Code, § 432.7.
SETTLEMENT AGREEMENTS	Yes	<i>Register Division of Freedom Newspapers v. County of Orange</i> (1984) 158 Cal.App.3d 893. For additional information, see p. 49 of the Guide.
SOCIAL SECURITY NUMBERS	No	Gov. Code § 7922.200 (formerly Gov. Code § 6254.29).
SPEAKER CARDS	Yes	Gov. Code, § 7922.000 (formerly Gov. Code, § 6255).
TAX RETURN INFORMATION	No	Gov. Code, § 7927.705 (formerly Gov. Code, § 6254(k)); Internal Revenue Code, § 6103.
TAXPAYER INFORMATION RECEIVED IN CONNECTION WITH COLLECTION OF LOCAL TAXES	No	Gov. Code, § 7925.000 (formerly Gov. Code, § 6254(i)). For additional information, see p. 61 of the Guide.
TEACHER TEST SCORES, IDENTIFIED BY NAME, SHOWING TEACHERS' EFFECT ON STUDENTS' STANDARDIZED TEST PERFORMANCE	No	Gov. Code, § 7922.000 (formerly Gov. Code, § 6255); <i>Los Angeles Unified School Dist. v. Superior Court</i> (2014) 228 Cal.App.4th 222.

INFORMATION/RECORDS REQUESTED	MUST THE INFORMATION/RECORD GENERALLY BE DISCLOSED?	APPLICABLE AUTHORITY
TELEPHONE RECORDS OF ELECTED OFFICIALS	Yes, as to expense totals. No, as to phone numbers called.	See <i>Rogers v. Superior Court</i> (1993) 19 Cal.App.4th 469.
UTILITY USAGE DATA	No, with certain exceptions.	Gov. Code, § 7927.410 (formerly Gov. Code, § 6254.16). For additional information, see p. 62 of the Guide.
VOTER INFORMATION	No	Gov. Code, § 7924.000 (formerly Gov. Code, § 6254.4). For additional information, see p. 36 of the Guide.
VOTER INFORMATION	No	Gov. Code, § 6254.4. For additional information, see p. 36 of the Guide.

- The analysis with respect to elected officials may not necessarily apply to executive officers such as City Managers or Chief Administrative Officers, and there is no case law directly addressing this issue.*
- It should be noted that these statements must be made available for inspection and copying not later than the second business day following the day on which the request was received.*

Revised August 2022

DISPOSITION OF FORMER LAW

Note. This table shows the proposed disposition of the following provisions of the California Public Records Act (Gov't Code §§ 6250- 6276.48), as that law will exist on January 1, 2020. Unless otherwise indicated, all statutory references are to the Government Code.

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6250-6276.48	7920.000-7930.215
6250.....	7921.000
6251.....	7920.000
6252(a).....	7920.510
6252(b)	7920.515
6252(c).....	7920.520
6252(d)	7920.525(a)
6252(e).....	7920.530
6252(f)	7920.540
6252(g).....	7920.545
6252.5.....	7921.305
6252.6.....	7927.420
6252.7.....	7921.310
6253(a).....	7922.525
6253(a) 1st sent.....	7922.525(a)
6253(a) 2d sent	7922.525(b)
6253(b)	7922.530(a)
6253(c).....	7922.535
6253(c) 1st, 4th sent	7922.535(a)
6253(c) 2d, 3d sent.....	7922.535(b)
6253(c) 5th sent	7922.535(c)
6253(d) 1st sent	7922.500
6253(d)(1)	7922.530(b)
6253(d)(2)	7922.530(c)
6253(d)(3)	7922.540(b)
6253(e).....	7922.505
6253(f) 1st sent	7922.545(a)
6253(f) 2d sent	7922.545(b)
6253.1(a)-(c).....	7922.600
6253.1(d)	7922.605
6253.2.....	7926.300
6253.21.....	7927.305
6253.3.....	7921.005
6253.31.....	7928.700
6253.4(a) 1st ¶	7922.630
6253.4(a) 2d ¶	7922.635
6253.4(b)	7922.640
6253.5.....	7924.100-7924.110
6253.5(a) 1st sent.....	7924.110(a)-(b)
6253.5(a) 2d sent	7924.110(c)
6253.5(b)	7924.110(d)
6253.5(c).....	7924.100
6253.5(d)	7924.105
6253.6.....	7924.005
6253.8(a)-(e)	7924.900
6253.8(f)	not cont'd

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6253.9.....	7922.570-7922.580
6253.9 intro cl 1st part.....	7922.570(a)
6253.9 intro cl 2d part.....	7922.570(b)
6253.9(a)(1).....	7922.570(b)
6253.9(a)(2) 1st sent.....	7922.570(b)
6253.9(a)(2) 2d sent	7922.575(a)
6253.9(b)	7922.575(b)
6253.9(c).....	7922.580(a)
6253.9(d)	7922.570(c)
6253.9(e).....	7922.580(b)
6253.9(f)	7922.580(c)
6253.9(g).....	7922.580(d)
6253.10.....	7922.680
6254(a).....	7927.500
6254(b)	7927.200
6254(c).....	7927.700
6254(d)	7929.000
6254(e).....	7927.300
6254(f)	7923.600-7923.625
6254(f) 1st sent	7923.600(a)
6254(f) 2d sent	7923.605(a)
6254(f) 3d sent	7923.605(b)
6254(f) 2d ¶	7923.600(b)
6254(f) 3d ¶	7923.610, 7923.615(a), 7923.620(a)
6254(f)(1)	7923.610
6254(f)(2)(A) 1st sent.....	7923.615(a)
6254(f)(2)(A) 2d, 3d sent.....	7923.615(b)
6254(f)(2)(B)	7923.615(c)
6254(f)(3) 1st, 2d sent	7923.620(a)
6254(f)(3) 3d sent	7923.620(b)
6254(f)(3) 4th sent.....	7923.620(c)
6254(f)(4)	7923.625
6254(g).....	7929.605
6254(h)	7928.705
6254(i).....	7925.000
6254(j).....	7927.100
6254(k).....	7927.705
6254 (l).....	7928.000
6254(m)	7928.100
6254(n)	7925.005
6254(o)	7924.505
6254(p)(1)	7928.405
6254(p)(2)	7928.410
6254(q)(1)	7926.220(a)
6254(q)(2)	7926.220(b)
6254(q)(3)	7926.220(c)
6254(q)(4)	7926.220(d)
6254(r)	7927.000
6254(s).....	7926.000
6254(t)	7926.210
6254(u)(1)	7923.800
6254(u)(2)-(3)	7923.805
6254(v)(1).....	7926.225(a)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254(v)(2).....	7926.225(b)
6254(v)(3).....	7926.225(c)
6254(v)(4).....	7926.225(d)
6254(w).....	7926.235
6254(w)(1).....	7926.235(a)
6254(w)(2).....	7926.235(b)
6254(w)(3).....	7926.235(c)
6254(x).....	7925.010
6254(y)(1).....	7926.230(a)
6254(y)(2).....	7926.230(b)
6254(y)(3).....	7926.230(c)
6254(y)(4).....	7926.230(d)
6254(y)(5).....	7926.230(e)
6254(z).....	7923.700
6254(aa).....	7929.200
6254(ab).....	7929.205
6254(ab) 1st sent	7929.205(b)
6254(ab) 2d sent	7929.205(a)
6254(ab) 3d sent	7929.205(c)
6254(ac).....	7926.100
6254(ad).....	7929.400-7929.430
6254(ad)(1).....	7929.400
6254(ad)(2).....	7929.405
6254(ad)(3).....	7929.410
6254(ad)(4).....	7929.415
6254(ad)(5).....	7929.420
6254(ad)(6).....	7929.425
6254(ad)(7).....	7929.430
6254 next-to-last ¶.....	7921.500
6254 last ¶ (unlabeled).....	7926.200
6254.1(a).....	7927.415
6254.1(b)	7927.405
6254.1(c).....	7929.600
6254.2.....	7924.300-7924.335
6254.2(a).....	7924.300
6254.2(b)	7924.305(a)
6254.2(c).....	7924.305(b)
6254.2(d)	7924.305(c)
6254.2(e).....	7924.305(d)
6254.2(f)	7924.305(f)
6254.2(g).....	7924.335
6254.2(h)	7924.310(a)-(b)
6254.2(i).....	7924.315
6254.2(j).....	7924.320
6254.2(k).....	7924.310(c)
6254.2(l).....	7924.330
6254.2(m)	7924.305(e)
6254.2(n)	7924.325
6254.3.....	7928.300
6254.4.....	7924.000
6254.4.5.....	7923.750
6254.5.....	7921.505
6254.5 1st sent	7921.505(b)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254.5 2d sent	7921.505(a)
6254.5(a)-(i).....	7921.505(c)
6254.6.....	7927.600
6254.7 (except (c)).....	7924.510
6254.7(a).....	7924.510(a)
6254.7(b)	7924.510(b)
6254.7(c).....	7924.700
6254.7(d) 1st sent	7924.510(c)
6254.7(d) 2d sent	7924.510(f)
6254.7(e).....	7924.510(d)
6254.7(f)	7924.510(e)
6254.8.....	7928.400
6254.9.....	7922.585
6254.10.....	7927.005
6254.11.....	7924.500
6254.12.....	7929.005
6254.13.....	7929.610
6254.14(a).....	7926.215
6254.14(a)(1).....	7926.215(a)
6254.14(a)(2).....	7926.215(b)
6254.14(a)(3).....	7926.215(c)
6254.14(a)(4).....	7926.215(d)
6254.14(a)(5).....	7926.215(e)
6254.14(b)	7926.220(d), 7926.225(d), 7926.230(d)
6254.15.....	7927.605
6254.16.....	7927.410
6254.17.....	7923.755
6254.18.....	7926.400-7926.430
6254.18(a).....	7926.405
6254.18(b)	7926.400
6254.18(b)(1)	7926.400(a)
6254.18(b)(2)	7926.400(b)
6254.18(b)(3)	7926.400(c)
6254.18(b)(4)	7926.400(d)
6254.18(c).....	7926.410
6254.18(d)	7926.415
6254.18(d) 1st sent	7926.415(a)
6254.18(d) 2d sent	7926.415(c)
6254.18(d) 3d sent	7926.415(b)
6254.18(e).....	7926.420
6254.18(f)	7926.425
6254.18(g).....	7926.430
6254.19.....	7929.210
6254.20.....	7927.400
6254.21 (except (f))	7928.200-7928.230
6254.21(a).....	7928.205
6254.21(b)	7928.210
6254.21(c).....	7928.215-7928.225
6254.21(c)(1).....	7928.215
6254.21(c)(1)(A)	7928.215(b)
6254.21(c)(1)(B)	7928.215(c)
6254.21(c)(1)(C)	7928.215(d)
6254.21(c)(1)(D)	7928.215(e)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6254.21(c)(1)(E).....	7928.215(a)
6254.21(c)(2).....	7928.225
6254.21(c)(3).....	7928.220
6254.21(d)	7928.230
6254.21(e).....	7928.200(b)
6254.21(f)	7920.500
6254.21(g).....	7928.200(a)
6254.22.....	7926.205
6254.22 1st sent	7926.205(a)
6254.22 2d sent	7926.205(b)
6254.22 3d & 4th sent.....	7926.205(c)
6254.23.....	7929.215
6254.24.....	7920.535
6254.25.....	7927.205
6254.26.....	7928.710
6254.26(a).....	7928.710(b)
6254.26(b)	7928.710(c)
6254.26(c).....	7928.710(a)
6254.27.....	7922.205
6254.28.....	7922.210
6254.29.....	7922.200
6254.30.....	7923.655
6254.30 1st sent	7923.655(a)
6254.30 2d sent	7923.655(b)
6254.33.....	7928.715
6254.35.....	7929.010
6255(a).....	7922.000
6255(b)	7922.540(a)
6257.5.....	7921.300
6258 1st sent	7923.000
6258 2d sent	7923.005
6259 (except (c) 1st sent intro cl)	7923.100-7923.500
6259(a) 1st sent.....	7923.100
6259(a) 2d sent	7923.105
6259(b)	7923.110
6259(c) 1st sent intro cl	not cont'd
6259(c) remainder.....	7923.500
6259(d)	7923.115(a)-(b)
6259(e).....	7923.115(c)
6260.....	7920.200
6261.....	7928.720
6262.....	7923.650
6263.....	7921.700
6264.....	7921.705
6265.....	7921.710
6267.....	7927.105
6268.....	7928.005, 7928.010
6268(a).....	7928.005
6268(b)	7928.010(a)
6268(c).....	7928.010(b)
6268.5.....	7928.015
6270.....	7921.010
6270.5.....	7922.700-7922.725

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
6270.5(a) 1st sent.....	7922.710(a)
6270.5(a) 2d sent	7922.715(a)
6270.5(a) 3d sent	7922.715(b)
6270.5(a) 4th sent	7922.720(a), (b)
6270.5(b)	7922.725(a)
6270.5(c)(1).....	7922.700(a)
6270.5(c)(2).....	7922.705
6270.5(c)(3).....	7922.700(b)
6270.5(d)	7922.725(b)
6270.5(e).....	7922.720(c)
6270.5(f)	7922.710(b)
6270.6.....	7928.800
6270.7.....	7926.500
6275-6276.48	7930.000-7930.215
6275.....	7930.000
6276.....	7930.005
6276.01.....	7930.100
6276.02.....	7930.105
6276.04.....	7930.110
6276.06.....	7930.115
6276.08.....	7930.120
6276.10.....	7930.125
6276.12.....	7930.130
6276.14.....	7930.135
6276.16.....	7930.140
6276.18.....	7930.145
6276.22.....	7930.150
6276.24.....	7930.155
6276.26.....	7930.160
6276.28.....	7930.165
6276.30.....	7930.170
6276.32.....	7930.175
6276.34.....	7930.180
6276.36.....	7930.185
6276.38.....	7930.190
6276.40.....	7930.195
6276.42.....	7930.200
6276.44.....	7930.205
6276.46.....	7930.210
6276.48.....	7930.215

DERIVATION OF NEW LAW

Note. This table shows the derivation of each proposed provision in this recommendation. Unless otherwise indicated, all statutory references are to the Government Code.

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7920.000.....	6251
7920.005.....	new
7920.100.....	new
7920.105.....	new
7920.110.....	new
7920.115.....	new
7920.120.....	new
7920.200.....	6260
7920.500.....	6254.21(f)
7920.505.....	new
7920.510.....	6252(a)
7920.515.....	6252(b)
7920.520.....	6252(c)
7920.525(a).....	6252(d)
7920.525(b).....	new
7920.530.....	6252(e)
7920.535.....	6254.24
7920.540.....	6252(f)
7920.545.....	6252(g)
7921.000.....	6250
7921.005.....	6253.3
7921.010.....	6270
7921.300.....	6257.5
7921.305.....	6252.5
7921.310.....	6252.7
7921.500.....	6254 next-to-last ¶
7921.505.....	6254.5
7921.505(a).....	6254.5 2d sent
7921.505(b).....	6254.5 1st sent
7921.505(c).....	6254.5(a)-(i)
7921.700.....	6263
7921.705.....	6264
7921.710.....	6265
7922.000.....	6255(a)
7922.200.....	6254.29
7922.205.....	6254.27
7922.210.....	6254.28
7922.500.....	6253(d) 1st sent
7922.505.....	6253(e)
7922.525.....	6253(a)
7922.525(a).....	6253(a) 1st sent
7922.525(b).....	6253(a) 2d sent
7922.530(a).....	6253(b)
7922.530(b).....	6253(d)(1)
7922.530(c).....	6253(d)(2)
7922.535.....	6253(c)
7922.535(a).....	6253(c) 1st, 4th sent

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7922.535(b)	6253(c) 2d, 3d sent
7922.535(c)	6253(c) 5th sent
7922.540(a)	6255(b)
7922.540(b)	6253(d)(3)
7922.540(c)	new
7922.545	6253(f)
7922.545(a)	6253(f) 1st sent
7922.545(b)	6253(f) 2d sent
7922.570-7922.580	6253.9
7922.570(a)	6253.9 intro cl 1st part
7922.570(b)	6253.9 intro cl 2d part, (a)(1), (a)(2) 1st sent
7922.570(c)	6253.9(d)
7922.575(a)	6253.9(a)(2) 2d sent
7922.575(b)	6253.9(b)
7922.580(a)	6253.9(c)
7922.580(b)	6253.9(e)
7922.580(c)	6253.9(f)
7922.580(d)	6253.9(g)
7922.585	6254.9
7922.600	6253.1(a)-(c)
7922.605	6253.1(d)
7922.630	6253.4(a) 1st ¶
7922.635	6253.4(a) 2d ¶
7922.640	6253.4(b)
7922.680	6253.10
7922.700-7922.725	6270.5
7922.700(a)	6270.5(c)(1)
7922.700(b)	6270.5(c)(3)
7922.705	6270.5(c)(2)
7922.710(a)	6270.5(a) 1st sent
7922.710(b)	6270.5(f)
7922.715(a)	6270.5(a) 2d sent
7922.715(b)	6270.5(a) 3d sent
7922.720(a), (b)	6270.5(a) 4th sent
7922.720(c)	6270.5(e)
7922.725(a)	6270.5(b)
7922.725(b)	6270.5(d)
7923.000	6258 1st sent
7923.005	6258 2d sent
7923.100-7923.500	6259 (except (c) 1st sent intro cl)
7923.100	6259(a) 1st sent
7923.105	6259(a) 2d sent
7923.110	6259(b)
7923.115(a)-(b)	6259(d)
7923.115(c)	6259(e)
7923.500	6259(c) (except obsolete intro cl)
7923.600-7923.625	6254(f)
7923.600(a)	6254(f) 1st sent
7923.600(b)	6254(f) 2d ¶
7923.605(a)	6254(f) 2d sent
7923.605(b)	6254(f) 3d sent
7923.610	6254(f) 3d ¶ (re 6254(f)(1)),
.....	6254(f)(1)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7923.615(a).....	6254(f) 3d ¶ (re 6254(f)(2)), 6254(f)(2)(A) 1st sent
7923.615(b)	6254(f)(2)(A) 2d, 3d sent
7923.615(c).....	6254(f)(2)(B)
7923.620(a).....	6254(f) 3d ¶ (re 6254(f)(3)), 6254(f)(3) 1st, 2d sent
7923.620(b)	6254(f)(3) 3d sent
7923.620(c).....	6254(f)(3) 4th sent
7923.625.....	6254(f)(4)
7923.630.....	new
7923.650.....	6262
7923.655.....	6254.30
7923.655(a).....	6254.30 1st sent
7923.655(b)	6254.30 2d sent
7923.700.....	6254(z)
7923.750.....	6254.4.5
7923.755.....	6254.17
7923.800-7923.805	6254(u)
7923.800.....	6254(u)(1)
7923.805.....	6254(u)(2)-(3)
7924.000.....	6254.4
7924.005.....	6253.6
7924.100.....	6253.5(c)
7924.105.....	6253.5(d)
7924.110(a)-(b)	6253.5(a) 1st sent
7924.110(c).....	6253.5(a) 2d sent
7924.110(d)	6253.5(b)
7924.300-7924.335	6254.2
7924.300.....	6254.2(a)
7924.305(a).....	6254.2(b)
7924.305(b)	6254.2(c)
7924.305(c).....	6254.2(d)
7924.305(d)	6254.2(e)
7924.305(e).....	6254.2(m)
7924.305(f)	6254.2(f)
7924.310(a)-(b)	6254.2(h)
7924.310(c).....	6254.2(k)
7924.315.....	6254.2(i)
7924.320.....	6254.2(j)
7924.325.....	6254.2(n)
7924.330.....	6254.2(l)
7924.335.....	6254.2(g)
7924.500.....	6254.11
7924.505.....	6254(o)
7924.510.....	6254.7 (except (c))
7924.510(a).....	6254.7(a)
7924.510(b)	6254.7(b)
7924.510(c).....	6254.7(d) 1st sent
7924.510(d)	6254.7(e)
7924.510(e).....	6254.7(f)
7924.510(f)	6254.7(d) 2d sent
7924.700.....	6254.7(c)
7924.900.....	6253.8(a)-(e)
7925.000.....	6254(i)
7925.005.....	6254(n)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7925.010.....	6254(x)
7926.000.....	6254(s)
7926.100.....	6254(ac)
7926.200.....	6254 last ¶ (unlabeled)
7926.205.....	6254.22
7926.205(a).....	6254.22 1st sent
7926.205(b)	6254.22 2d sent
7926.205(c).....	6254.22 3d & 4th sent
7926.210.....	6254(t)
7926.215.....	6254.14(a)
7926.215(a).....	6254.14(a)(1)
7926.215(b)	6254.14(a)(2)
7926.215(c).....	6254.14(a)(3)
7926.215(d)	6254.14(a)(4)
7926.215(e).....	6254.14(a)(5)
7926.220(a).....	6254(q)(1)
7926.220(b)	6254(q)(2)
7926.220(c).....	6254(q)(3)
7926.220(d)	6254(q)(4),
.....	6254.14(b) (re 6254(q))
7926.225(a).....	6254(v)(1)
7926.225(b)	6254(v)(2)
7926.225(c).....	6254(v)(3)
7926.225(d)	6254(v)(4),
.....	6254.14(b) (re 6254(v))
7926.230(a).....	6254(y)(1)
7926.230(b)	6254(y)(2)
7926.230(c).....	6254(y)(3)
7926.230(d)	6254(y)(4),
.....	6254.14(b)(re 6254(y))
7926.230(e).....	6254(y)(5)
7926.235.....	6254(w)
7926.235(a).....	6254(w)(1)
7926.235(b)	6254(w)(2)
7926.235(c).....	6254(w)(3)
7926.300.....	6253.2
7926.400-7926.430	6254.18
7926.400.....	6254.18(b)
7926.400(a).....	6254.18(b)(1)
7926.400(b)	6254.18(b)(2)
7926.400(c).....	6254.18(b)(3)
7926.400(d)	6254.18(b)(4)
7926.405.....	6254.18(a)
7926.410.....	6254.18(c)
7926.415.....	6254.18(d)
7926.415(a).....	6254.18(d) 1st sent
7926.415(b)	6254.18(d) 3d sent
7926.415(c).....	6254.18(d) 2d sent
7926.420.....	6254.18(e)
7926.425.....	6254.18(f)
7926.430.....	6254.18(g)
7926.500.....	6270.7
7927.000.....	6254(r)

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7927.005.....	6254.10
7927.100.....	6254(j)
7927.105.....	6267
7927.200.....	6254(b)
7927.205.....	6254.25
7927.300.....	6254(e)
7927.305.....	6253.21
7927.400.....	6254.20
7927.405.....	6254.1(b)
7927.410.....	6254.16
7927.415.....	6254.1(a)
7927.420.....	6252.6
7927.500.....	6254(a)
7927.600.....	6254.6
7927.605.....	6254.15
7927.700.....	6254(c)
7927.705.....	6254(k)
7928.000.....	6254 (l)
7928.005-7928.010	6268
7928.005.....	6268(a)
7928.010(a).....	6268(b)
7928.010(b)	6268(c)
7928.015.....	6268.5
7928.100.....	6254(m)
7928.200-7928.230	6254.21 (except (f))
7928.200(a).....	6254.21(g)
7928.200(b)	6254.21(e)
7928.205.....	6254.21(a)
7928.210.....	6254.21(b)
7928.215-7928.225	6254.21(c)
7928.215.....	6254.21(c)(1)
7928.215(a).....	6254.21(c)(1)(E)
7928.215(b)	6254.21(c)(1)(A)
7928.215(c).....	6254.21(c)(1)(B)
7928.215(d)	6254.21(c)(1)(C)
7928.215(e).....	6254.21(c)(1)(D)
7928.220.....	6254.21(c)(3)
7928.225.....	6254.21(c)(2)
7928.230.....	6254.21(d)
7928.300.....	6254.3
7928.400.....	6254.8
7928.405.....	6254(p)(1)
7928.410.....	6254(p)(2)
7928.700.....	6253.31
7928.705.....	6254(h)
7928.710(a).....	6254.26(c)
7928.710(b)	6254.26(a)
7928.710(c).....	6254.26(b)
7928.715.....	6254.33
7928.720.....	6261
7928.800.....	6270.6
7929.000.....	6254(d)
7929.005.....	6254.12

EXISTING PROVISION(S)	PROPOSED PROVISION(S)
7929.010.....	6254.35
7929.200.....	6254(aa)
7929.205.....	6254(ab)
7929.205(a).....	6254(ab) 2d sent
7929.205(b)	6254(ab) 1st sent
7929.205(c).....	6254(ab) 3d sent
7929.210.....	6254.19
7929.215.....	6254.23
7929.400-7929.430	6254(ad)
7929.400.....	6254(ad)(1)
7929.405.....	6254(ad)(2)
7929.410.....	6254(ad)(3)
7929.415.....	6254(ad)(4)
7929.420.....	6254(ad)(5)
7929.425.....	6254(ad)(6)
7929.430.....	6254(ad)(7)
7929.600.....	6254.1(c)
7929.605.....	6254(g)
7929.610.....	6254.13
7930.000-7930.215	6275-6276.48
7930.000.....	6275
7930.005.....	6276
7930.100.....	6276.01
7930.105.....	6276.02
7930.110.....	6276.04
7930.115.....	6276.06
7930.120.....	6276.08
7930.125.....	6276.10
7930.130.....	6276.12
7930.135.....	6276.14
7930.140.....	6276.16
7930.145.....	6276.18
7930.150.....	6276.22
7930.155.....	6276.24
7930.160.....	6276.26
7930.165.....	6276.28
7930.170.....	6276.30
7930.175.....	6276.32
7930.180.....	6276.34
7930.185.....	6276.36
7930.190.....	6276.38
7930.195.....	6276.40
7930.200.....	6276.42
7930.205.....	6276.44
7930.210.....	6276.46
7930.215.....	6276.48



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Rental Housing Vouchers



16,634
Voucher Funding Baseline

Tenant-Based (Baseline): 12,742
(Voucher household receives assistance for any rental housing unit in the market.)

Committed Project-Based (Baseline): 3,892
(Assistance is tied to a specific development or housing unit. When a resident moves on, the assistance remains with the unit to help another household.)



17,269
Voucher Households

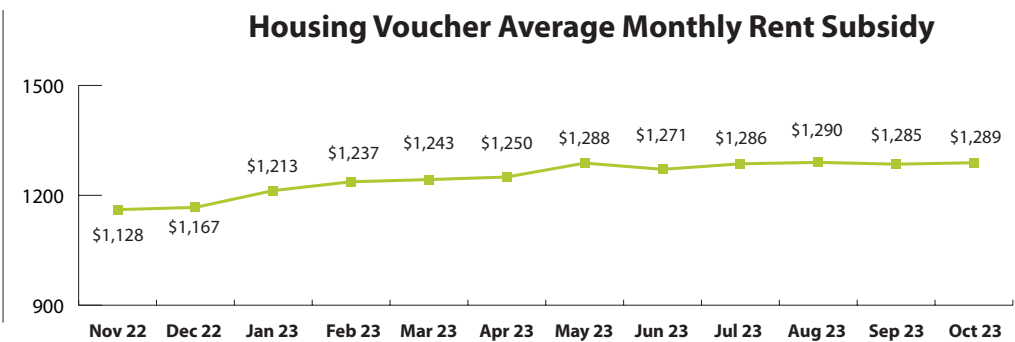
38,014
Individuals in Voucher Households



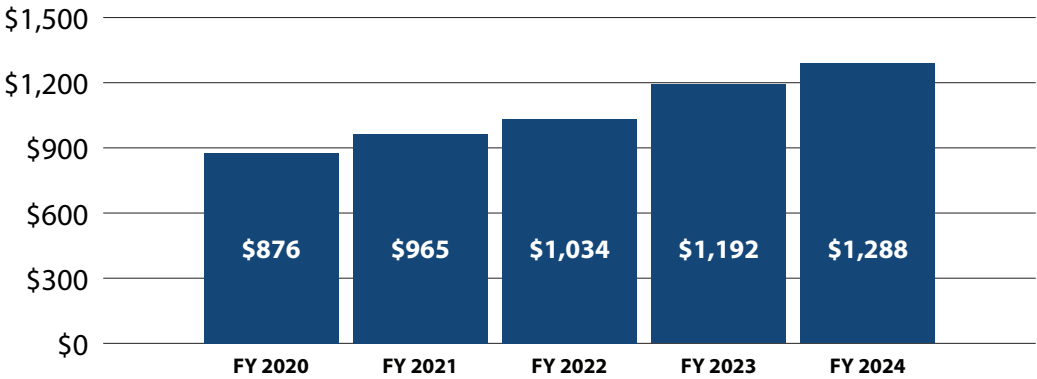
83
Households Ended Participation



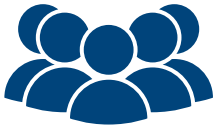
103.82%
Utilization Rate



Housing Voucher Average Monthly Rent Subsidy by Fiscal Year



47%
increase since
FY 2020



Waiting List: 133,718

876
Households Added to Waiting List in September 2023

12 - 15 years
Average Time on Waiting List



Participating Landlords: 4,783

(Data as of September 30, 2023)

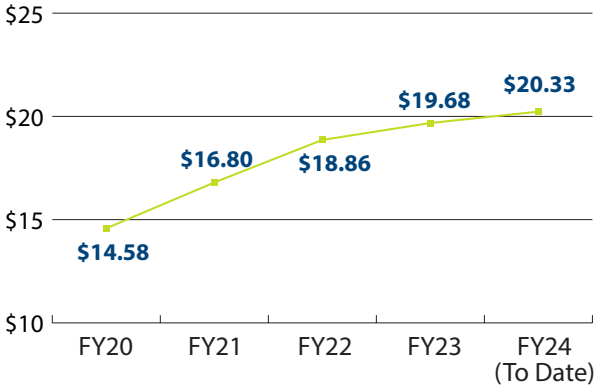
SDHC Achievement Academy (Fiscal Year 2024 through September 30, 2023):
1,518 Participants

59
Individuals placed in jobs or increased earnings

425
Individuals participating in education or workforce development classes

291
Family Self-Sufficiency Participants

\$20.23
Average Hourly Wage



(Data as of September 30, 2023)

Section 8 Housing Choice Voucher Wait List Update

To maintain accurate lists of applicants for the limited amount of federal rental assistance in the City of San Diego, SDHC is continuing the process to update its Rental Assistance Wait Lists. After months of outreach, SDHC on August 30, 2023, began the process of removing unresponsive households from the rental assistance Wait Lists. This process will continue through December 2023. Households may not respond to requests to update their information for a variety of reasons, such as moving out of the area, no longer needing help, or passing away. SDHC is not able to collect data on the reasons why individual households did not respond. As unresponsive households are removed, the number of households on the Wait Lists will decline; however, additional families are added to the Wait Lists each month as new applications are submitted.

If an applicant is removed from the Wait Lists for failure to respond due to circumstances beyond the applicant’s control, SDHC may reinstate their original application. SDHC will allow requests for reinstatement for up to 24 months after the update deadline. Any household with a disability can be reinstated to the Wait Lists with their original application date and time regardless of when they request reinstatement.

In addition to extensive outreach directly to wait list households that began in December 2022, SDHC raised awareness of the wait list update through multiple posts on SDHC’s social media accounts. SDHC’s previous outreach efforts included sending a “Save My Spot” letter and email (if an email address is on file) to applicants currently on a wait list. To remain active on the wait list and maintain the original application date and time, applicants were required to update their application online within 60 days from the date of the letter/email. If an existing wait list application was not updated within the time allotted, the application will be removed from the wait list.

SDHC also continues to contract with the following Community-Based Organizations (CBOs) to serve as an access point for individuals who require additional in-person assistance responding to the wait list update. Addresses for CBOs will be provided to all applicants on the Wait List: Casa Familiar, Chicano Federation, Logan Heights Community Development Corporation, Refugee Assistance Center, Horn of Africa Community, and United Women of East Africa Support Team.

AT-A-GLANCE HOMELESSNESS SOLUTIONS



Coordinated Shelter Intake Referrals Summary

November 2023

Referral Type	# of Referrals	Percentage
Complete Referrals	303	18%
Incomplete Referrals	1,415	82%
Total Referrals	1,718	100%

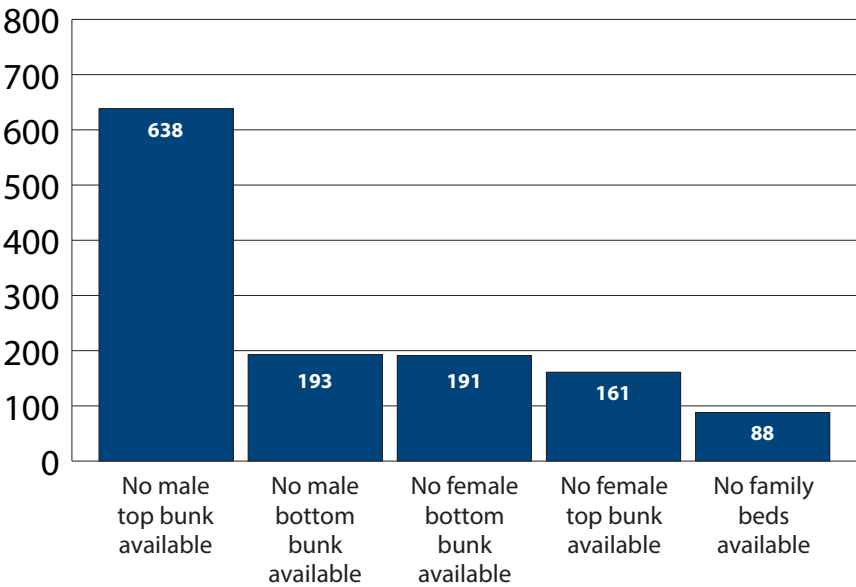
Fiscal Year to Date (July 1, 2023 – November 30, 2023)

Referral Type	# of Referrals	Percentage
Complete Referrals	1,905	21%
Incomplete Referrals	7,349	79%
Total Referrals	9,254	100%

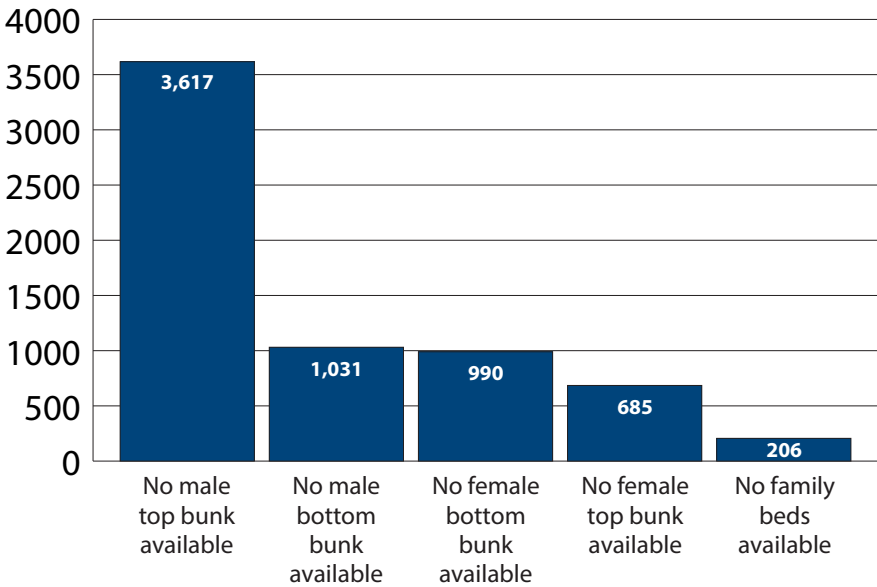
Total referrals are duplicative. An individual counted as an incomplete referral on one or more occasions may also be included as a completed referral upon shelter placement.

Most Frequent Reasons for Incomplete Referrals

November 2023



Fiscal Year to Date (July 1, 2023 – November 30, 2023)

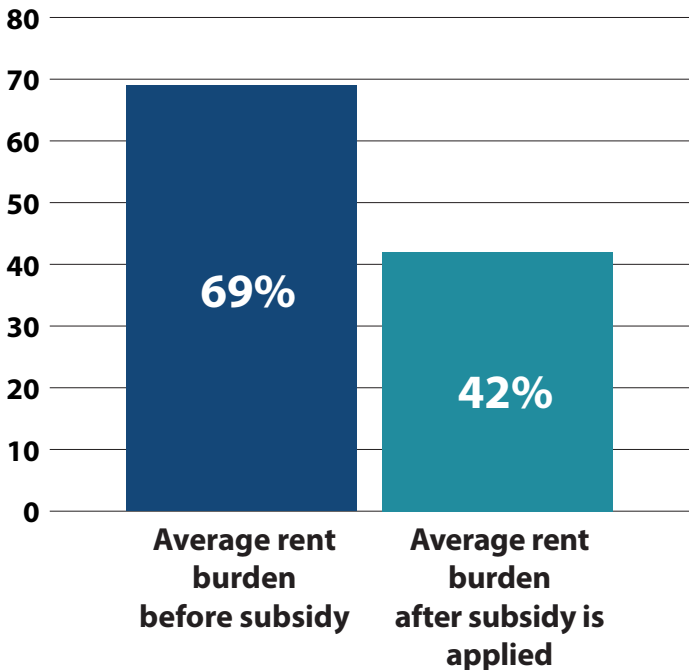


Seniors Safe at Home

Announced on September 29, 2023, the Seniors Safe at Home program provides time-limited case management and a specified rental assistance amount per month for seniors aged 55 and older with low income, experiencing a housing crisis, and at risk of homelessness. This is a collaboration among SDHC, Serving Seniors and The Lucky Duck Foundation, which invested \$500,000 in philanthropic funds for the program.



34
Households Enrolled
As of November 30, 2023



“Rent burden” refers to the percentage of household income spent on rent.

(Data as of November 30, 2023)

HOUSING FIRST – SAN DIEGO

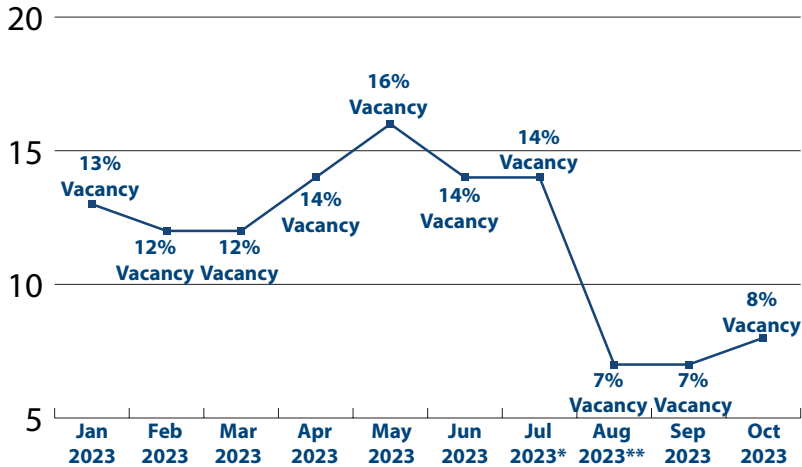


11,251
Housing Solutions
Created since 2014

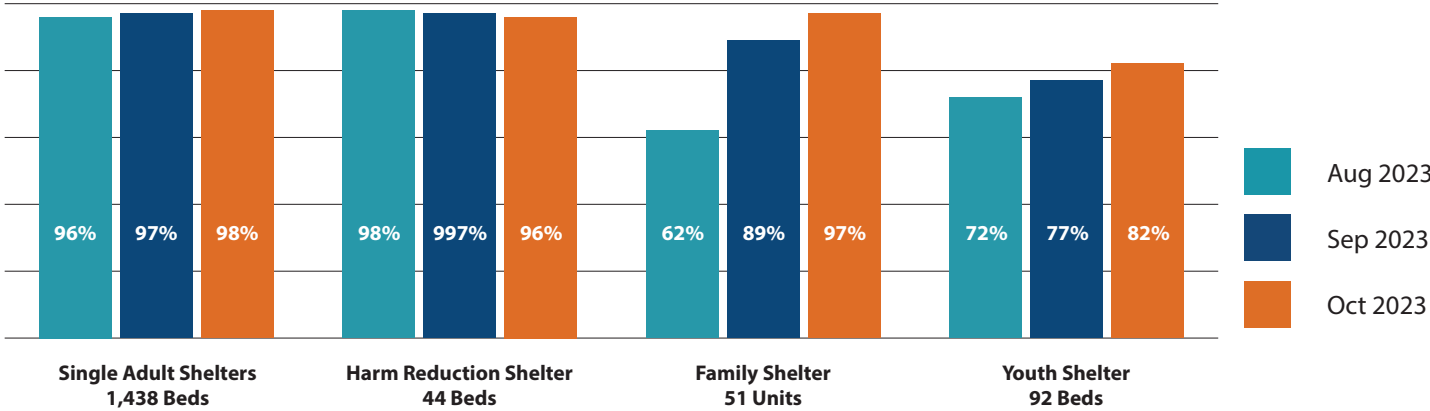
202
Housing Solutions
FY2024 to date

(Data as of October 31, 2023)

Homelessness Sector Staff



Average Monthly Bed Occupancy Rate – Last Three Months



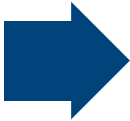
Single adult shelters include beds utilized by SDPD and the SDPD Homeless Outreach Team (HOT)

Occupancy rates at Family Shelters and Youth Shelters are lower in August 2023 due to the wind-down of operations for those subpopulations at the Bridge Shelter located at Golden Hall and the ramp-up of additional beds at other locations.

Beginning in August 2023, SDHC reports occupancy for family shelters based on the number of occupied units instead of beds. The family shelters currently administered by SDHC are non-congregate, and the number of available and occupied beds in each unit fluctuates based on the size of the family in a particular unit. Reporting on units is therefore a more accurate representation of availability and occupancy.

Housing Vouchers Committed to Addressing Homelessness

5,766
Vouchers Committed
(Includes developments
pending completion)



4,340
Rental Housing
Vouchers Leased

(Data as of September 30, 2023)

City/SDHC-Funded Homelessness Shelters & Services

Homelessness System Dashboard: <https://www.sdhc.org/homelessness-solutions/city-homeless-shelters-services/dashboard/>

City Shelters Data: https://www.sdhc.org/wp-content/uploads/2022/04/SDHC_City_Shelter_Dashboard.pdf

City of San Diego Community Action Plan on Homelessness

Quarterly updates online at <https://www.sdhc.org/homelessness-solutions/community-action-plan/overview/>



Housing Instability Prevention Program

The Housing Instability Prevention Program (HIPP) helps pay rent and other housing-related expenses for families in the City of San Diego with low income, experiencing a housing crisis and at risk of homelessness. The San Diego Housing Commission (SDHC) operates HIPP for the City of San Diego. HIPP launched September 8, 2022, with funding the San Diego City Council allocated specifically for the creation of this program.

How It Works

- Households that need assistance call (619) 578-7768, SDHC’s HOUSING FIRST – SAN DIEGO hotline.
 - SDHC provides enrolled households with \$250, \$500 or \$750 per month toward their rent, depending on the household’s circumstances.
 - HIPP also provides case management and assists with
- housing-related expenses, such as past-due rent and past-due utilities, depending on the household’s need. These payments are made directly to the landlord or utility company.

 - Enrolled households receive assistance for up to 24 months.

Eligibility Criteria

- Live in the City of San Diego
 - Spending more than 40 percent of their gross income on housing in San Diego.
 - After the rent subsidy begins, the household cannot spend more than 95 percent of its income on rent.
 - Experiencing a housing crisis, such as facing eviction, and at risk of homelessness.
 - No alternative housing options.
 - Lack the money and support network to resolve their housing crisis.
- Household income is at or below 80 percent of San Diego’s Area Median Income, currently \$104,100 per year for a family of four.
 - Assets such as bank accounts or retirement savings that total less than \$2,000.
 - Do NOT currently receive ongoing rental assistance from another program.
 - Immigration status DOES NOT affect eligibility for this program.
 - Additional criteria apply.

Priority Populations

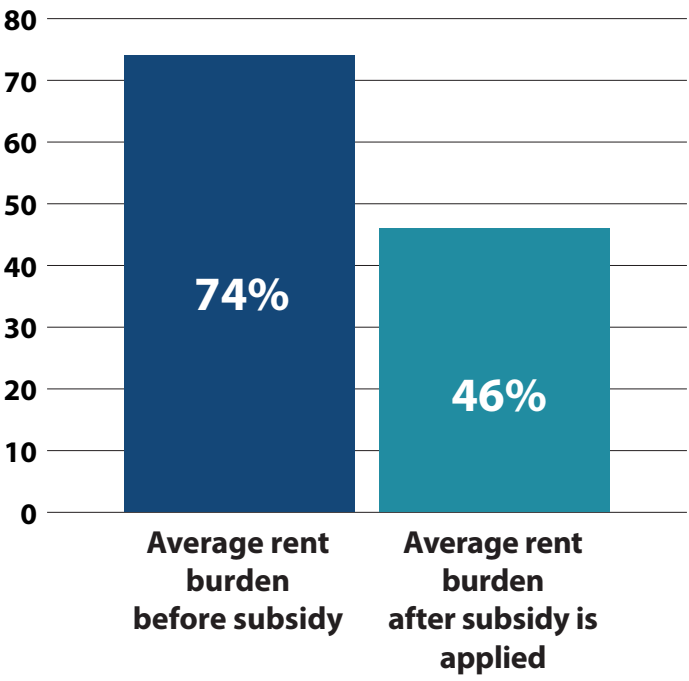
- Seniors aged 55 and older
 - People of any age with a disability
- Families with a child aged 17 and younger
 - Transition-age youth between the ages of 18 and 24



HIPP Enrolled Household Demographics

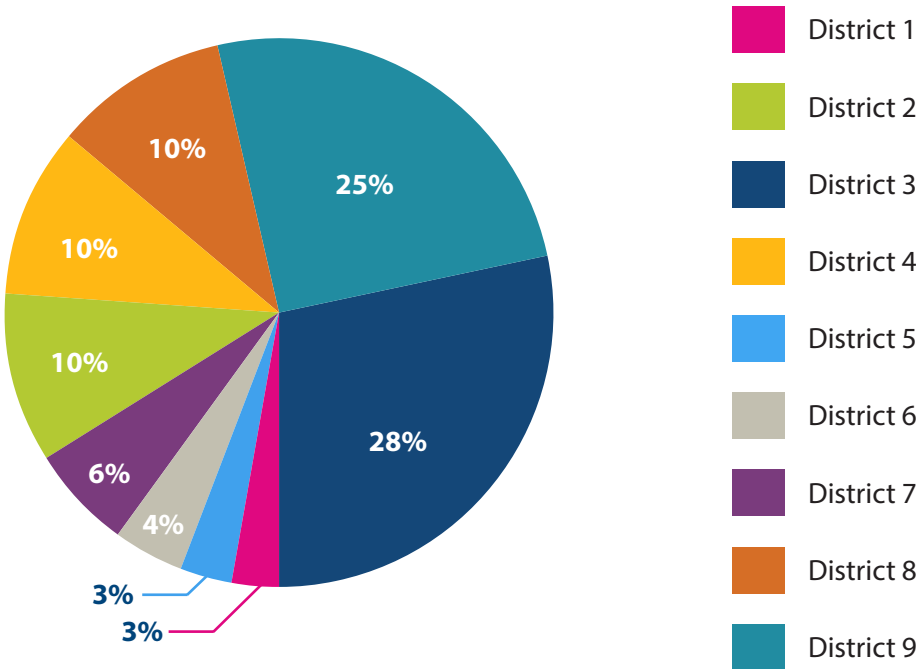


Both categories apply to some households



“Rent burden” refers to the percentage of household income spent on rent.

Enrolled Households by Council District



AT-A-GLANCE EVICTION PREVENTION PROGRAM



Eviction Prevention Program

SDHC contracts with Legal Aid Society of San Diego to operate the City of San Diego Eviction Prevention Program (EPP). EPP helps renters with low income in the City of San Diego who are facing eviction for not paying their rent due to the financial effects of the COVID-19 pandemic.

Eligible households may receive full legal representation throughout the pre-eviction and eviction process, in settlement negotiations and through trial, if necessary. EPP also offers limited legal services for eligible tenants through clinics, hotlines or appointments (virtual or in person), such as help with completing COVID-19-related declarations; submitting formal responses to eviction notices; formal responses to Unlawful Detainers; and requests for reasonable accommodations.

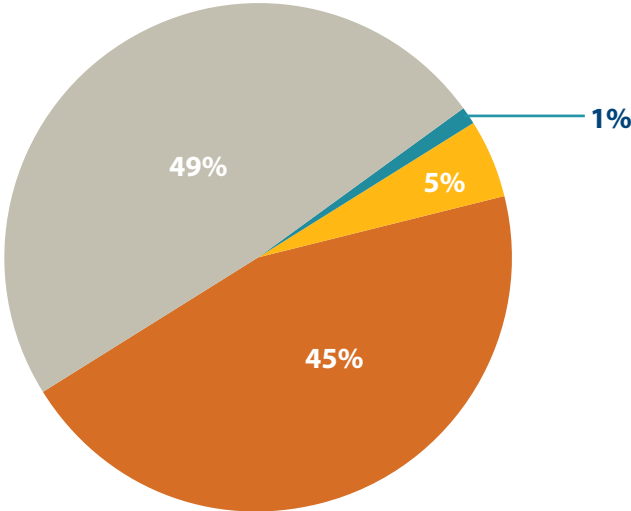
Data for program activities from December 2021 through June 2023 are available at <https://sdhc.org/eviction-prevention-program-data-as-of-06302023/>.

Fiscal Year 2024 data, as of October 31, are below.

Project Activities	Total (Fiscal Year 2024 Year-to-Date)
Eligible tenants receiving Full legal assistance	56
Eligible tenants receiving Limited legal assistance	467
Public workshops conducted	0
Targeted trainings conducted	3
Public awareness events conducted	1
Hotline calls received and responded to	285
Referrals to other community resources	134
Additional services provided to eligible tenants with low income	638

Race & Ethnicity

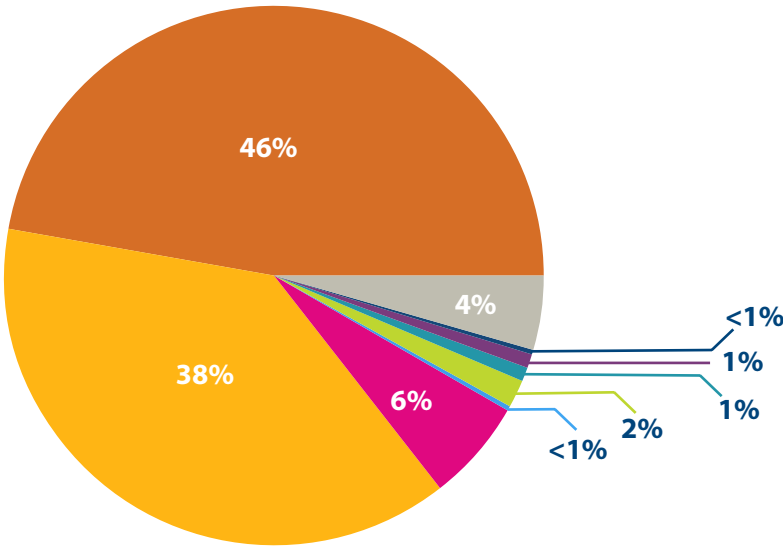
Identified as Hispanic



- White
- Black/African American
- Asian or Asian American
- Asian & White
- American Indian/Alaskan Native
- American Indian/Alaskan Native & Black/African American
- Native Hawaiian/Other Pacific Islander
- Black/African American & White
- Other Multiracial

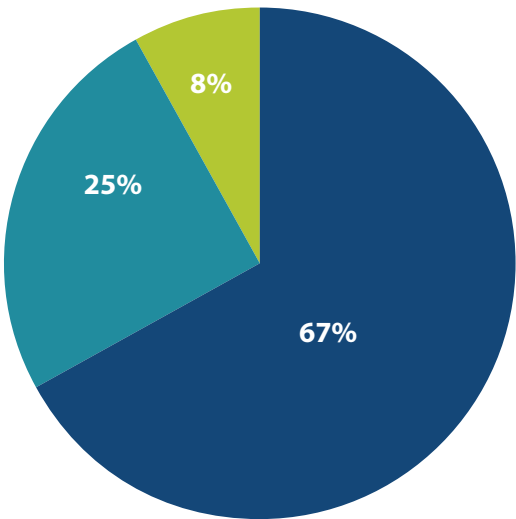
No participants identified as Asian, American Indian / Alaskan Native, American Indian / Alaskan Native & White; Asian & White; Black / African American & White; or American Indian / Alaskan Native & Black / African American.

Identified as Not Hispanic



No participants identified as American Indian / Alaskan Native & White.

Income



- Extremely Low Income
0-30% of AMI
- Very Low Income
31-50% of AMI
- Low/ Moderate Income
51-80% of AMI

No participants identified as Non-Low/ Moderate income (>80% of AMI)



Affordable Rental Housing Units



25,601
In Service



2,387
Approved and
Pending Completion
(SDHC financing)



205
Approved by the
SDHC Board in October 2023



SDHC Multifamily Rental
Housing Loans

130
Loans

\$406,483,762
Total Amount

(*Data as of June 30, 2023)
This information is updated quarterly.



SDHC Multifamily Housing
Revenue Bonds
Developments Supported by Bonds

10,463
Total Units

9,103
Affordable Units

\$2,136,194,217
Total Bond Portfolio

(Data as of November 30, 2023)

First-Time Homebuyer Program

27
Households Assisted through
First-time Homebuyer
Down Payment Assistance Program

5
Households Assisted through
Affordable For-Sale Program

6,042
Households Assisted
Since 1988

(Fiscal year-to-date as of November 30, 2023)

*Total since 1988 includes all single-family housing finance programs, including the first-time homebuyer and affordable for-sale housing programs.

Affordable Housing Dashboard

Includes a map searchable by ZIP Code and property-specific information, as well as a high-level overview about affordable housing throughout the city: <https://public.tableau.com/app/profile/san.diego.housing.commission.sdhc/viz/CityofSanDiegoAffordableHousingOverview/AffordableHousingOverview>

Regional Housing Needs
Allocation Goals and Progress

City of San Diego Planning Department Annual Housing Element Progress Report 2022 (Page 55): https://www.sandiego.gov/sites/default/files/housing_element_annual_progress_report_2022.pdf



LEGISLATIVE AFFAIRS

Federal

SDHC Senior Vice President of Policy & Land Use Molly Weber participated in meetings with U.S. Representative Sara Jacobs' and U.S. Representative Scott Peters' offices to discuss housing and homelessness issues.

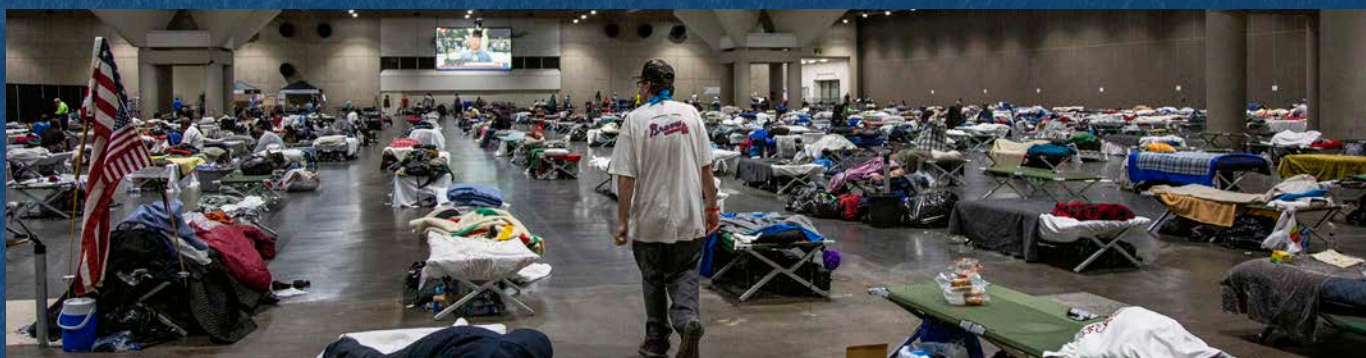
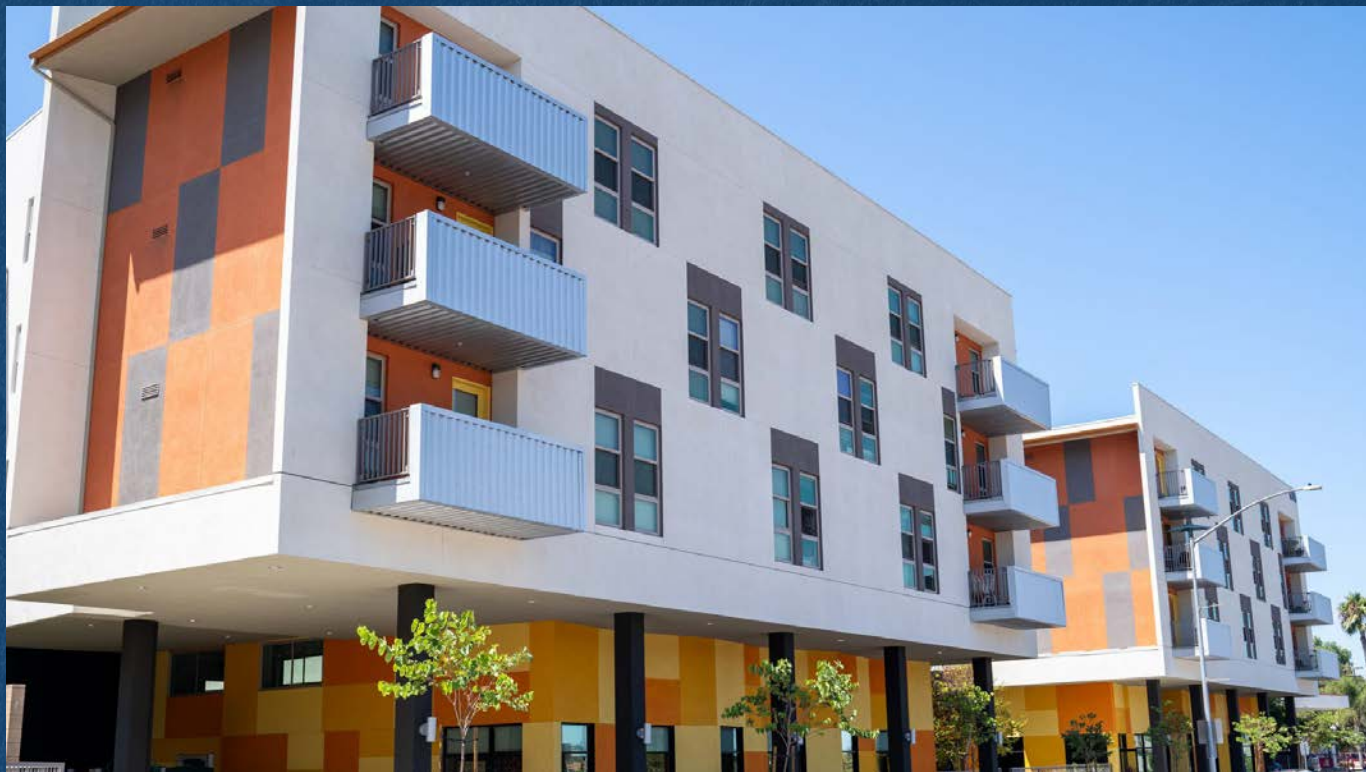
State

Throughout November, SDHC staff and legislative consultant Lighthouse Public Affairs met with the offices of California Senate and Assembly members from San Diego's delegation, including Senate President pro Tempore Toni Atkins, Senator Catherine Blakespear, Senator Steve Padilla, Assemblymember David Alvarez, Assemblymember Brian Maienschein, and Assemblymember Chris Ward.



SDHC Web Pages and Reports at www.sdhc.org

- [Fiscal Year 2023 Annual Report](#)
- [SDHC Strategic Plan Fiscal Year \(FY\) 2022 – FY 2024](#)
 - [Fiscal Year 2023 Progress Report](#)
- [Budget and Financial Reports](#)
- [SDHC Administrative Policies](#)
- [Section 8 Administrative Plan](#)
- [HOUSING FIRST – SAN DIEGO, SDHC’s Homelessness Action Plan](#)
- [Community Action Plan on Homelessness for the City of San Diego](#)
- [Homelessness Services Compensation Study](#)
- [Accessory Dwelling Unit Pilot Program: Lessons Learned for San Diego Homeowners](#)
- [Preserving Affordable Housing in the City of San Diego](#)
- [Addressing the Housing Affordability Crisis: An Action Plan for San Diego](#)
- [Addressing the Housing Affordability Crisis: San Diego Housing Production Objectives 2018 – 2028](#)
- [Addressing the Housing Affordability Crisis: 2018 Status Report](#)
- [Creating Affordable Housing through Public Housing Conversion](#)



San Diego Housing Commission Strategic Plan

FY22 – FY24

We're About People



MESSAGE FROM THE CEO



Planning for the years ahead while remaining mindful of past successes and challenges is important for any organization. It provides a guide for progress as an organization moves forward.

With this principle as a foundation, the San Diego Housing Commission (SDHC) engaged in a strategic planning process that produced a bold new vision for the agency: a future in which everyone in the City of San Diego has a home they can afford.

As the COVID-19 pandemic evolved and continued over the past year, it reinforced and elevated the importance of this vision. A stable, affordable place to call home is essential.

Achieving this vision will require collaboration, perseverance and commitment from multiple organizations working together. SDHC cannot do this alone. We value the many elected officials, civic leaders, developers, service providers and community organizations that have worked with SDHC in the past, and we look forward to continuing these relationships and developing new ones in the years to come.

Many of these individuals and organizations, as well as our customers—individuals and families with low income or experiencing homelessness—and staff provided valuable insight as we worked on the elements of SDHC's Strategic Plan in consultation with Nuffer, Smith Tucker.

To define SDHC's role in working toward the vision, we also developed a new mission for the agency: SDHC fosters social and economic stability for vulnerable populations in the City of San Diego through quality, affordable housing; opportunities for financial self-reliance; and homelessness solutions.

The Strategic Plan detailed on the following pages will serve as a roadmap for SDHC, guiding our decisions, initiatives and day-to-day efforts for the next three years. At the same time, we have the flexibility to adapt this Strategic Plan as needed to address changing circumstances around us.

I thank SDHC's Board of Commissioners for their ongoing leadership, and direction. The input and support from our Board members has helped craft the direction and creation of this plan.

SDHC looks forward to continuing to collaborate with Mayor Todd Gloria, the San Diego City Council and organizations throughout the City of San Diego to identify and implement additional innovative solutions consistent with SDHC's vision and mission to help the San Diego community thrive.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Gentry".

Richard C. Gentry
President and CEO
San Diego Housing Commission



SAN DIEGO
HOUSING
COMMISSION

THE STRATEGIC PLANNING PROCESS:

The strategic planning process was designed to obtain input from a variety of stakeholders. The process included:



STEP 1:

Telephone interviews with City Councilmembers, SDHC Commissioners, a representative sample of SDHC staff and community partners



STEP 2:

Electronic surveys of the full SDHC staff, SDHC tenants and individuals SDHC programs serve



STEP 3:

Strategic planning meeting with SDHC Board of Commissioners' Ad Hoc Committee on Planning Priorities to review themes and draft elements



STEP 4:

Staff planning meeting to elaborate on strategic priorities and action items



STEP 5:

Finalize plan, SMART (specific, measurable, achievable, realistic and time-bound) objectives and methods for ongoing evaluation



STEP 6:

Align the organization behind the plan



STEP 7:

SDHC Board of Commissioners approval of the plan

THE LANGUAGE OF STRATEGIC PLANNING:

The most effective, forward-thinking strategic planning today focuses on “why” an organization exists in addition to the historic elements of “what” the organization does and “how” it works. Answering “why” involves defining purpose—articulating the benefit of an organization’s work to people or society at large. This resonates across stakeholders, particularly among younger demographics in search of meaning. Thus, the San Diego Housing Commission’s (SDHC) Strategic Plan now includes a purpose statement to help motivate and align internal and external stakeholders. Consider the following definitions when reviewing this plan:

Purpose: The end benefit of an organization’s work to people or society at large.

Vision: The destination the organization is working toward – the centerpiece of a strategic plan.

Core Values: Principles that drive decision making.

Mission: An organization’s core business.

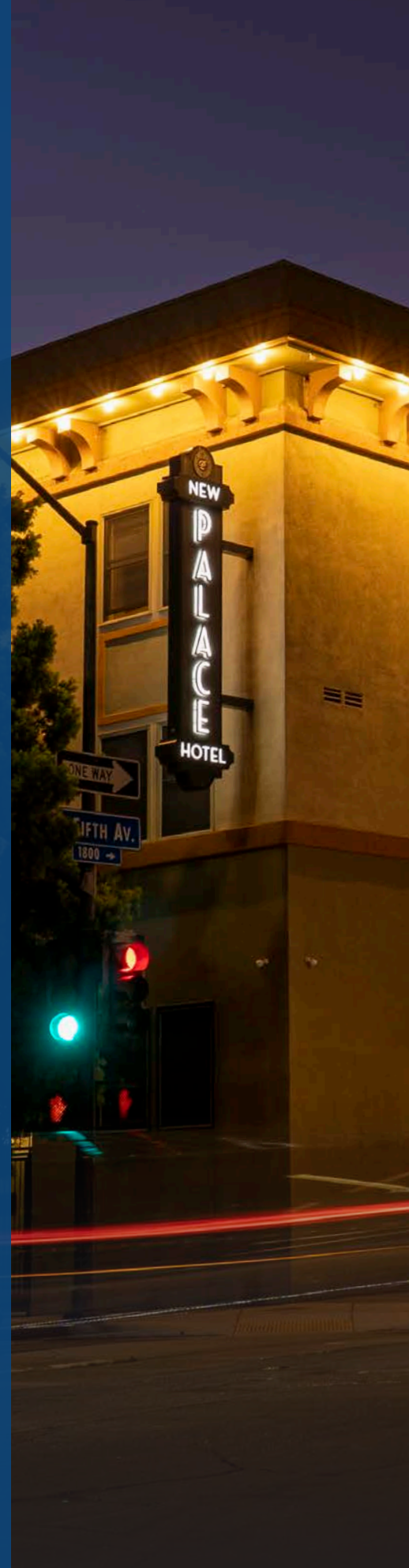
Strategic Priorities: Areas of focus to achieve the vision.

Action Items: Annual activities designed to support the priority.

SMART Objectives: Specific, measurable, achievable, relevant and time-bound measures of success.

Aligning the Organization Behind the Plan:

To ensure SDHC is well-equipped to execute the Strategic Plan, careful consideration will be taken to ensure SDHC’s staff have the budget, people and other resources needed to implement the plan. In addition, values will be a focus in all decision making.



SAN DIEGO HOUSING COMMISSION

STRATEGIC PLAN 2021-2024

Vision: The destination we are working toward.

Everyone in the City of San Diego has a home they can afford.

Mission: The organization's core business.

San Diego Housing Commission (SDHC) fosters social and economic stability for vulnerable populations in the City of San Diego through:

- Quality, affordable housing.
- Opportunities for financial self-reliance.
- Homelessness solutions.

Purpose: The end benefit to people or society.

Help individuals, families and the San Diego community thrive.

Core Values: Principles to drive decision making.

At SDHC, we:

- Serve our clients with equity, dignity and respect.
- Are committed to excellence and innovation in all we do.
- Believe in transparency and being good financial stewards.

Strategic Priority Areas: Areas of focus to achieve the vision.

1. Increasing and Preserving Housing Solutions.
2. Helping Families Increase Opportunities for Self-Sufficiency and Quality of Life.
3. Investing in Our Team.
4. Advancing Homelessness Solutions – Supporting the City of San Diego Community Action Plan on Homelessness.
5. Advocacy, Communication, Public Engagement.

Equity and Inclusivity.

At SDHC, we are about people. SDHC embraces diverse approaches and points of view to improve our programs, projects and policies.

- We believe in delivering programs and services in innovative and inclusive ways.
- We are committed to advancing equity and inclusion both internally and externally.

STRATEGIC PRIORITY 1:

INCREASING AND PRESERVING HOUSING SOLUTIONS

First-Year Actions:

1. Production: Identify opportunities to produce and retain affordable and middle-income housing, and permanent supportive housing solutions (note: ensure production goals are in alignment with Strategic Priority 4).
2. Preservation: Preserve existing deed-restricted affordable housing or naturally occurring affordable housing (NOAH) by furthering recommendations of SDHC's report "Preserving Affordable Housing in the City of San Diego," released May 28, 2020.
 - A. Identify components of the report on which action or progress can occur annually and present recommendations to the SDHC Board of Commissioners and Housing Authority of the City of San Diego/City Council.
3. Funding: Identify and pursue additional funding mechanisms dedicated to increasing housing solutions (note: ensure funding and advocacy needed to support priorities are reflected in Strategic Priority 5). Seek opportunities to diversify funding sources, including:
 - A. Public-private partnerships.
 - B. Local, county, state and federal collaborations, and Notices of Funding Availability (NOFA).
 - C. Tax-exempt bonds and tax credit financing.
4. Advocacy: In alignment with Strategic Priority 5, conduct advocacy with policy makers at local, state and federal levels in consideration of:
 - A. Favorable ordinances for affordable housing preservation (i.e., incentives for maintaining affordability).
 - B. Tax credit application processes and priorities.
 - C. Housing and community development priorities.
 - D. Increased allocations for federal Section 8 Housing Choice Voucher rental assistance, Continuum of Care, HOME Investment Partnerships Program, and Community Development Block Grant funding formulas and priorities.
 - E. Middle-income housing financing and legislation for broader applicability.

STRATEGIC PRIORITY 1:

INCREASING AND PRESERVING HOUSING SOLUTIONS

Indicators of Success

The level of progress in this Strategic Priority is contingent on the amount of and diversity of funding opportunities available and a variety of policy and economic factors. SDHC will track the following metrics citywide annually, from which results can be measured. Metrics will be comprehensive and include SDHC-led efforts as well as other public and private projects.

- The number of affordable housing units created (acquisitions and new construction).
- The number of affordable housing units preserved.
- The number of middle-income housing units built and financed.
- The number of permanent supportive housing units created for individuals experiencing homelessness (acquisitions and new construction).

STRATEGIC PRIORITY 2:

HELPING FAMILIES INCREASE OPPORTUNITIES FOR SELF-SUFFICIENCY AND QUALITY OF LIFE

First-Year Actions:

1. Conduct a needs assessment of existing SDHC program participants and residents to determine opportunities for quality-of-life enhancements in SDHC- or affiliate-owned housing communities.
 - A. Determine which existing SDHC support programs meet the greatest needs and identify potential unmet needs in current programming. Consider evaluating current SDHC Achievement Academy programming and gauging needs for medical and mental health services, career training, education, child care, digital access, financial coaching, loan programs and more.
 - i. Based on assessment, determine the opportunity to enhance, scale or remove current programs.
 - ii. Consider new services, including an audit of programs provided by existing third-party organizations that may be able to serve as potential partners. Potential programs should be evaluated based on need and financial, operational and other implications to SDHC and its customers.
 - iii. Explore adding priority services (e.g., broadband internet access) as a requirement for NOFA applications or other opportunities.
2. Explore an online tenant portal to streamline application process (e.g., a document portal that allows for an online application and submission of required documentation in a more secure environment). Consideration should be given to ways to best ensure equitable access to the diverse populations SDHC's programs serve.
3. Increase awareness of existing and/or new SDHC resources.
 - A. Develop a communications plan and tools to increase awareness among current SDHC residents, program participants and potential customers.
 - B. Develop and deploy internal training and a collaboration program to increase awareness of SDHC Achievement Academy, San Diego EnVision Center and third-party programs to encourage customer referrals across the agency's housing communities, rental assistance programs and homelessness services programs.
4. Explore new funding structures to support priority programming and identified quality-of-life opportunities, including joint funding opportunities with partners.
 - A. Streamline the grant application process internally to fast-track approvals to support the timely pursuit of new funding opportunities.
 - B. Identify philanthropic programs and opportunities that align with priority needs/programming.



STRATEGIC PRIORITY 2: HELPING FAMILIES INCREASE OPPORTUNITIES FOR SELF-SUFFICIENCY AND QUALITY OF LIFE

SMART Objectives:

- By the end of Fiscal Year (FY) 2024, increase awareness among customers of the availability and quality of SDHC Achievement Academy programming based on a to-be-conducted 2021 benchmark survey (upon survey completion, a specific metric for improvement will be set).
- By the end of FY 2024, increase the number of individuals who participate in or benefit from the SDHC Achievement Academy by 15 percent from the baseline established at the close of FY 2021.
- By the end of FY 2024, implement three new financial resource initiatives or products.
- By the end of FY 2024, establish partnerships with five new entities to supplement SDHC Achievement Academy programming and resident resources in SDHC- or affiliate-owned housing communities.
- By the end of FY 2024, implement five new quality-of-life initiatives in SDHC- or affiliate-owned housing communities.

STRATEGIC PRIORITY 3:

INVESTING IN OUR TEAM

First-Year Actions:

1. Enhance communication/engagement through the development and implementation of a year-round internal engagement plan. Consider opportunities to enhance the current Rewards and Recognition program, along with efforts aimed at cross-divisional learning and engagement in support of SDHC's mission, vision and core values.
2. Audit employee benefits and explore additional workplace programs – including those that support mental and physical health and allow for alternative and flexible scheduling – that position SDHC as an employer of choice.
3. Conduct a classification and compensation study to ensure employment opportunities remain competitive.
4. Ensure team members have the training and resources needed to support SDHC's vision and grow individually.
 - A. Audit staff to determine specific areas in which training and resources may be necessary, including any additional needs that may have arisen as a result of the COVID-19 pandemic; implement a plan to ensure SDHC's team is equipped for success.
 - i. A training and development program may include a mix of tactics for individuals and groups or company-wide training efforts.
 - ii. Training would focus on all levels of the organization – from leadership to frontline staff, including potential programs for mentorship.
5. Ensure SDHC has the people it needs today and tomorrow to achieve success as outlined in the Strategic Plan. As part of this effort, examine if needs for additional talent exist and, if so, recruit the needed team members to achieve success as outlined in the Strategic Plan.
 - A. Establish and share a business continuity and succession plan for key positions, including knowledge transfer and the creation of a repository of information and resources to retain historical knowledge or expertise and prevent knowledge loss.
6. Ensure team members have the necessary technologies to support SDHC's vision.
 - A. Evaluate current information technology support tools/software applications to determine if they will continue to meet SDHC's needs or if additional tools, training or deployment efforts are needed.



STRATEGIC PRIORITY 3: INVESTING IN OUR TEAM

SMART Objectives:

- By the end of FY 2024, increase employees' job satisfaction, and availability and quality of training among employees based on 2021 benchmark survey (upon survey completion, a specific metric for improvement will be set).
- By the end of FY 2024, maintain an employee retention rate that exceeds the current regional benchmark of 84 percent.

STRATEGIC PRIORITY 4:

ADVANCING HOMELESSNESS SOLUTIONS – SUPPORTING THE CITY OF SAN DIEGO COMMUNITY ACTION PLAN ON HOMELESSNESS

Note: The City of San Diego Community Action Plan on Homelessness (Action Plan) is the guiding document for annual activity related to homelessness programs and services. In its role as the project management administrator for the Action Plan, SDHC works, with the Implementation Team and Leadership Council to determine areas of focus for SDHC. This work will continue and be the basis from which SDHC will implement this Strategic Priority.

First Year Actions:

1. Continue to support the City of San Diego Community Action Plan on Homelessness (Action Plan) by:
 - A. Providing day-to-day project management of the Action Plan's implementation and oversight of publicly accessible reporting dashboards for the Action Plan.
 - B. Coordinating and facilitating Implementation Team and Leadership Council meetings to further the Action Plan's objectives on a weekly, monthly and annual basis.
 - C. Working with City policy makers and community stakeholders to support the Action Plan. Areas of focus may include:
 - i. Identify funding and/or partnership opportunities to increase housing and supportive service resources for transition-age youth.
 - ii. Identify funding and/or partnership opportunities to increase housing and supportive service resources for veterans.
 - iii. Identify funding and/or partnership opportunities to increase shelter, long-term housing, permanent housing and supportive service resources for persons experiencing chronic homelessness and unsheltered homelessness.
2. Establish an internal working group to evaluate all SDHC divisions to look for opportunities to support the Action Plan. Ensure the areas of support align with Housing First principles and SDHC's role in the implementation of the Action Plan.
 - A. Adopt division-specific action items in support of the Action Plan.
 - i. Establish areas of prioritization/action and timeliness that align with the Action Plan's three-year "Goals Within Reach" and annually establish areas of focus toward achieving the long-term objectives, in order to promote informed and aligned decision making at divisional levels and for recommendations to the SDHC Board of Commissioners and Housing Authority of the City of San Diego.
3. Evaluate funding, infrastructure and capacity – staffing, technology, training, communications, etc.
 - A. Explore opportunities and collaborations for capacity building both internally and within the broader homelessness response system.
 - B. Proactively identify funding sources to support SDHC's role. Explore new funding mechanisms and external partners with funding capabilities (i.e., County of San Diego, philanthropy and public-private partnership opportunities).

STRATEGIC PRIORITY 4:

ADVANCING HOMELESSNESS SOLUTIONS - SUPPORTING THE CITY OF SAN DIEGO COMMUNITY ACTION PLAN ON HOMELESSNESS

SMART Objectives:

- The Action Plan includes three-year and 10-year goals and objectives. SDHC will work annually with the Action Plan Leadership Council and Implementation Team to determine objectives to measure impact related to the portion of the Action Plan that SDHC implements. Measures may include at the following areas:
 - Transition-age youth homelessness and transition-age youth unsheltered homelessness within the City of San Diego.
 - Veteran homelessness and veteran unsheltered homelessness within the City of San Diego.
 - Unsheltered homelessness within the City of San Diego.
- Once division-specific action items are adopted, SDHC divisions will also establish SMART objectives to measure progress specific to the division, but in alignment with the Action Plan's three-year goals within reach and broader 10-year goals.

STRATEGIC PRIORITY 5:

ADVOCACY, COMMUNICATION, PUBLIC ENGAGEMENT

First Year Actions:

1. Advocacy: Establish priority policy areas and a policy engagement guide to foster progress toward SDHC's vision and secure additional public funding.
 - A. The guide would establish roles for internal support, recommendations for potential partnership-building opportunities, recommendations for assuring that equity and inclusion issues are evaluated and addressed, and direction on how and when SDHC will engage on key issues. It will also outline systems for proactive engagement with City Council/Housing Authority of the City of San Diego with the goal of developing solutions and policies collaboratively.
 - i. Consider policy areas such as land use, naturally occurring affordable housing, social equity issues (e.g., poverty deconcentration), single-room occupancy ordinance, Housing Impact Fees (also known as linkage fees), tenant protection, Area Median Income levels, etc.
 - ii. Pursue public funding, specifically addressing needs outlined in:
 - a. Strategic Priority 1 – Increasing Housing and Preservation Solutions
 - b. Strategic Priority 2 – Helping Families Increase Opportunities for Self-Sufficiency and Quality of Life
 - c. Strategic Priority 4 – Advancing Homelessness Solutions
2. Stakeholder Communication: Develop a communications strategy for SDHC and key housing/homelessness issues that builds support and awareness for SDHC and its multifaceted responsibilities. The communications strategy would incorporate customized approaches to address the unique perspectives of various stakeholders (City Council/Housing Authority of the City of San Diego, Regional Task Force on the Homeless, developers, partners and those with a vested interest in housing and homelessness) and the public. Messaging should also address common misconceptions about programs, practices or outcomes.
 - A. Establish a stakeholder communications working group to foster information sharing, messaging, discussion around key issues, and alignment on approach and roles.
 - B. Develop and implement an ongoing stakeholder engagement plan designed to build support for SDHC's efforts and foster housing and homelessness solutions.
3. Public Engagement: Develop and implement an ongoing public engagement plan designed to build support for housing and homelessness solutions and SDHC among the broader public, including neighborhood planning associations, community leaders and the public at large.
 - A. Develop a media response guide that outlines internal roles, and how and on what subjects SDHC will respond to media requests.
 - B. Establish tenant-focused engagement strategies, such as "Know Your Rights" trainings and expository communication materials about SDHC programs.

STRATEGIC PRIORITY 5:

ADVOCACY, COMMUNICATION, PUBLIC ENGAGEMENT

SMART Objectives:

Advocacy:

- By the end of FY 2024, influenced or achieved the intended objective on 20 percent of the bills or policies SDHC engages in that support SDHC's mission.
- By the end of FY 2024, identify a minimum of three funding opportunities per year for which SDHC either directly or in collaboration with partners (e.g., City, public-private partnerships) can apply and/or advocate to support housing and homelessness programs and equity and inclusion initiatives.

Stakeholder Communication:

- By the end of FY 2024, 25 percent of stakeholder external communications, such as news releases, social media posts and e-newsletters, will contain one or more of SDHC's key message concepts.

Public Engagement:

- By the end of FY 2024, conduct at least 15 briefings with reporters or newsrooms to inform and educate them about SDHC's programs and activities, and to increase public awareness and understanding of SDHC's mission, vision and programs.



SAN DIEGO
HOUSING
COMMISSION

Appendix K

SAN DIEGO HOUSING COMMISSION STRATEGIC PLAN PROGRESS REPORT

Fiscal Year 2023

San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, CA 92101
www.sdhc.org





Strategic Plan Progress Report Update #3

**Fiscal Year 2023
(July 1, 2022 – June 30, 2023)**

The San Diego Housing Commission (SDHC) Strategic Plan provides a comprehensive roadmap that encourages increased internal collaboration and promotes a focus on innovative solutions for its strategic priority areas. The plan directs the creation of several guides and reviews that will assist SDHC in carrying out its work, accomplishing strategic objectives and increasing public awareness and engagement. Since the adoption and approval of the Fiscal Year (FY) 2022 – 2024 Strategic Plan on July 9, 2021, total progress toward Strategic Priority Area (SPA) goals and objectives has been measured at 76.75%.

This report provides updates and progress on Underlying Action Items and Indicators of Success. Some updates are related to specific, measurable, achievable, relevant and time-bound (SMART) Objectives, if that action item is currently underway as related to each priority area. This summary provides an update on actions from July 1, 2022 - June 30, 2023.

Strategic Priority Areas:

1. Increasing and Preserving Housing Solutions
2. Helping Families Increase Opportunities for Self-Sufficiency and Quality of Life
3. Investing in Our Team
4. Advancing Homelessness Solutions – Supporting the City of San Diego Community Action Plan on Homelessness
5. Advocacy, Communication, Public Engagement

Key: SPA: Strategic Priority Area

UAI: Underlying Action Item



Strategic Priority Area #1: Increasing and Preserving Housing Solutions:

Since the adoption of SDHC FY 2022 – 2024 Strategic Plan, 47% of all SDHC Board of Commissioners (Board) items have been related to and in support of Priority Area # 1.

- **SPA-1, UAI-1:** The San Diego Housing Commission continues to create opportunities to increase and preserve housing solutions.
 - A total of 25,597 affordable housing units currently in service in the City of San Diego.
 - There are another 469 units that are in-service/board approved rehab status.
 - There are an additional 2,454 units in the pipeline.
 - A total of 941 affordable housing units were completed in Fiscal Year 2023 across 15 properties/projects. This reflects when they received their Certificate of Occupancy.
- **SPA-1, UAI-1:** Development of more than 300 Affordable Housing Units: On June 29, 2023, three developments in collaboration with SDHC at the former site of the Sheriff's Crime Lab in Clairemont celebrated their groundbreaking. These developments will provide 306 affordable rental housing units for seniors aged 62 or older with low income and families with low income, including 58 units designated for families with a member who has an intellectual or developmental disability.
- **SPA-1, UAI-2:** The preservation Collaborative is the community-based stakeholder group that recommends policy parameters for SDHC's preservation activities. The collaborative's objectives are to reach out to property owners and operators of naturally occurring affordable housing (NOAH) and deed-restricted properties at risk of expiration; educate community members, revise the Prioritization Matrix to align with changing city goals and priorities; and augment efforts to meet the city's preservation goals through community engagement and outreach efforts. Below is a list of action items the Preservation Collaborative engaged in during FY 2023:
 - An analysis of the findings from the "[Preserving Affordable Housing](#)" Study led the delineation of a two-track approach to preserve deed restricted and naturally occurring affordable housing.
 - Track 1 aims to preserve deed-restricted affordable housing through the adoption of a local preservation ordinance and expands the opportunity for preservation by triggering notice and a right of first offer and right of first refusal at the time of sale.
 - Track 2 aims to preserve naturally occurring affordable housing (NOAH) through the creation of a public/private preservation fund as well as incentives to owners to preserve existing NOAH.
 - The Preservation Collaborative provided input for preserving deed-restricted housing which staff then drafted into a framework for a local preservation ordinance, which can be viewed [HERE](#).
 - In May 2023: The Preservation Collaborative members wrote letters to City Council members in support for a budget allocation of Redevelopment Property Tax Trust Funds



to provide initial seed funding for the creation of an affordable housing preservation fund dedicated to preservation.

- The fund would leverage private and philanthropic dollars in partnership with the city to fund a program that provides incentives to owners of NOAH to preserve affordability. A request was made for \$5.9 million which in later budget hearings was reduced to \$1 million and was supported by seven City Council members. While considered an important priority, no allocation was made due to other more pressing needs. Plans are to refine the budget request and resume advocacy for the next budget cycle starting in September 2023.
 - The Preservation Collaborative helped plan stakeholder meetings scheduled to take place in the Fall of 2023 with tenant associations, advocacy groups and Downtown San Diego Partnership for their feedback on the draft framework ordinance.
- Strategic Priority Area 1: Compliance and Equity Assurance Consideration (CEA)
- In addition to the existing Equity & Inclusion requirements, a Small Emerging Developer Program was incorporated into the FY 2024 NOFA posted on our website for review prior to its final release. The Program provides additional points to Developers who partner with Small Emerging Developers.



Affordable Housing Units in Service Does Not Include Expirations

Affordable Units	PSH Vouchers
25,597	3,126

○ This item relates to Strategic Priority Area No. 1 in SDHC's Strategic Plan for Fiscal Year (FY) 2022-2024: Increasing and Preserving Housing Solutions.

○ Area Median Income (AMI) levels in 2023 for a family of four:

- Low Income: 80% of AMI = \$110,250/year
- Very Low Income: 50% of AMI = \$68,900/year
- Extremely Low Income: 30% of AMI = \$41,350/year
- Complete list on SDHC's website: <https://www.sandiegocounty.gov/sdhc/rental-assistance/income-limits-ami/>

○ Permanent Supportive Housing (PSH): An intensive, best-practice intervention for addressing homelessness that combines permanent, subsidized housing with voluntary, wraparound supportive services, including case management for populations with disabilities and the most significant needs.

○ Affordable Housing: Rental housing units with deed restrictions that require the rents to remain affordable for households with a specified income level. The U.S. Department of Housing and Urban Development (HUD) defines "affordable" as housing that costs no more than 30 percent of a household's monthly income. That means rent and utilities in an apartment or the monthly mortgage payment and housing expenses for a homeowner should be less than 30 percent of a household's monthly income to be considered affordable.

○ Preservation units being reported in this report represent Housing Assistance Payment (HAP) contract extension units that are up for renewal every 5-years. These units are not acquisition/rehab units. SDHC is developing a tracking system to ensure transparency in the frequency and manner in which HAP units are counted as preservation units based on the guidance in the approved preservation strategy in SDHC's 2020 report [Preserving Affordable Housing in the City of San Diego](#).

Affordable Housing Unit Pipeline Utilizing Loans and/or Bonds

Total Units	Affordable Units	PSH Vouchers	Non-PSH Vouchers
2,523	2,454	298	405

Affordable Housing Units Created/Preserved (7/1/2021-6/30/2023)

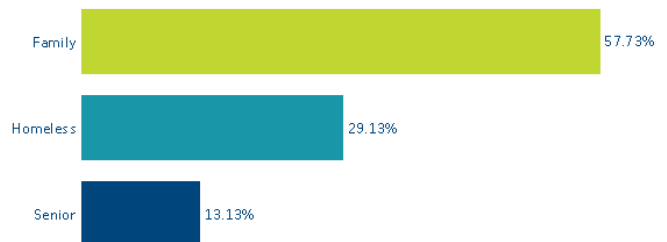
Preserved Units	Affordable Units	PSH Vouchers
170	1,945	579

Affordable Housing Characteristics (7/1/2021-6/30/2023)

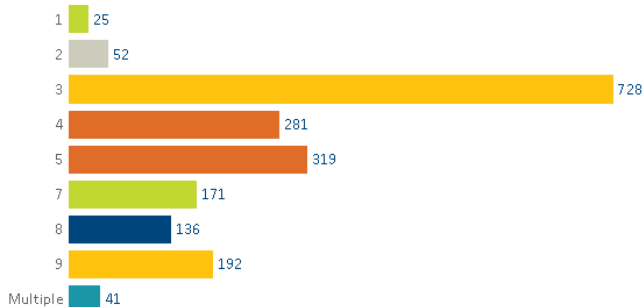
Affordable Units by Most Restrictive AMI



Percentage of Units by Target Population

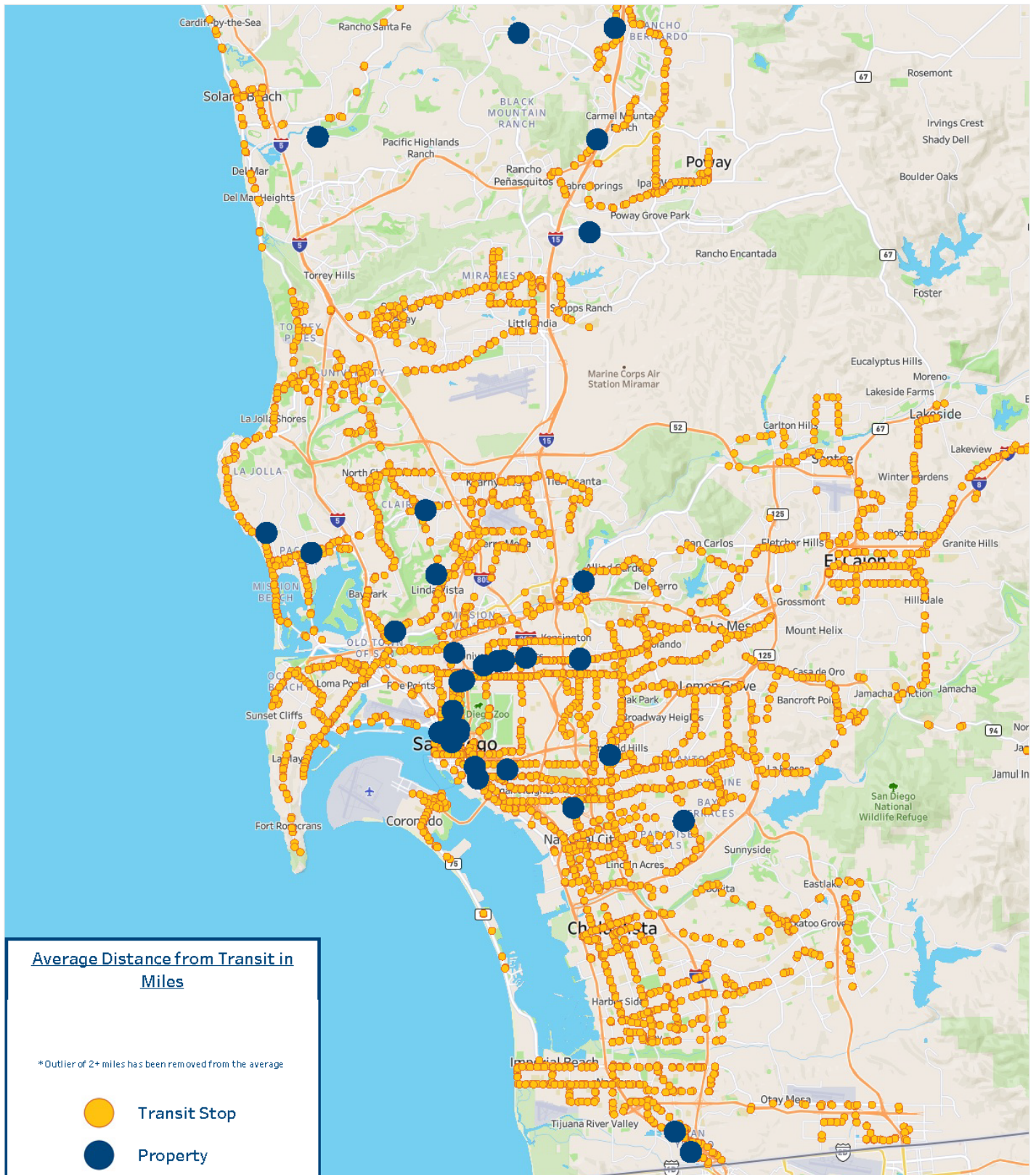


Affordable Units by Council District





Recently Completed Projects Map





Strategic Priority Area #2: Helping Families Increase Opportunity for Self-Sufficiency and Quality of Life:

Since the adoption of SDHC's FY 2022 - 2024 Strategic Plan, 19% of all SDHC Board items have been related to and in support of Priority Area 2.

- **SPA-2, UAI-1:** Quality of Life and Self Sufficiency Needs Assessment RFP Update: To solicit the most competitive proposals that best fit our scope of work and project goals/ objective, the initial RFP solicitation was closed and re-opened for a second round. As of June 30, 2023, the evaluation committee was in process of reviewing the second solicitation responses to determine next steps.
- **SPA-2, UAI-1A:** SDHC launched a Digital Inclusion Project on February 9, 2021, to help expand access to technology and the internet for households with low income. A gap between households with access and those without it is often referred to as the "digital divide." The "digital divide" adversely affects households with low income and reflects inequities in the abilities of these households to access the internet.
 - o In August 2023, the Housing Commission released an RFP seeking proposals from qualified respondents interested in providing managed Wi-Fi services for SDHC's Public Housing Portfolio. The primary purpose of the Wi-Fi network is to provide no cost internet accessibility to families and students who live at select properties owned and/ or operated by the SDHC.
 - The system would provide no-fee access to the Internet within the coverage area and be able to accommodate the needs of families and students. Should the project be determined feasible, SHDC would pay 100% of the monthly cost for internet services throughout the term of the contract.
 - It is the intent of the RFP to establish a contract, with a single or multiple qualified vendors to design, build/furnish, install, operate, and maintain a High-Speed Wi-Fi Internet Access Network for residential multi-dwelling unit (MDU) buildings. SDHC is seeking a turn-key solution with a simple pricing structure capable of providing, at minimum, 100Mbps/10Mbps speed to all users.
 - There are approximately 189 public Housing Units at 8 properties covered under the scope of this RFP. There is an additional 84 Affordable Units that share a Public Housing property footprint that will be in scope as well.
 - o San Diego Oasis has distributed 45 tablet devices and device training to senior residents of SDHC's affordable rental housing properties with a plan to distribute an additional 27 before the end of calendar year 2023. This will complete the executed contract requirements established.
 - o On April 8, 2023, SDHC announced the Federal Communications Commission (FCC) awarded SDHC more than \$230,000 in a "Your Home, Your Internet" grant. FCC Commissioner Geoffrey Starks visited SDHC's Park Crest Senior Apartments for the announcement. The grant supports awareness, outreach and assistance for households to apply for the FCC's Affordable Connectivity Program, which provides eligible households with a discount of up to \$30 per month toward internet service and a one-



time discount of up to \$100 to purchase a laptop, desktop computer, or tablet from participating providers if they contribute more than \$10 and less than \$50 toward the purchase price. With the FCC grant, SDHC's objective is to reach out to approximately 120,000 households in the City of San Diego that are eligible for the Affordable Connectivity Program. Outreach will include digital, print, and in-person efforts in multiple languages and in coordination with community partners.

- SDHC hired two new Outreach Workers on June 20, 2023, to support this effort. They have been collaborating with the San Diego Association of Governments (SANDAG), San Diego Futures Foundation, city and county organizations to reach out to eligible San Diego County residents.
 - In February 2023, SDHC was awarded a grant for the highly competitive [Morehead Cain Foundation Scholars Program](#) which awarded in-kind support of four- University of North Carolina students during the summer of 2023 to work with SDHC on its Digital inclusion efforts. The scholars supported SDHC's Digital Inclusion Project by creating an onboarding guide, standard operating procedures and a marketing guide to support the ongoing SDHC "Your Home, Your Internet" ACP enrollment activities.
- **SPA-2, UAI- 2:** A new tenant portal, Rent Café, was developed and implemented in December 2022. It allows increased access and versatility for residents and applicants, including applying for Section 8 Housing Choice Voucher rental assistance, responding to wait list updates, and making changes to current applications. Using the portal, SDHC started a comprehensive process to update its rental assistance wait lists on December 5, 2022, and expects to complete the wait list update, "Save My Spot," during FY 2024.
- **SPA-2, UAI-3A:** SDHC's Communications Plan was finalized in December 2021. The Communications and Government Relations Division (Communications) continues to implement actions and strategies related to increasing awareness of existing and new SDHC resources, including social media accounts (Facebook, Instagram and LinkedIn).
 - For example, in August 2022, Communications distributed a newsletter about SDHC Achievement Academy programs to SDHC rental assistance participants.
 - In addition, in July 2023, Communications distributed a tenant newsletter to SDHC rental assistance participants to provide information about the City of San Diego Tenant Protection Guide, upcoming changes to the federal rental assistance program, and discounts available to low-income households for utilities and internet service.
- **SPA-2, UAI-4A:** In continued efforts to streamline the funding application process, SDHC Executive Leadership authorized an expedited memo process for grants seeking up to \$20,000 for Workforce and Economic Development Department (WED) programs. The expedited memo is a formal notice to WED and Compliance & Equity Assurance department heads and outlines relevant grant information such as funder/program name, requested amount, date submitted, match requirement and grant period. It requires review by department leadership.



- Strategic Priority Area 2: Compliance and Equity Assurance Consideration (CEA)
 - **SPA-2, UAI-1Ai-iii:** CEA will actively participate in all assessments and proposals for new services to ensure an equity lens is applied. Community outreach, input and/or engagement will be led by CEA on an as needed basis.
 - **SPA-2, UAI-2:** CEA will participate in the associated review, evaluation, and selection process of a potential tenant portal. Community outreach, input and/or engagement will be led by CEA.
 - **SPA-2, UAI- 3:** CEA will explore and ultimately procure available community outreach and engagement platforms to increase SDHC's ability to engage with residents, program participants and potential customers.
 - **FY 2023 Update:** CEA procured a comprehensive community engagement platform with Public Input. The CEA division aims to foster stronger connections within the community to address pressing issues. The following community engagement projects were released:
 - City of San Diego Affordable Housing Fund
 - SDHC Computer Giveaway
 - San Diego Renter Study
 - FY 2024 SDHC NOFA Public Comment

SMART Objective Status Update: Progress toward the completion of SMART Objective for this priority area is at 83 percent.

- By the end of FY 2024, increase the number of individuals who participate in or benefit from the SDHC Achievement Academy by 15 percent from the baseline established at the close of FY 2021.
 - To inform the SMART objective of increasing the number of individuals who participate in or benefit from the SDHC Achievement Academy programs, the established baseline at the close of FY 2021 was 1,833 unduplicated participants.
 - In FY 2023, the Achievement Academy had 2,205 unduplicated participants, showing an increase of 20 percent. This surpasses the 15 percent participation increase goal.
- By the end of FY 2024, implement three new financial resource initiatives or products.
 - Three new financial resources have been implemented:
 - International Rescue Committee's Center for Economic Opportunity. The purpose of the program is to increase access to affordable consumer loan products for individuals typically affected by predatory lending practices, which will usually have interest rates well above 20 percent. This program provides different types of loans (credit building ladder, auto loans and refinance, personal loans) with 0 percent interest up to approximately 10 percent, and no late fees or other borrower expenses.



- eCredable. This is a pilot program to work with clients on credit building and connect them to affordable products and services that boost credit. The program offers clients the opportunity to choose phone and utility accounts to include in their TransUnion credit report to create or establish their credit scores.
 - Black, Indigenous, People of Color (BIPOC) First-Time Homebuyer Program. On June 8, 2023, SDHC announced its new pilot program to assist middle-income BIPOC first-time homebuyers. Funded by a Wells Fargo Foundation Wealth Opportunities Realized Through Homeownership (WORTH) grant and a National Fair Housing Alliance grant. The pilot program can assist BIPOC households with income up to 150% of San Diego's Area Median Income, currently \$175,200 per year for a family of four.
- By the end of FY 2024, establish partnerships with five new entities to supplement SDHC Achievement Academy programming and resident resources in SDHC- or affiliate-owned housing communities.
 - Six new partnerships to supplement programming and resident resources have been implemented:
 - SAS: New employer recruiter
 - Securitas: New employer recruiter
 - Lionel University: 12-week personal training professional certificate program for 15 students. The program prepares students for employment in the fitness industry, and students develop skills necessary as a personal trainer and potential for employment through skills like communication, business etiquette, problem solving, critical thinking, time management, and interpersonal skills. Lionel University is providing the training.
 - Mixte: A month-long paid internship at \$15/hour where interns learn public relations and digital marketing.
 - Head Start: Will create a pipeline for families to receive access to childcare services and potential employment opportunities.
 - YMCA: Established a partnership with SDHC's Personal Training Program. YMCA will provide guaranteed employment interviews for all graduates of the Personal Training Program.
- By the end of FY 2024, implement five new quality-of-life initiatives in SDHC- or affiliate-owned housing communities.
 - Five new initiatives have been implemented:
 - First-time homebuyer program to help clients become ready for buying a home based on six criteria from lenders: credit score, debt, employment, income tax statements, down payment, and income. (This program does not provide financial assistance to participants.)
 - International Rescue Committee's Center for Economic Opportunity. Please see the description above.
 - New career pathways (digital media, personal training): Working with Lionel University and Mixte Communications, as described above.



- Master Gardener: Del Mar Master Gardeners provide quarterly training to residents and free plants. They are currently working SDHC to install community gardens on select property sites for residents to be able to grow their own food.
- Oasis Senior Tablet Program: Through a partnership with San Diego Oasis, SDHC is implemented a pilot program targeting senior residents of SDHC affordable housing properties to directly confront the lack of tools and training available to access and use tablet devices and the internet. This program created a technology package that includes providing a Samsung tablet, 12 months of internet, an hour of one-on-one training in small groups, and vouchers for access to Oasis classes.

**Strategic Priority Area #3: Invest in Our Team:**

Since the adoption of SDHC's FY 2022 - 2024 Strategic Plan, 6% of all SDHC Board items have been related to and in support of Priority Area #3.

- **SPA-3, UAI-2:** SDHC has selected and signed a contract with a new benefits broker, which will provide an overall savings of 11.3 percent to SDHC as well as improved and more well-rounded services for employees.
 - o SDHC will be implementing a benefits engagement survey to capture feedback on additional benefits that may be introduced based on employee interest. This is anticipated to begin in fall of FY 2024.
- **SPA-3, UAI-1:** The Employee Engagement Survey project was administered in February 2023, with 288 employees surveyed for an 82 percent participation rate. SDHC staff is currently working with the survey consultant to analyze data and determine how to implement additional workplace programs to increase employee engagement and retention. For additional details about the Engagement Survey results, [click HERE](#).
- **SPA-3, UAI-2:** Workplace programs have been enhanced to support employee engagement:
 - o Walking Spree: SDHC participates in this app-based program to help promote health & wellness and employee engagement. Through customized marketing and communication efforts, employees participate in health-centric challenges to promote an active lifestyle.
 - o Gym Benefit: SDHC is continuing to provide a gym benefit to employees to encourage and support health & fitness and employee engagement.
 - o Headspace: – As of June 30, 2023, a contract was being finalized for SDHC to provide employees and their families access to a mental health services resource, available at no cost through Headspace, a top-rated, on-demand, app-based provider. Employees and their eligible dependents will have access to a variety of mental health services, including activities and tips to manage stress, video-based therapy and psychiatry sessions, and live coaching sessions.
 - o Mentoring Program: SDHC re-introduced its Mentoring program in February 2023 with 50 participants, the largest participation in the program's history. The Mentoring Program provides SDHC employees the opportunity to develop professional connections and leadership skills. These mentee-led relationships provide mentees the opportunity to connect in meaningful ways with someone whose experience can help them navigate careers and life.
- **SPA-3, UAI-2:** SDHC has transitioned into a Work from Home Pilot Program with a Flexible Work Model. The current program offers the ability to reserve in-person office space when needed through an online reservation system. The Work from Home Pilot Program has allowed SDHC to consolidate its office space.
 - o Following the Work from Home Pilot Program, we acknowledge that physical proximity to colleagues may be rare so when it does occur, it becomes a more memorable



experience. The Intentional Interactions Initiative launched to build clear, concise, and consistent effective communication strategies to set SDHC up for lasting success in the new remote work environment by:

- Increasing employee engagement and productivity through hosting onsite meetings and events
 - Providing and investing in necessary training; and
 - Promoting employee wellness
 - This initiative also included the creation of:
 - The Customer Experience Unit: Customer service and client experience management. An informational presentation about this unit was presented to the SDHC Board on May 12, 2023.
- **SPA-3, UAI-4Aii:** “Lunch and Learn” workshops continue to highlight internal programs and services, benefit explanation information, and mental health strategies. This program supports internal collaboration and awareness-building that encourages customer referrals across the agency’s housing communities, rental assistance programs and homelessness services programs. Here is a list of the workshops conducted in FY 2023:
- 7/26 – Achievement Academy SDHC Spotlight
 - 8/18 - Rewards & Recognition Program SDHC Spotlight
 - 9/21 - Strategic Plan SDHC Spotlight
 - 10/20- MOU Supervisors Presentation
 - 11/30 – Holiday Stress Hardy (MHN)
 - 2/15 - Mentoring Program – Informational Sessions
 - 4/24 & 5/3 – Open Enrollment Benefits Presentation
 - 5/16 - Working Remotely: Being Productive and Connected (MHN)
 - 6/6 - Delivering Excellent Customer Service
- **SPA-3, UAI-4:** SDHC has increased training programs and resources to support SDHC’s vision and to ensure team members grow individually.
- Learning Management System (LMS) Training- Provides SDHC staff with quarterly trainings throughout the year on a variety of topics, e.g., Customer Service, Mental Health, Time Management, Diversity and Inclusion, etc.
 - SDHC offers employee multiple opportunities for training and career development, in person, virtually or through the LMS (Learning Management System).
 - DISC Training provides a common language to help teams understand one another and work better together. Communication, productivity and teamwork with customers and co-workers becomes more empathic and more successful.
 - DISC training benefits include individuals become more self-aware, the performance of the team and teamwork improves noticeably, recruitment is meaningfully supported (able to find candidates who fit well for the specific team)



- Strategic Priority Area 3: Compliance and Equity Assurance Consideration (CEA)
 - **SPA-3, UAI-1:** CEA will collaborate with Human Resources to assist with ensuring the engagement plan and recognition programs are reviewed through an equity lens and inclusive language is incorporated.
 - **SPA-3, UAI-2:** CEA will reach out to fellow Government Alliance on Race and Equity (GARE), the national network of government working to achieve racial equity and advance opportunities for all, members for potential programs that have been developed with equity and inclusion in mind.
 - **SPA-3, UAI-3:** CEA will collaborate with Human Resources to ensure an equity and inclusion perspective is part of the process.
 - **SPA-3, UAI-4:** CEA will collaborate with Human Resources to ensure an equity and inclusion perspective is part of the process.
 - **SPA-3, UAI-5:** CEA will actively participate to ensure an equity and inclusion perspective is part of the process.
 - **SPA-3, UAI-6:** CEA will actively participate to ensure an equity and inclusion perspective is part of the process.
 - FY 2023 Update:
 - CEA executed GARES membership renewal for FY 2024 to access the resources and knowledge base of more than 400 jurisdictions whose collective goal is to achieve racial equity and advance opportunities for all.
 - CEA held mandatory 8-hour equity and inclusion training for directors, managers and supervisors.
 - CEA held 6-hour equity and inclusion training for Vice Presidents and above included sessions on foundations of Diversity, Equity and Inclusion, Building a Culture of Inclusion; also, Identity & Allyship.
- **SMART Objective Progress:** Progress towards the completion of SMART Objectives for this priority area is currently at 67%.
 - By the end of FY 2024, increase employees' job satisfaction, and availability and quality of training among employees based on 2021 benchmark survey (upon survey completion, specific metrics for enhancement will be set).
 - SDHC launched a confidential Employee Engagement Survey in March-April 2023. SDHC was compared to other top performing agencies with similar size in the government and non-profit industry. Based on this comparative demographic, SDHC was favorable in Engagement with an 82% engagement rate (above 75th percentile), and Endorsement with an 89% endorsement rate (above 75 percentile). Given these results, moving the needle by a point or two would be appropriate progress. To maintain or improve our engagement and endorsement rate, SDHC has identified the following strategy as next steps:



- Leadership is to develop action items based on the engagement survey feedback for each department (identifying 2-3 initiatives)
 - Host focus groups to identify 1-2 organizational initiatives based on the engagement survey and department feedback.
 - Based on the outcome SDHC will incorporate feedback
 - Monitor department Action Plan progress through an Action Plan Tracker Tool
 - To raise visibility of employee-based programs and activities, HR is creating an employee webpage that will include available employee benefits, available onsite or virtual trainings and a calendar of events.
 - By the end of FY 2024, all departments will have completed their Action Plan Tracker Tool that identifies 2-3 department initiatives. SDHC leadership will monitor implementation and determine an appropriate time to implement another Employee Engagement Survey to measure progress.
- By the end of FY 2024, maintain an employee retention rate that exceeds the current regional benchmark of 84 percent.
 - SDHC maintained an employee retention rate of 87 percent during the reporting period.



Strategic Priority Area #4: Advancing Homelessness Solutions – Supporting the City of San Diego Community Action Plan on Homelessness:

Since the adoption of SDHC's FY 2022 – 2024 Strategic Plan, 24 percent of all SDHC Board items have been related to and in support of Priority Area #4.

- **SPA-4, UAI-1:** Community Action Plan on Homelessness (CAPH) Updates:
 - The CAPH Implementation Team, Leadership Council, Provider Network Group and Front-Line Staff Advisory groups continue to meet to discuss strategies and practices to move work forward effectively and efficiently.
 - In the Fall of 2022, the Community Action Plan on Homelessness Leadership Council requested that an updated analysis of the crisis response and housing needs in the Action Plan be conducted. As a result, the Implementation Team, through SDHC's consulting contract with Corporation for Supportive Housing, has worked with the CSH team to conduct an updated needs analysis. CSH reviewed available data on persons experiencing homelessness, persons who are newly entering the homeless system, and the number and types of resources available in the city. This includes data from the Point in Time Count, Housing Inventory Count, SDHC's homeless programs reporting dashboard, and the Homeless Management Information System. The final updated analysis will be released in October 2023.
 - The wellness initiative for homelessness services frontline staff launched its Take a Break for Wellness event series in FY 2023. The first event took place in October 2022 with over 70 attendees. Two additional events took place in February and June, and more events will be scheduled in the new fiscal year. A Frontline Staff Wellness Survey was conducted in October 2022. Over 100 responses were submitted, which are helping to inform next steps around frontline staff support and SDHC's ongoing efforts with service provider leadership to progress SDHC's homelessness service provider staff wellness and engagement initiative.
 - A Homelessness Services Compensation Study was conducted as a component of SDHC's broader efforts to address workforce challenges and build capacity in the homelessness services sector. The study was published on SDHC's website on March 8, 2023. Making budget recommendations to the City of San Diego for front-line services program staff wages is part of a scaled approach that will be implemented over the next few years. SDHC staff implemented the first stage of these recommendations by implementing staff wage increases for Case Managers, Housing Specialists and Residential staff across all administered programs which were accepted and included in SDHC's and the City of San Diego's FY 2024 budget.
 - Additional focus areas for the Front-Line Staff Advisory group are harm reduction strategies and addressing security at homelessness services programs. These efforts help inform SDHC's work with policy makers and funders on programming and policy.



- **SPA-4, UAI-1Ciii:** The Haven Interim Family Shelter Program, approved in November 2022, provides safe, low- barrier, non-congregate shelter units for families with children experiencing homelessness in the City of San Diego.
 - **SPA-4, UAI-1Ciii:** The Transition-Age Youth Interim Shelter, provides enhanced services to up to 52 individuals at a time to include stable housing, case management, meals, and other supportive services. The SDHC Board initially approved the shelter contract on September 20, 2022, and approved a contract amendment on May 12, 2023, to expand shelter capacity expand shelter capacity from 19 beds to 52 beds.
 - **SPA-4, UAI-1Ciii:** The Multidisciplinary Outreach Program, approved on September 16, 2022, staffs a multidisciplinary team of nurse practitioners, clinical outreach specialists, medical assistants, peer support specialists and substance abuse counselors to provide ongoing services. Through the Program, PATH and FJV will provide care coordination, linkage to community resources, housing and health assessments, and basic needs support for up to 20 high barrier individuals experiencing homelessness at any given time in the City of San Diego. The program is anticipated to serve up to 50 individuals annually.
- SPA-4, UAI-1Ciii:** LQGTQ+ Affirming Shelter and Outreach Program for Transitional Aged Youth (TAY), approved on April 6, 2023 the shelter will provide up to 21 safe, low-barrier, non-congregate and congregate shelter beds for any transition-age youth (TAY) ages 18 to 24 experiencing unsheltered homelessness in the City of San Diego. In its full capacity, it is anticipated that the Program will provide shelter beds for up to 45 youth at any given time.
- **SPA-4, UAI-3A:** Capacity Building and Infrastructure Investments:
 - In November 2022, the Homeless Housing Innovations Administrative Team initiated Phase 1 of a project to develop and deploy a database to manage homelessness services contracts that SDHC administers. Core functions incorporated into the database replace existing administratively burdensome and disconnected processes/platforms (such as excel, word, email) and include creating a single database to manage program budgets for each contract; process reimbursements for program expenses submitted by program operators; collect performance outcome data; and serve as a repository for critical documents. The workflows created for each of these core functions streamlined internal processes; created the ability to generate reports to more effectively monitor program performance and aggregate data by individual contract, specific interventions, or portfolio-wide; and allowed for increased oversight through the utilization of internal management dashboards.
 - The team anticipates Phase 2 of the project will be initiated in Fiscal Year 2024, with a focus on the development of a portal to provide external access to program operators to perform certain functions directly within the database. This will result in greater transparency and information sharing while further streamlining the team's work by eliminating duplication of efforts.
 - Database Implementation: A new database was developed for the Housing First San Diego Homeless Housing Innovations team to enhance efficiency, and in response to a need for a more intuitive, user-friendly solution for a growing department. The platform



development focused on simplifying complex data management and workflows to reduce administrative burden, promote data integrity, and increase adherence to guidelines and procedures.

- **Reporting Update:** Since implementation in March of 2022, the database has reduced duplicate data entry by 26 percent. Creating a single flow of data from SDHC's community database, the new platform eliminates the need for teams to start client records from scratch and instead pulls in previously created records.
 - Using this client data, the platform auto-populates approximately 12,600 documents annually, and more than 3,300 payments are now auto-generated and moved into SDHC's payment system. This design provides for real-time reporting, program performance outcomes, and budget tracking and allows staff to track client progress toward housing goals.
- **Coordinated Shelter Intake Program (CSIP):** The program coordinates access to City funded shelter programs administered by the Housing Commission. Staff employed by the Housing Commission manage program operations, facilitate referrals for shelter that are received from referring partners with shelter operators, provide technical assistance, and conduct regular reporting and data analysis functions. The program is operational seven days a week.
 - **Reporting Update:** In Fiscal Year 2023, the Homelessness Innovations, Informational Technology, and Project Management departments designed and launched an application to support the transition of CSIP operations to a web-based platform.
 - In Fiscal Year 2023 the program received 16,350 referrals for shelter and reduced processing time by 20% post implementation of the QuickBase platform.
- **SPA-4, UAI-1:** SDHC successfully obtained new Continuum of Care (CoC) funding in the amount of \$1,754,376 which will help support an additional 62 households through SDHC's current Moving Home Rapid Rehousing program.
- **SPA-4, UAI-1:** The Housing Instability Prevention Program (HIPP) launched September 8, 2022. As of June 30, 2023, HIPP had enrolled 140 households. HIPP continues to receive referrals to identify 300 households to receive assistance. HIPP initially provided a fixed rental assistance amount of \$500 per month for up to 24 months for qualifying households. During the first six months of the program, SDHC staff identified challenges affecting the level of eligible enrollees and implemented solutions to address those challenges. SDHC also determined that the original \$500 flat subsidy amount did not provide enough flexibility to assist all of the households that needed it. To address this, SDHC created three tiers of subsidies. Households now receive \$250, \$500 or \$750 per month based on the household's circumstances.
- **Strategic Priority Area 3: Compliance and Equity Assurance Consideration (CEA)**
 - **SPA-4, UAI-2Ai:** CEA will actively participate in the process and conduct as needed equity lens reviews to ensure inclusivity.



- UPDATE:
 - CEA facilitated 3 targeted technical assistance outreach meetings with shelter providers. Reviewed shelter provider documents and provided recommendations.
 - The Tenant Protection Guide was translated into additional languages to increase access to information related to tenants' rights, which can help prevent housing instability or potential homelessness (Tagalog, Traditional Chinese, Amharic and Somali)

**Strategic Priority Area #5: Advocacy, Communication, Public Engagement:**

Since the adoption SDHC's FY 2022 -2024 Strategic Plan, 4 percent of all SDHC Board items have been related to and in support of Priority Area #5.

- **SPA-5, UAI-1:** In fiscal year 2023, for the first time, SDHC developed a [Calendar Year 2023 State and Federal Advocacy and Legislative Engagement Guide](#) (Engagement Guide) which was approved by the SDHC Board and Housing Authority. The new guide supports key strategic priority areas by framing areas of focus for SDHC leadership and SDHC policy staff in alignment with council priorities, to inform SDHC efforts to garner support and secure funding for SDHC's core work. This includes increasing quality, affordable housing and preservation solutions; helping families increase the opportunity for self-sufficiency and quality of life; and advancing homelessness solutions. The Engagement Guide provides a framework for SDHC's legislative platform and supports SDHC's FY 2022 – 2024 Strategic Plan to help foster progress toward SDHC's vision.
 - o For a review of FY 2023 legislative advocacy activities, please view report [HCR23-098](#) and the related presentation.
- **SPA-5, UAI-2:** SDHC's Communications Plan was finalized in December 2021, in consultation with Strategies 360. This plan includes goals and objectives on which SDHC continues to make progress, including but not limited to launching SDHC's social media accounts in November 2022 (LinkedIn) and December 2022 (Instagram and Facebook); convening a local Communications Working Group in December 2022 that continues to meet quarterly to foster information sharing, messaging, discussion around key issues, and alignment on approach and roles among communication professionals and additional representatives from affordable housing and homelessness organizations; collaborating with the Information Technology Department to identify a software solution to assist with managing Public Records Act requests; and creating special reports, such as the Fiscal Year 2024 Budget Report and the COVID-19 Housing Stability Assistance Program concluding report.
- **SPA-5, UAI-2A:** The Communications Working Group began meeting in December 2022 and continues to meet approximately quarterly to discuss messaging, information-sharing possibilities, challenges and opportunities, and other communications-related topics.
- **SPA-5, UAI-2B:** Communications completed the Public Engagement Guide, including stakeholder engagement, in February 2023. This guide is available for all SDHC staff on Communications' page on SDHC's intranet.
- **SPA-5, UAI-3A:** SDHC's News Media Response Guide was finalized and published in December 2022. This guide details processes and directions for responding to news media inquiries accurately and in a timely manner and to proactively interact with news media to inform the public about SDHC's programs and activities.
- **SPA-5, UAI-3B:** In June 2023, SDHC completed the creation of the City of San Diego Tenant Protection Guide, as required by the City's Residential Tenant Protections Ordinance. This guide is available to the public on SDHC's website in multiple languages. SDHC also created a web page, www.sdhc.org/tenantprotections, for the public to access the Tenant Protection



Guide and additional resources. Additional workshops and training are available to the public through the [Eviction Prevention Program](#). SDHC contracts with Legal Aid Society of San Diego to operate the Eviction Prevention Program.

- Strategic Priority Area 5: Compliance and Equity Assurance Consideration
- **SPA-5, UAI-1Ai:** CEA will actively participate in the process and will assist with community outreach utilizing a robust community engagement platform.
- **SPA-5, UAI-3B:** CEA will actively participate in the process and will assist with community outreach utilizing a robust community engagement platform.
- UPDATE: CEA procured a comprehensive community engagement platform with Public Input. The CEA division aims to foster stronger connections within the community to address pressing issues. The following community engagement projects were released:
 - [City of San Diego Affordable Housing Fund](#)
 - [SDHC Computer Giveaway](#)
 - [San Diego Renter Study](#)
 - [FY 2024 SDHC NOFA Public Comment](#)

SMART Objective Progress: Progress towards the completion of SMART Objectives for this priority area is currently at 68%.

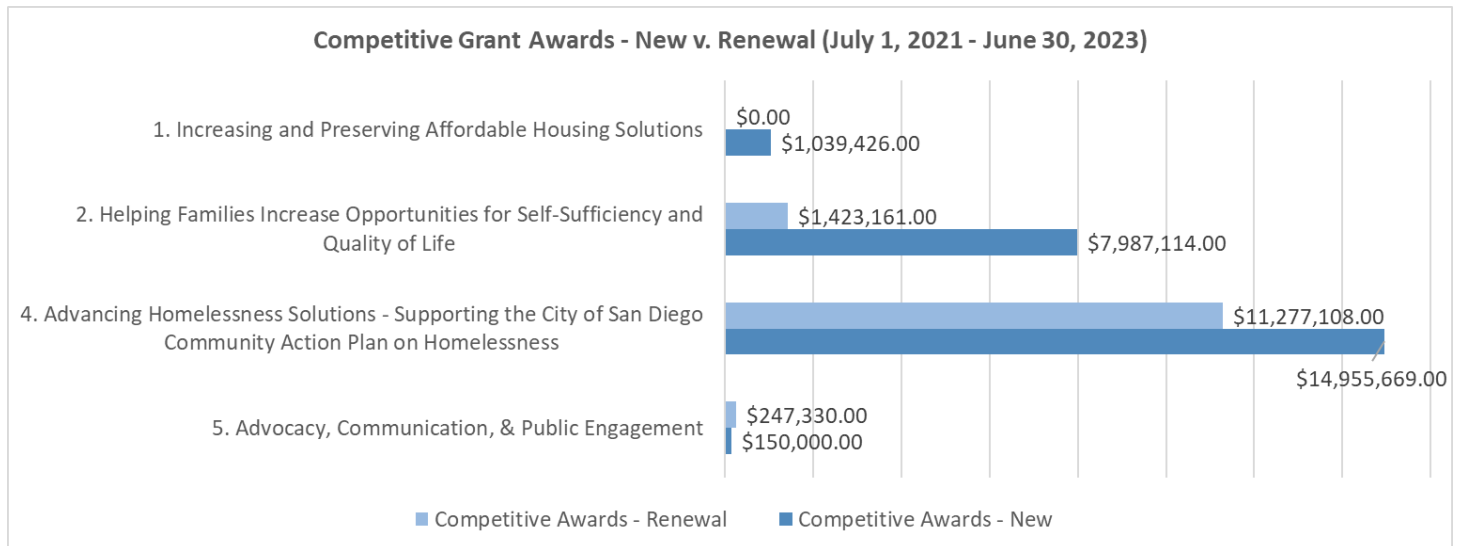
- Advocacy: By the end of FY 2024, influenced or achieved the intended objective on 20 percent of the bills or policies SDHC engages in that support SDHC's mission:
 - The policy team is engaged in legislative advocacy efforts to help support SDHC's Strategic Priority areas. In FY 2023, SDHC took a position on more than a dozen state bills and engaged in advocacy efforts at the federal level in support of the Affordable Housing Fair Credit Improvement Act and the Fair Housing Improvement Act. To view lists of those efforts for the reporting period, [click here](#).
- By the end of FY 2024, identify a minimum of three funding opportunities per year for which SDHC either directly or in collaboration with partners (e.g., City, public-private partnerships) can apply and/or advocate to support housing and homelessness programs and equity and inclusion initiatives.
 - Nearly half of the 40 competitive grant funding awards to SDHC and its 501(c)(3) affiliate, SDHC Building Opportunities, Inc., between July 1, 2021, and June 30, 2023, were in support of housing and homelessness programs and equity and inclusion initiatives. Specifically, there were eight in FY 2022 and nine in FY 2023.
 - Additionally, approximately \$70.8 million in competitive grant requests that support these issue areas were pending at the end of FY 2023.
 - Also pending was a request for up to 75 federal Family Unification Vouchers, and two collaborative requests totaling approximately \$3.4 million to the Congressionally directed Economic Development Initiative – Community Project Funding (CPF) program to address housing and



- homelessness. The CPF requests were submitted in collaboration with the City of San Diego, U.S. Representative Juan Vargas (District 52), U.S. Senator Alex Padilla and U.S. Representative Scott Peters (District 50).
- Several other of the awarded and pending competitive grant applications during this timeframe and in support of these issues were submitted collaboratively with partners such as the Regional Task Force on Homelessness, developer and nonprofit partners, and additional housing, real estate, and equity community partners.
 - The remaining competitive grant awards and pending applications during this timeframe align with Strategic Priority areas 2 and 5.
 - Details about grant opportunities are tracked by staff on an ongoing basis.
- Stakeholder Communication: By the end of FY 2024, 25 percent of stakeholder external communications, such as news releases, social media posts and e-newsletters, will contain one or more of SDHC's key message concepts.
 - SDHC is reevaluating the feasibility of this metric and will provide an update in the next Strategic Plan progress report.
 - Public Engagement: By the end of FY 2024, conduct at least 15 briefings with reporters or newsrooms to inform and educate them about SDHC's programs and activities, and to increase public awareness and understanding of SDHC's mission.
 - As of September 30, 2023, SDHC has engaged in discussions with news media at least 15 times to provide information to them about SDHC's programs and activities, independent of SDHC's distribution of media advisories, news releases and social media posts.

Grants and Funding

In FY 2023 SDHC successfully secured just over \$24 million in sixteen new competitive awards and just over \$13 million in twenty-four renewal competitive award funds to support the Strategic Plan's priority areas. Most of the awards support Priority Area 4: Advancing Homelessness Solutions. The largest award that contributes to the difference between FY 2022 and FY 2023 funding is the Home Key Round Two award.



Grants Pending as of 06.30.23 Summary

- There were 5 competitive grant applications requesting approximately \$70.8 million that were pending as of June 30, 2023.
 - This total amount requested does not include the budget authority of a request for federal Family Unification Program rental housing vouchers, which isn't known until the time of award.
 - For a complete list of pending grant information, please see the semi-annual grant report for the second half of FY 2023 [HERE](#).
 - NOTES: Data does not include non-competitive renewal Section 8 Housing Choice Voucher or Operating Fund awards tracked by different divisions and departments. Data include awards to SDHC and its nonprofit affiliate, SDHC Building Opportunities, Inc. (SDHC BOI). Though most grants support multiple Strategic Plan Priority Areas, individual awards are correlated to the priority areas with which they most closely align. Grant activities also indirectly support Strategic Priority Area 3, "Investing in Our Team" through administrative allocations, etc.

Article 8: Housing**Division 5: San Diego Housing Trust Fund***("San Diego Housing Trust Fund" added 4-16-1990 by O-17454 N.S.)***§98.0501 Purpose and Intent**

- (a) It is the intent of the City Council to create an Affordable Housing Fund as a permanent and annually renewable source of revenue to meet, in part, the housing needs of the City's *very low*, *low*, and *median income* households. There are households which are income eligible and also possess one or more of the following characteristics; (1) they are burdened by paying more than thirty percent (30%) of their gross income for housing costs; (2) they live in overcrowded conditions; (3) they live in substandard housing units; (4) they are homeless individuals and families; or (5) they consist of individuals and families with special housing needs such as the elderly, the developmentally disabled, the mentally ill, the physically disabled, single parent households and large families.
- (b) The Affordable Housing Fund will serve as a vehicle for addressing very low, low, and median income housing needs through a combination of funds as provided for in these regulations.
- (c) It is the intent of the City Council to address a significant portion of the City's current and projected very low, low, and median income housing need by leveraging every one dollar of City funds allocated to the Fund with two dollars of non-City subsidy capital funds.
- (d) It is further the intent of the Council to foster a mix of family incomes in projects assisted by the Fund and to disperse affordable housing projects throughout the City, in accordance with its Balanced Communities Policy and its intent to achieve a balance of incomes in all neighborhoods and communities so that no single neighborhood experiences a disproportionate concentration of housing units affordable to very low, low, and median income households.
- (e) It is the purpose and intent of this part to preserve and maintain renter and ownership housing units which are affordable to low, very low, and moderate income households and are located within the City, including federally assisted units and units located in mobile home parks.

- (f) It is the further intent of the City Council to foster and encourage the private sector to join with the public sector and the nonprofit sector to further the goals of this ordinance.

(Amended 6-3-2003 by O-19190 N.S.)

§98.0502 Establishment of the San Diego Affordable Housing Fund

- (a) There is established a fund to be known as the San Diego Affordable Housing Fund. The Affordable Housing Fund shall consist of funds received from the commercial development linkage fees paid to the City pursuant to Chapter 9, Article 8, Division 6 of the San Diego Municipal Code; revenues from the Transient Occupancy Tax as provided in Section 35.0128 of the San Diego Municipal Code; funds received from in lieu fees paid to the City and revenues received from promissory note repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code; and any other appropriations as determined from time to time by legislative action of the City Council. The Affordable Housing Fund shall be administered by the San Diego Housing Commission pursuant to the provisions of this Division, the appropriation ordinances and applicable Council policies.
- (b) There is also established within the Affordable Housing Fund, a San Diego Housing Trust Fund account. Except for funds received from in lieu fees paid to the City and revenues received from promissory note repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code, all funds received by the Affordable Housing Fund, either from special funds or general fund appropriations, shall be deposited in the Housing Trust Fund account. The administration and use of monies from the San Diego Housing Trust Fund shall be subject to all provisions under this Division related to the Affordable Housing Fund.
- (c) There is also established within the Affordable Housing Fund, an Inclusionary Housing Fund account. Funds received from in lieu fees paid to the City and revenues received from promissory note repayments, shared equity payments, or other payments collected pursuant to Chapter 14, Article 2, Division 13 of the San Diego Municipal Code shall be deposited in the Inclusionary Housing Fund account. The administration and use of monies from the Inclusionary Housing Fund shall be subject to all provisions under this Division related to the Affordable Housing Fund.

(“Definitions” repealed; “Establishment of the San Diego Housing Trust Fund and Trust Fund Account” renumbered from Sec. 98.0503, retitled and amended 6-3-2003 by O-19190 N.S.)

(Amended 1-28-2020 by O-21167 N.S; effective 7-1-2020.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

Click the link to view the Strikeout Ordinance highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-21167-SO.pdf]

§98.0503 Purpose and Use of Affordable Housing Fund and Monies

- (a) The Affordable Housing Fund shall be used solely for programs and administrative support approved by the City Council in accordance with Section 98.0507 to meet the housing needs of *very low income*, *low income* and *median income* households. In addition, for homeownership purposes only, these funds may be utilized to meet the housing needs of *moderate income* households where *moderate income* has the same meaning as in San Diego Municipal Code Section 113.0103. These programs shall include those providing assistance through production, acquisition, rehabilitation and preservation.
- (b) Principal and interest from loan repayments, proceeds from grant repayments, forfeitures, reimbursements, and all other income from Affordable Housing Fund activities, shall be deposited into the Affordable Housing Fund. All funds in the account shall earn interest at least at the same rate as pooled investments managed by the Treasurer. All interest earnings from the account shall be reinvested and dedicated to the account. All appropriated funds in the Affordable Housing Fund account shall be available for program expenditures as directed by the Commission and pursuant to Section 98.0507. The City's Annual Appropriation Ordinance shall provide for the transfer of designated funds to the Affordable Housing Fund. Transfers shall be made quarterly or upon direction of the City Manager. Transferred funds shall accrue interest from the time of transfer.

(“Establishment of the San Diego Housing Trust Fund and Trust Fund Account” renumbered to Sec. 98.0502; “Purpose and Use of Housing Trust Fund and Monies” renumbered from Sec. 98.0504, retitled and amended 6–3–2003 by O–19190 N.S.)
(Amended 1-23-2009 by O-19825 N.S; effective 2-22-2009.)

§98.0504 Purpose and Use of San Diego Housing Trust Fund Account

- (a) The San Diego Housing Trust Fund may be used in any manner, through loans, grants, or indirect assistance for the production and maintenance of assisted units and related facilities. The San Diego Housing Trust Fund monies shall be distributed to the target income groups according to the following guidelines:
- (1) No less than ten percent (10%) of the funds in the San Diego Housing Trust Fund account shall be expended to provide transitional housing for households who lack permanent housing;
 - (2) Not less than sixty percent (60%) of the funds in the Trust Fund account shall be expended to provide housing to *very low income* households at *affordable housing costs*.
 - (3) No more than twenty percent (20%) of the funds in the San Diego Housing Trust Fund account shall be expended to provide housing to *low income* households at *affordable housing costs*;
 - (4) No more than ten percent (10%) of the funds in the San Diego Housing Trust Fund account shall be expended to assist *median income* and *moderate income* first-time home buyers purchase a home at an *affordable housing cost* with special consideration given to those proposals (1) involving neighborhoods that are predominately *low income* with substantial incidence of absentee ownership, or (2) which further the goals of providing economically balanced communities. *Affordable housing cost*, as defined for moderate income home buyers, shall also be consistent with California Health and Safety Code section 50052.5 for those households at or exceeding 100 percent (100%) of area median income.
- (b) The San Diego Housing Commission shall ensure that a program to increase the capacity of nonprofit organizations to develop and operate housing for *very low, low, median and moderate income* households be included in the Affordable Housing Fund Annual Plan to be submitted to the City Council in accordance with Section 98.0507. Through such a program, the Housing Trust Fund may fund training programs for non-profit organizations, and provide funds for administrative support. Furthermore, the San Diego Housing Commission shall ensure that technical assistance related to the preparation of project proposals is made available to nonprofit organizations requesting such assistance.

- (c) Funds shall not be used for the operation of supporting services such as child care or social services unless:
 - (1) The funds are used in connection with transitional housing or in neighborhoods where the addition of units will create the need for supportive services.
 - (2) The recipient can demonstrate to the Commission that other funds are not available, and
 - (3) No more than twenty-five percent (25%) of the loan, grant or assistance is designated for such services. Whenever such funds are disbursed from the Trust Fund account, the San Diego Housing Commission shall determine the terms and conditions which shall be attached to the grant or loan of those funds.

*(“Purpose and Use of Housing Trust Fund and Monies” renumbered to Sec. 98.0503; “Purpose and Use of San Diego Housing Trust Fund Account” added 6-3-2003 by O-19190 N.S.)
(Amended 1-23-2009 by O-19825 N.S; effective 2-22-2009.)*

§98.0505 Purpose and Use of San Diego Inclusionary Housing Fund Account

- (a) The Inclusionary Housing Trust Fund shall be used solely for programs and administrative support approved by the City Council pursuant to the provisions of Section 98.0507.
- (b) Priority for the expenditure of funds from the Inclusionary Housing Trust Fund shall be given to the construction of new affordable housing stock. The monies may also be allowed to be expended for other programs administered by the San Diego Housing Commission if approved by the City Council in the Affordable Housing Fund Annual Plan, pursuant to the provisions of this Division.
- (c) Priority for the expenditure of funds from the Inclusionary Housing Trust Fund shall be given to the Community Planning Area from which the funds were collected. The funds shall be used to promote and support the City’s goal of providing economically balanced communities.

(“Term of Affordability” renumbered to Sec. 98.0506; “Purpose and Use of San Diego Inclusionary Housing Fund Account” added 6-3-2003 by O-19190 N.S.)

§98.0506 Term of Affordability

- (a) Whenever funds from the Affordable Housing Fund are used for the acquisition, construction or substantial rehabilitation of an affordable rental or cooperative unit, the San Diego Housing Commission shall impose enforceable requirements on the owner of the housing unit that the unit remain affordable for the remaining life of the housing unit, assuming good faith efforts by the owner to maintain the housing unit and rehabilitate it as necessary. The remaining life of the housing unit shall be presumed to be a minimum of fifty-five (55) years.
- (b) Whenever funds from the Affordable Housing Fund are used for the acquisition, construction or substantial rehabilitation of ownership housing, the San Diego Housing Commission shall impose enforceable resale restrictions on the owner to keep the housing unit affordable for the longest feasible time, while maintaining an equitable balance between the interests of the owner and the interests of the San Diego Housing Commission.
- (c) For programs funded with funds from the Affordable Housing Fund which are not described in (a) or (b) above, the Commission shall develop appropriate mechanisms to ensure affordability which shall be described in the San Diego Housing Fund Annual Plan.
- (d) The affordability restriction requirements described in this section shall run with the land and the Commission shall develop appropriate procedures and documentation to enforce these requirements and shall record such documentation in the Official Records of the Recorder of San Diego County.

(“Three Year Program” renumbered to Sec. 98.0507; “Term of Affordability” renumbered from Sec. 98.0505 and amended 6–3–2003 by O–19190 N.S.)

§98.0507 Affordable Housing Fund Annual Plan

Prior to the commencement of the fiscal year and annually thereafter, the San Diego Housing Commission shall adopt an Affordable Housing Fund Annual Plan for the use of the Affordable Housing Fund, including the Housing Trust Fund account and the Inclusionary Housing Fund account, and present it to Council for action. This document shall plan for the following fiscal year or other appropriate time frame to ensure for accurate and effective planning and budgeting of fund revenues. The Affordable Housing Fund Annual Plan shall include:

- (a) A description of all programs to be funded with funds from the Affordable Housing Fund account specifying the intended beneficiaries of the program including the capacity building program for nonprofit organizations;

- (b) The amount of funds budgeted for loans or grants to recipients who agree to participate in Commission approved Programs;
- (c) The amount of funds budgeted for administrative expenses, exclusive of legal fees. All disbursements from the Affordable Housing Fund shall be consistent with the Affordable Housing Fund Annual Plan.

(“Solicitation of Program Suggestions” renumbered to Sec. 98.0508; “Three Year Program Plan” renumbered from Sec. 98.0506, retitled and amended 6-3-2003 by O-19190 N.S.)

§98.0508 Solicitation of Program Suggestions

Each year, the San Diego Housing Commission shall solicit suggestions on the programs to be funded by the Affordable Housing Fund account in the next fiscal year from any person who has indicated such a desire in writing to the Board of Commissioners of the San Diego Housing Commission.

(“Preparation and Funding of Three-Year Program Plan” renumbered to Sec. 98.0509; “Solicitation of Program Suggestions” renumbered from Sec. 98.0507 and amended 6-3-2003 by O-19190 N.S.)

§98.0509 Preparation and Funding of Affordable Housing Fund Annual Plan

Each year, the San Diego Housing Commission shall hold three (3) public hearings to solicit testimony from the general public on programs to be funded by the Affordable Housing Fund account in the next fiscal year. A hearing shall be held in the North, South and Central areas of the City. The San Diego Housing Commission shall consider the suggestions from the neighborhood groups and the testimony from the public hearings, and cause a draft Annual Plan to be prepared for its consideration. The San Diego Housing Commission shall hold a public hearing to obtain public comments on the draft Affordable Housing Fund Annual Plan, make modifications as it deems appropriate and submit it to the Council for action. The City Council shall consider the Affordable Housing Fund Annual Plan as submitted by the San Diego Housing Commission, modify it if it so elects; approve it no later than July 31 of each year; and appropriate to fund the Affordable Housing Fund Annual Plan from the Affordable Housing Fund account or an other funding sources it chooses to consider for this purpose. These procedures and dates may be adjusted as necessary for the preparation of the first Affordable Housing Fund Annual Plan after the enactment of this Division.

(“Project Selection and Disbursement of Funds” renumbered to Sec. 98.0510; “Preparation and Funding of Three-Year Program Plan” renumbered from Sec. 98.0508, retitled and amended 6-3-2003 by O-19190 N.S.)

§98.0510 Project Selection and Disbursement of Funds

- (a) All projects considered for funding will be reviewed prior to Commission action by the local Community Planning Group or, in an area where there is no Planning Group, another community advisory group.
- (b) The San Diego Housing Commission may notify potential recipients that specified funds from the Affordable Housing Fund are available to be distributed as loans or grants through issuing requests for proposals and notices of fund availability.

(“Support of Nonprofit Organizations” repealed; “Project Selection and Disbursement of Funds” renumbered from Sec. 98.0509 and amended 6-3-2003 by O-19190 N.S.)

§98.0511 Regulation of Recipients

Every recipient shall enter into a written agreement with the San Diego Housing Commission which sets forth the terms and conditions of the grant or loan. The agreement shall contain at least the following provisions:

- (a) The amount of funds to be disbursed from the Affordable Housing Fund.
- (b) The manner in which the funds from the Affordable Housing Fund are to be used.
- (c) The terms and conditions of the grant or loan.
- (d) The projected and maximum amount that is allowed to be charged in order for the assisted units to maintain an affordable housing cost.
- (e) A requirement that periodic reports be made to the Commission to assist its monitoring of compliance with the agreement.
- (f) A description of actions that the Commission may take to enforce the agreement.
- (g) Restrictions on the return on equity and developers fee recipients may receive, where applicable.

(“Funding of Supporting Services” repealed; “Regulation of Recipients” renumbered from Sec. 98.0512 and amended 6-3-2003 by O-19190 N.S.)

§98.0512 Publication of Program Documents

The Commission shall publish such administrative rules and guidelines as are necessary and desirable to implement the programs approved by the City Council in the Annual Plan.

(“Regulation of Recipients” renumbered to Sec. 98.0511; “Publication of Program Documents” renumbered from Sec. 98.0522 and amended 6–3–2003 by O-19190 N.S.)

§98.0513 Annual Report

- (a) The Commission shall within ninety (90) days following the close of each fiscal year prepare and submit an annual report to the City Council on the activities undertaken with funds from the Affordable Housing Fund account. The report shall specify the number and types of units assisted, the geographic distribution of units and a summary of statistical data relative to the incomes of assisted households, the monthly rent or carrying charges charged the amount of state, federal and private funds leveraged, and the sales prices of ownership units assisted. The report shall specifically contain a discussion of how well the goals of the previous year’s Annual Plan were met. The report shall also contain the information necessary to support the findings specified in Section 66001 of Chapter 5, Division 1 of Title 7 of the California Government Code.

(“Annual Report” renumbered from Sec. 98.0523 and amended 6–3–2003 by O-19190 N.S.)

§98.0514 Reserve Fund

The Commission may establish and maintain a reserve fund account subject to approval of the City Council, adequate to preserve the ability of the Affordable Housing Fund to take maximum advantage of unforeseen opportunities in assisting housing and to ensure prudently against unforeseen expenses. The amount to be maintained in this reserve fund shall be determined by the San Diego Housing Commission. The San Diego Housing Commission shall establish procedures for maintaining such a fund.

(“Reserve Fund” renumbered from Sec. 98.0524 and amended 6–3–2003 by O-19190 N.S.)

§98.0515 Financial Management

- (a) The City Auditor shall maintain a separate Affordable Housing Fund and any required related subsidiary funds and transfer the balance on deposit from such funds to the San Diego Housing Commission on a quarterly basis upon the direction from the Financial Management Director.
- (b) The San Diego Housing Commission shall maintain and report within their accounts a separate Affordable Housing Fund and the subsidy funds of the Housing Trust Fund, the Inclusionary Housing Fund, and any other required related subsidiary funds for all related financing transferred from the City and any related income. Such funds shall be accounted for and reported separately on the San Diego Housing Commission's annual audited financial report, and such funds shall be audited for compliance with the Affordable Housing Fund Ordinance, Inclusionary Housing Ordinance, and related policies and regulations.
The Commission shall also prepare any other reports legally mandated for financing sources of the Affordable Housing Fund.

(“Financial Management” renumbered from Sec. 98.0525 and amended 6-3-2003 by O-19190 N.S.)

§98.0516 Equal Opportunity Program

The San Diego Housing Commission shall apply its equal opportunity program to assure that contractors doing business with and/or receiving funds from the Affordable Housing Fund will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, age, or national origin and that equal employment opportunity is provided to all applicants and employees without regard to race, religion, sex, handicap, age, or national origin. The goals of the equal opportunity program are to ensure that all contracts achieve parity in the representation of women, minorities, and the handicapped in each contractor's work force with the availability of women minorities, and the handicapped in the San Diego County labor market. The program shall apply to all vendors, grantees, lessees, consultants, banks, and independent corporations under contract with the San Diego Housing Commission.

(“Equal Opportunity Program” renumbered from Sec. 98.0526 and amended 6-3-2003 by O-19190 N.S.)

§98.0517 Compliance with Antidiscrimination Laws

Each contractor shall submit certification of compliance with Executive Order 11246, Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practice Act, and other applicable federal and state laws and regulations hereinafter enacted. Such certification shall be on forms to be provided by the Commission and shall be submitted at the time the contractor submits a bid or proposal.

(“Compliance with Antidiscrimination Laws” renumbered from Sec. 98.0527 on 6-3-2003 by O-19190 N.S.)

§98.0518 Commission Powers To Enforce

The San Diego Housing Commission may institute any action or proceeding it deems appropriate, judicial or otherwise, against recipients or other persons to carry out the provisions of this Division, to enforce the terms of any agreement related to the use of funds from the Affordable Housing Fund, or to protect the interest of the City, the San Diego Housing Commission, or intended beneficiaries of programs operated pursuant to this Division. The San Diego Housing Commission may foreclose on property assisted with funds from the Affordable Housing Fund, seek to assume managerial or financial control over property financed with funds from the Affordable Housing Fund, directly or through a receiver, seek monetary damages or seek equitable or declaratory relief.

(“Commission Powers to Enforce” renumbered from Sec. 98.0528 and amended 6-3-2003 by O-19190 N.S.)

Article 2: General Development Regulations**Division 13: Inclusionary Affordable Housing Regulations***(Added 6-3-2003 by O-19189 N.S.)***§ 142.1301 Purpose of Inclusionary Affordable Housing Regulations**

The purpose of this Division is to encourage diverse and balanced neighborhoods with housing available for households of all income levels. The intent is to ensure that when developing the limited supply of developable land, housing opportunities for persons of all income levels are provided.

*(Added 6-3-2003 by O-19189 N.S.)***§ 142.1302 When Inclusionary Affordable Housing Regulations Apply**

This Division applies to all residential *development* of 10 or more *dwelling units* and to all *condominium conversion development* of two or more *dwelling units*, except as provided in Section 142.1303. The requirements of this Division shall not be cumulative to state or other local affordable housing requirements where those *dwelling units* are subject to an affordability restriction recorded against the property by the state or local agency. To the extent that state or local regulations are inconsistent with the requirements of this Division for the amount of the fee, length of the restriction or the level of affordability, the more restrictive shall apply.

*(Added 6-3-2003 by O-19189 N.S.)**(Amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)**(Amended 1-28-2020 by O-21167 N.S.; effective 7-1-2020.)*

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§ 142.1303 Exemptions From the Inclusionary Affordable Housing Regulations

This Division is not applicable to the following:

- (a) Residential *development* located in the North City Future Urbanizing Area that is within *Proposition A Lands* of the City of San Diego or any project located in an area of the City that was previously located in the North City Future Urbanizing Area and has been phase shifted into the *Planned Urbanized Communities*, and is subject to the inclusionary zoning requirements contained in the North City Future Urbanizing Area Framework Plan, San Diego Municipal Code section 143.0450(d), the Subarea Plans, Development Agreements, Affordable Housing Agreements, or conditions of approval of a *development permit*, as applicable.
- (b) Rehabilitation of an existing building that does not result in a net increase of *dwelling units* on the *premises*.
- (c) *Density* bonus units constructed in accordance with the provisions of Chapter 14, Article 3, Division 7.

(Amended 3-8-2004 by O-19267 N.S.)

(Amended 4-8-2008 by O-19734 N.S.; effective 5-8-2008.)

(Amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)

(Retitled from “Exemptions From the Affordable Housing Inclusionary Regulations” to “Exemptions From the Inclusionary Affordable Housing Regulations” and amended 1-28-2020 by O-21167 N.S.; effective 7-1-2020.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§142.1304 Inclusionary Affordable Housing Requirements

From July 1, 2020 through June 30, 2024, the requirements of subsections (a) and (b) of this Section 142.1304 shall be implemented incrementally as set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual on file with the San Diego Housing Commission (Procedures Manual). Effective July 1, 2024, all residential *development* subject to this Division shall include inclusionary *dwelling units* as follows:

(a) Rental residential *development*:

At least 10 percent of the total *dwelling units* in the *development* shall be made available for rent by *very low income* households or *low income* households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of *median income*.

(b) For-sale residential *development*:

(1) At least 10 percent of the total *dwelling units* in the *development* shall be made available for purchase at a cost affordable to *median income* households; or

(2) At least 15 percent of the total *dwelling units* in the *development* shall be made available for purchase at a cost affordable to *moderate income* households.

(c) The *applicant* may propose a combination of inclusionary *dwelling units* required by this Division. The proposal shall be considered by the San Diego Housing Commission in accordance with this Division and the Procedures Manual. The proposal shall be approved if the combination provides substantially the same or greater level of affordability as required by this Division and provides the same or greater number of inclusionary *dwelling units* required by this Division.

(d) For any partial inclusionary *dwelling unit* calculated, the *applicant* shall pay a prorated amount of the Inclusionary In Lieu Fee in accordance with Section 142.1306 or provide an additional inclusionary *dwelling unit*.

(e) *Development* of inclusionary *dwelling units* shall be subject to the following:

(1) The inclusionary *dwelling units* shall be constructed at the same time as the market-rate *dwelling units* and receive final inspection approval from the Building Official no later than the date that the market-rate *dwelling units* receive final inspection approval from the Building Official. The *applicant* may seek an alternative *development* schedule in accordance with Section 142.1310 and Section 142.1311.

- (2) The inclusionary *dwelling units* shall be comparable in *bedroom* mix, design, and overall quality of construction to the market-rate *dwelling units* in the *development*, as determined by the San Diego Housing Commission, except that the inclusionary *dwelling units* shall not be required to exceed three *bedrooms* per *dwelling unit*. The square footage and interior features of the inclusionary *dwelling units* shall be good quality and consistent with current building standards for new housing in the City of San Diego.
 - (3) Sale or lease of the inclusionary *dwelling units* shall follow the marketing requirements and procedures in the Procedures Manual.
 - (4) *Development* of the inclusionary *dwelling units* shall follow all other requirements in the Procedures Manual.
- (f) Rental inclusionary *dwelling units* shall remain affordable for a period of not less than 55 years from the date of final inspection for the *development* or applicable phase of the *development*.
- (g) For-sale inclusionary *dwelling units* shall be owner-occupied and the San Diego Housing Commission shall cause the for-sale inclusionary *dwelling units* to be subject to documentation ensuring the following:
 - (1) The owner and the San Diego Housing Commission shall share equity in a for-sale inclusionary *dwelling unit*. For the purpose of this Section 142.1304, equity shall be defined in the Procedures Manual. Shared equity shall be measured by the difference between the unrestricted fair market value of the inclusionary *dwelling unit* on the date of the first resale and the original unrestricted fair market value of the inclusionary *dwelling unit* at the time of its initial acquisition. Any equity calculation shall be based on an appraisal approved by the San Diego Housing Commission and shall consider the actual costs of any San Diego Housing Commission-approved improvements to the inclusionary *dwelling unit*. If the San Diego Housing Commission's calculation results in a negative number, the equity is deemed to be zero.
 - (2) The owner and the San Diego Housing Commission shall share the equity earned during the owner's first 15 years of ownership at the time of the first resale, refinance, or transfer of the for-sale inclusionary *dwelling unit* in accordance with the table in the Procedures Manual. The San Diego Housing Commission may waive the requirement to share equity if the for-sale inclusionary *dwelling unit* is sold to another *median income* household or *moderate income* household in compliance with the Procedures Manual.

- (3) Upon any sale or transfer of the inclusionary *dwelling unit* by the original owner, whenever it occurs, the San Diego Housing Commission shall also receive that sum calculated as the difference between the original unrestricted fair market value of the inclusionary *dwelling unit* and the restricted value of the inclusionary *dwelling unit* at the time of the original sale, as determined by an appraisal approved by the San Diego Housing Commission.
- (4) The owner shall sell the inclusionary *dwelling unit* at no less than fair market value unless sold to another *median income* household or *moderate income* household in compliance with the Procedures Manual.
- (5) Unless otherwise required by law, all promissory note repayments, shared equity payments, or other payments collected under this Section 142.1304(g) shall be deposited into the Affordable Housing Fund.
- (h) Residential *development* that intends to provide affordable *dwelling units* as a condition of the *development* and has an application for a *development permit*, for a *subdivision*, or for a Building Permit *deemed complete* before July 1, 2020 shall be subject to the version of these Inclusionary Affordable Housing Regulations in effect prior to July 1, 2020, as set forth in the Procedures Manual.

(“Inclusionary Affordable Housing Requirements” added 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1304 “Inclusionary Affordable Housing Fee” retitled, amended, and renumbered to Section 142.1306.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§142.1305 Methods of Compliance

- (a) The requirement to provide inclusionary *dwelling units* may be met in any of the following ways:
 - (1) On the same *premises* as the *development*;

- (2) On different *premises* from the *development*, but within the same community planning area, or within one mile of the *premises* of the *development*, as measured in a straight line from the *property lines* of the *development premises* to the *property lines* of the proposed *premises* where the inclusionary *dwelling units* will be constructed;
 - (3) On different *premises* from the *development* that does not meet the locational criteria in Section 142.1305(a)(2) but within the City of San Diego, if the *applicant* provides five percent more inclusionary *dwelling units* than required for the *development* pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (4) By payment of an Inclusionary In Lieu Fee in accordance with Section 142.1306 in lieu of constructing all or a portion of the inclusionary *dwelling units* required in Section 142.1304(a) or Section 142.1304(b);
 - (5) By rehabilitation of existing *dwelling units* or *SRO hotel rooms* or conversion of *guest rooms* in a *motel* or *hotel* to inclusionary *dwelling units* in accordance with Section 142.1307; or
 - (6) By land donation in accordance with Section 142.1308.
- (b) When a residential *development* includes both for-sale and rental *dwelling units*, the provisions of this Division that apply to for-sale *development* shall apply to that portion of the *development* that consists of for-sale *dwelling units*, and the provisions of this Division that apply to rental *dwelling units* shall apply to that portion of the *development* that consists of rental *dwelling units*.
- (c) Nothing in this Division shall preclude an *applicant* from using affordable *dwelling units* constructed by another *applicant* to satisfy the requirements of this Division, including contracting with an affordable housing developer with experience obtaining tax-exempt bonds, low income housing tax credits, and other competitive sources of financing, upon approval by the San Diego Housing Commission pursuant to the standards set forth in the Procedures Manual.

(“Methods of Compliance” added 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1305 “Election to Provide For-Sale Affordable Housing Units in a For-Sale Development” retitled, amended and renumbered to Section 142.1307.)

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§ 142.1306 Inclusionary In Lieu Fee

- (a) From July 1, 2020 through June 30, 2024, the Inclusionary In Lieu Fee requirements shall be implemented incrementally as set forth in the Procedures Manual. Effective July 1, 2024, the Inclusionary In Lieu Fee shall be \$25.00 per square foot of *net building area* of unrestricted market-rate residential *development*. The Inclusionary In Lieu Fee shall be updated annually based on the annual increase in the Construction Costs Index (CCI) published by Engineering News Record for Los Angeles, or similar construction industry index selected by the City Manager if the CCI index is discontinued.
- (b) Except as provided in Section 142.1306(c), the Inclusionary In Lieu Fee shall be determined using the rate in effect at the time the *applicant's development permit* application, application for *subdivision* under the *Subdivision Map Act*, or Building Permit application is *deemed complete*, whichever is earlier. The Inclusionary In Lieu Fee shall be paid on or before the issuance of the first residential Building Permit for the *development*.
- (c) The Inclusionary In Lieu Fee applicable to residential *development* that has an application for a *development permit*, for a *subdivision*, or for a Building Permit *deemed complete* before July 1, 2020 shall be \$12.73 per square foot multiplied by the *net building area* of the unrestricted market-rate residential *development*.
- (d) All funds collected pursuant to this Section 142.1306 shall be deposited into the Affordable Housing Fund.

(Added 6-3-2003 by O-19189 N.S.)

(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)

(Renumbered from former Section 142.1310, retitled to "Inclusionary Affordable Housing Fee" and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.

Former Section 142.1304 repealed.)

(Renumbered from former Section 142.1304 to Section 142.1306, retitled from “Inclusionary Affordable Housing Fee” to “Inclusionary In Lieu Fee” and amended 1-28-2020 by O-21167 N.S.; effective 7-1-2020. Former Section 142.1306 “Inclusionary Affordable Housing Obligations for Condominium Conversions” amended and renumbered to Section 142.1308.)

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§ 142.1307 Rehabilitation of Existing Dwelling Units, SRO Hotel Rooms, or Conversion of Guest Rooms

- (a) The requirements of this Division may be satisfied by the rehabilitation of existing *dwelling units* for conversion to inclusionary *dwelling units* affordable to *very low income* households or *low income* households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of *median income*, if the City Manager determines all of the following:
- (1) The San Diego Housing Commission is satisfied that the value of each *dwelling unit* after the rehabilitation work is 25 percent or more than the value of the *dwelling unit* prior to rehabilitation, inclusive of land value. The Procedures Manual shall include criteria for the determination of the value of the rehabilitation work;
 - (2) One *dwelling unit* shall be rehabilitated in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (3) The rehabilitated *dwelling units* are located in an appropriate residential zone that can accommodate at least the number of rehabilitated *dwelling units* required by this Division, and if those rehabilitated *dwelling units* are located within a *Transit Priority Area*, the number of *dwelling units* on the *premises* is at least 60 percent of the base *floor area ratio* or *density* designated by the zone in which the *premises* is located;
 - (4) The *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years from the approval of the *dwelling unit* as an inclusionary *dwelling unit*;

- (5) The *applicant* provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;
 - (6) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each *dwelling unit* to be rehabilitated, for the *premises* where the *dwelling units* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work; and
 - (7) On or before the time the *applicant's* application is *deemed complete*, the *applicant* complies with the State Relocation Act codified in California Government Code Section 7260 and provides all costs of notice to, and relocation of, any existing residents occupying the *dwelling units* to be rehabilitated.
- (b) The requirements of this Division may be satisfied by the rehabilitation of existing *dwelling units* that are restricted for use and occupancy for *very low income* households or *low income* households earning up to 60 percent of the *median income* by agreement with a federal, state, or local government agency, if the City Manager determines all of the following:
- (1) The agreement restricting the use and occupancy of the *dwelling units* for *very low income* households or *low income* households expires within 10 years of completion of *applicant's* rehabilitation of the *dwelling units*;
 - (2) One restricted *dwelling unit* shall be rehabilitated in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (3) The *applicant* provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;
 - (4) The *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years from the approval of the *dwelling unit* as an inclusionary *dwelling unit*; and

- (5) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each restricted *dwelling unit* to be rehabilitated, for the *premises* where the *dwelling units* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work.
- (c) The requirements of this Division may be satisfied by the rehabilitation of existing *SRO hotel rooms* affordable to *very low income* households, if the City Manager determines all of the following:
 - (1) The San Diego Housing Commission is satisfied that the value of each *SRO hotel room* after the rehabilitation work is 25 percent or more than the value of the *SRO hotel room* prior to rehabilitation, inclusive of land value. The Procedures Manual shall include criteria for the determination of the value of the rehabilitation work;
 - (2) One *SRO hotel room* shall be rehabilitated and affordable to a *very low income* household in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (3) All of the *SRO hotel rooms* located in the *SRO hotel* shall be rehabilitated by the *applicant*;
 - (4) The *SRO hotel* is located in an appropriate residential zone;
 - (5) The *applicant* provides evidence that the existing *SRO hotel* has a remaining useful life of at least 55 years from completion of the rehabilitation work;
 - (6) The *applicant* provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;
 - (7) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each *SRO hotel room* to be rehabilitated, for the *SRO hotel* where the *SRO hotel rooms* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work; and

- (8) The *applicant* complies with the State Relocation Act codified in California Government Code Section 7260 and provides all costs of notice to, and relocation of, any existing residents occupying the *SRO hotel rooms* to be rehabilitated at the time the application is *deemed complete*.
- (d) The requirements of this Division may be satisfied by the conversion of existing *guest rooms* in a *motel* or *hotel* to inclusionary *dwelling units* affordable to *very low income* households or *low income* households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of *median income*, if the City Manager determines all of the following:
 - (1) One *guest room* shall be converted to an inclusionary *dwelling unit* in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);
 - (2) The *motel* or *hotel* is located in an appropriate residential zone that can accommodate at least the number of converted *guest rooms* required by this Division, and if the *motel* or *hotel* is located within a *Transit Priority Area*, the number of *guest rooms* in the *motel* or *hotel* is at least 60 percent of the base *floor area ratio* or *density* designated by the zone in which the *motel* or *hotel* is located;
 - (3) The *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years from conversion of the *guest rooms*;
 - (4) The *applicant* provides evidence that the construction or rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official; and
 - (5) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each *guest room* to be converted, for the *motel* or *hotel* where the *guest rooms* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during conversion of the *guest rooms*.

- (e) Any inclusionary *dwelling units* or rehabilitated *SRO hotel rooms* provided pursuant to this Section 142.1307 shall be completed no later than the date the *applicant's* market-rate *dwelling units* receive final inspection approval from the Building Official. The *applicant* may seek an alternative *development* schedule in accordance with Section 142.1310 and Section 142.1311.
- (f) Inclusionary *dwelling units* and rehabilitated *SRO hotel rooms* provided pursuant to this Section 142.1307 shall remain affordable for a period of not less than 55 years from the date of final inspection or the date accepted by the San Diego Housing Commission.
- (g) The affordability of inclusionary *dwelling units* and rehabilitated *SRO hotel rooms* provided pursuant to this Section 142.1307 shall be secured by a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission, recorded against the market-rate residential *development* and the *premises* where the inclusionary *dwelling units* or rehabilitated *SRO hotel rooms* are located. The Declaration of Covenants, Conditions and Restrictions shall comply with the provisions of Section 142.1313 and shall include the method by which a capital reserve fund for repair, replacement, and maintenance of the inclusionary *dwelling units* or rehabilitated *SRO hotel rooms* shall be maintained with provision for sufficient initial capitalization and periodic contributions to the capital reserve fund.

(Added 6-3-2003 by O-19189 N.S.)

(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)

(Renumbered from former Section 142.1309, retitled to "Election to Provide For-Sale Affordable Housing Units in a For-Sale Development" and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)

(Amended 4-5-2016 by O-20634 N.S.; effective 5-5-2016.)

(Renumbered from former Section 142.1305 to Section 142.1307, retitled from "Election to Provide For Sale Affordable Housing Units in a For Sale Development" to "Rehabilitation of Existing Dwelling Units, SRO Hotel Rooms, or Conversion of Guest Rooms" and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1307 "Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations" amended and renumbered to Section 142.1310.)

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§ 142.1308 Land Donation

The requirements of this Division may be satisfied by the donation of land, if the donation is completed in accordance with California Government Section 65915(g) and Chapter 14, Division 7, Article 3 of the San Diego Municipal Code and if the value of the land on the date of donation is equal to or greater than the Inclusionary In Lieu Fee applicable to the *applicant's development* on the date of donation.

(Amended 3-8-2004 by O-19267 N.S.)

(Amended 7-5-2006 by O-19505 N.S.; effective 8-5-2006.)

(“Inclusionary Affordable Housing Obligations for Condominium Conversions” added 11-21-2011 by O-20107 N.S.; effective 12-21-2011. Former Section 142.1306 repealed.)

(Renumbered from former Section 142.1306 to Section 142.1308, retitled from “Inclusionary Affordable Housing Obligations for Condominium Conversions” to “Land Donation” and amended 1-28-2020 by O-21167 N.S.; effective 7-1-2020. Former Section 142.0308 “Findings for Variance, Waiver, Adjustment or Reduction Approval” amended and renumbered to Section 142.1311.)

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§142.1309 Incentives for On-Site Inclusionary Dwelling Units

- (a) An *applicant* may submit a written request for *density* bonus, waiver, or incentives pursuant to California Government Code Section 65915 and Chapter 14, Division 7, Article 3 of the San Diego Municipal Code if the *development* meets the minimum thresholds for *density* bonus pursuant to California Government Code Sections 65915 – 65918.
- (b) If an *applicant* has complied with this Division by providing all the inclusionary *dwelling units* required by this Division on the same *premises* as the market-rate *dwelling units*, then the inclusionary *dwelling units* shall be exempt from the payment of Development Impact Fees pursuant to Section 142.0640 of the San Diego Municipal Code.

(“Incentives for On-Site Inclusionary Dwelling Units” added 1-28-2020 by O-21167 N.S.; effective 7-1-2020. Former Section 142.1309 “General Rules for Inclusionary Affordable Housing Regulations” renumbered to Section 142.1312.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§ 142.1310 Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations

- (a) A variance, adjustment, or reduction from the provisions of this Division may be requested and decided in accordance with Process Four. A waiver from the provisions of this Division may be requested and decided in accordance with Process Five. Any variance, waiver, adjustment or reduction shall require either that the *findings* in Section 142.1311(a) or in Section 142.1311(b) be made.
- (b) An application for a variance, waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, waiver, adjustment, or reduction.

(Added 6-3-2003 by O-19189 N.S.)

(Renumbered from former Section 142.1304, retitled to “Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations” and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)

(“Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations” renumbered from former Section 142.1307 to Section 142.1310 and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1310 “Declaration of Covenants, Conditions and Restrictions” amended and renumbered to Section 142.1313.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§ 142.1311 Findings for Variance, Waiver, Adjustment or Reduction Approval

- (a) The decision maker may approve or conditionally approve an application for a variance, waiver, adjustment, or reduction of the applicability of the provisions of this Division only if the decision maker makes all of the following *findings*:
 - (1) Special circumstances, unique to that *development*, justify granting the variance, waiver, adjustment, or reduction;
 - (2) The *development* would not be feasible without the modification;
 - (3) A specific and substantial financial hardship would occur if the variance, waiver, adjustment, or reduction were not granted; and
 - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (b) The decision maker may approve or conditionally approve an application for a variance, waiver, adjustment, or reduction to the provisions of this Division if the decision maker makes *findings* that applying the requirements of this Division would take property in violation of the United States or California Constitutions.

(Added 6-3-2003 by O-19189 N.S.)

(Renumbered from former Section 142.1305, retitled to “Findings for Variance, Waiver, Adjustment or Reduction Approval” and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011. Former Section 142.1308 repealed.)

(“Findings for Variance, Waiver, Adjustment or Reduction Approval” renumbered from former Section 142.1308 to Section 142.1311 and amended 1-28-2020 by O-21167 N.S.; effective 7-1-2020. Former Section 142.1311 “Reporting Requirements” amended and renumbered to Section 142.1314.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§ 142.1312 General Rules for Inclusionary Affordable Housing Regulations

- (a) The Chief Executive Officer of the San Diego Housing Commission shall be responsible for determining affordability standards and occupant qualifications for any affordable units provided pursuant to this Division. The San Diego Housing Commission shall also monitor compliance with any documentation created as a result of an *applicant's* compliance with this Division.
- (b) The San Diego Housing Commission shall determine the reasonable fee to be paid by the *applicant* for the costs incurred by the San Diego Housing Commission in connection with implementation of this Division.

(Added 6-3-2003 by O-19189 N.S.)

(Renumbered from former Section 142.1307, retitled to "General Rules for Inclusionary Affordable Housing Regulations" and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)

("General Rules for Inclusionary Affordable Housing Regulations" renumbered from former Section 142.1309 to Section 142.1312 on 1-28-2020 by O-21167 N.S; effective 7-1-2020.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§ 142.1313 Declaration of Covenants, Conditions and Restrictions

All *development* of inclusionary *dwelling units* pursuant to this Division shall be subject to the following:

- (a) Each inclusionary *dwelling unit* and the applicable portions of the *premises* shall have recorded against them a Declaration of Covenants, Conditions and Restrictions approved by and in favor of the San Diego Housing Commission.
- (b) Any Declaration of Covenants, Conditions and Restrictions required by this Division shall enjoy first lien position and shall be secured by a deed of trust in favor of the San Diego Housing Commission recorded against the applicable portions of the *premises* and *dwelling unit*, prior to construction or permanent financing.

(Added 6-3-2003 by O-19189 N.S.)

(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)

(Renumbered from former Section 142.1311, and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)
(“Declaration of Covenants, Conditions and Restrictions” renumbered from former Section 142.1310 to Section 142.1313 and amended 1-28-2020 by O-21167 N.S.; effective 7-1-2020.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§ 142.1314 Reporting Requirements

The San Diego Housing Commission shall annually report to the City Council and the Housing Authority of the City of San Diego on the results of implementing this Division, including the following:

- (a) The number of *applicants* and location of *developments* that came before the City for ministerial or discretionary approval and the number of *applicants* and location of *developments* that were subject to the requirements of this Division;
- (b) The number of *applicants* and location of *developments* that applied for a waiver, variance, reduction, or adjustment in accordance with this Division, and the number of *applicants* and location of *developments* that were granted a waiver, variance, reduction, or adjustment and the terms of each; and
- (c) The number of market-rate units developed subject to this Division, the number of inclusionary *dwelling units* along with their location, the methods of compliance with this Division, and the total Inclusionary In Lieu Fees paid.

(Added 6-3-2003 by O-19189 N.S.)
(Renumbered from former Section 142.1312, and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)
(“Reporting Requirements” renumbered from former Section 142.1311 to Section 142.1314 and amended 1-28-2020 by O-21167 N.S.; effective 7-1-2020.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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Article 3: Supplemental Development Regulations**Division 5: SRO Hotel Regulations***(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§143.0510 Purpose of SRO Hotel Regulations**

The purpose of these regulations is to ensure the retention of the existing number of *SRO hotel rooms* and to provide assistance to tenants of *SRO hotel rooms* that will be displaced by the demolition, conversion, or rehabilitation of existing *SRO hotel rooms*. These regulations are intended to benefit the general public by minimizing the adverse impact on the housing supply and on displaced persons, particularly those who are *very low income*, elderly, or disabled, resulting from the permanent or temporary loss of *SRO hotel rooms* through their demolition, conversion, or rehabilitation.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§143.0515 When SRO Hotel Regulations Apply**

This division applies to any *development* that proposes the demolition or rehabilitation of all or part of an *SRO hotel* or *SRO hotel rooms* or the conversion of all or part of an *SRO hotel* or *SRO hotel rooms* to another use, except as provided in Section 143.0520.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§143.0520 Exemptions from SRO Hotel Regulations**

- (a) The regulations in sections 143.0540 and 143.0550 do not apply to the following demolitions or conversions:
- (1) Conversion of all or part of an *SRO hotel* or *SRO hotel room* to a *very low income* housing project.
 - (2) Demolition of all or part of an *SRO hotel* or *SRO hotel room* to allow for the new construction of a *very low income* housing project on the same site within 2 years pursuant to an agreement with the San Diego Housing Commission.
 - (3) Demolitions or conversions that result in the *development* of a project for housing *low income* senior citizens that is operated by a nonprofit corporation.

- (b) The City Council may exempt demolition or conversion of all or part of an *SRO hotel* or *SRO hotel room* that is necessary to implement a redevelopment project. An exemption under this section shall not be granted by the City Council unless it finds that the proposed project will contribute to the public health, safety, and welfare and that the contribution exceeds the negative impact on the supply of *SRO hotels* and *SRO hotel rooms* that will result from the demolition or conversion. An exemption under this section shall not exempt a redevelopment agency from requirements for replacement and other applicable requirements under California Community Redevelopment Law or other state or federal laws.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§143.0530 Administration of SRO Hotel Regulations

The San Diego Housing Commission or successor agency, as the agency responsible for administering the *SRO hotel* regulations, shall do the following:

- (a) Review each application for a permit to demolish or convert a hotel to identify any *SRO hotel* or *SRO hotel room* that is not exempt from these regulations under Section 143.0520.
- (b) Advise the *applicant* of the requirements of these regulations.
- (c) Review each replacement plan prepared by an *applicant* and advise the *applicant* as to whether or not the plan satisfies the requirements of these regulations. A replacement plan is a plan to replace *SRO hotel rooms* that is prepared by the *applicant*, approved by the San Diego Housing Commission, and incorporated into a Housing Replacement Agreement.
- (d) For each replacement plan that meets the requirements of these regulations, draft and execute with the *applicant*, a Housing Replacement Agreement that incorporates the terms of the replacement plan. A Housing Replacement Agreement is a written agreement between the San Diego Housing Commission and the *applicant* specifying the manner in which the housing replacement requirements in Section 143.0550 will be met.
- (e) Prepare and implement a system to monitor compliance of the Housing Replacement Agreements with the regulations in this division.
- (f) Manage the City of San Diego Single Room Occupancy Hotel Replacement Fund and cause replacement units to be acquired, constructed, or rehabilitated.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§143.0540 Demolition or Conversion Permit Requirement for SRO Hotel Rooms

Before a permit to convert or demolish all or part of an *SRO hotel* or *SRO hotel room* is issued, the *applicant* shall execute a Housing Replacement Agreement with the San Diego Housing Commission in accordance with Section 143.0550. A Housing Replacement Agreement is not required unless the *SRO hotel* had an occupancy permit issued prior to January 1, 1990, and the owner or operator did not deliver a notice of intent to withdraw accommodations from rent to the City before January 1, 2004.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000)

(Amended 9-7-2004 by O-19313N.S.; effective 10-7-2004)

§143.0550 Housing Replacement Requirement for SRO Hotel Rooms

- (a) Replacement *SRO hotel rooms* shall be provided within the community plan area in which the *SRO hotel rooms* were demolished or converted unless the San Diego Housing Commission approves alternate sites on public transportation corridors outside the community plan area. The replacement rooms shall be completed and ready for occupancy before occupancy of the redeveloped site upon which the former *SRO hotel rooms* were located.
- (b) Replacement *SRO hotel rooms* shall be made available to and occupied by *very low income* households at rents affordable to a *very low income*, single-person household as most recently established by the U.S. Department of Housing and Urban Development or successor agency for the San Diego Standard Metropolitan Statistical Area.
- (c) Occupancy and affordability restrictions shall be recorded for at least 30 years.
- (d) *SRO hotel rooms* shall be provided at a ratio of one replacement room for each existing *SRO hotel room* proposed to be demolished or converted. The replacement rooms shall be provided by one of the following methods:
 - (1) Construction of new *SRO hotel rooms*;
 - (2) Rehabilitation or conversion of hotel rooms that have been continuously vacant for more than one year before the permit application for use as *SRO hotel rooms*. Rehabilitation means reconstruction, renovation, repair, or other improvement to all or part of an *SRO hotel* or an *SRO hotel room*;

- (3) Conversion of nonresidential *structures* to *SRO hotel rooms*;
- (4) In lieu of providing *SRO hotel rooms*, an *applicant* may contribute to the Single Room Occupancy Hotel Replacement Fund. The amount of the contribution shall be equal to 50 percent of the replacement cost of the *SRO hotel rooms* to be demolished or converted. That cost shall be calculated by multiplying one-half of the hotel area demolished or converted, by the current *development* cost per square foot of comparable *SRO hotels* in the City, including land development costs. Monies deposited in the fund shall be used solely for the production or rehabilitation of *SRO hotel rooms* or the conversion of nonresidential *structures* to *SRO hotel rooms*.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§143.0560 SRO Hotel Relocation Provisions

- (a) An *applicant* for a permit for or related to the demolition, conversion, or rehabilitation of all or part of an *SRO hotel* or *SRO hotel room* shall, concurrent with the filing of the permit application, submit a list of all tenants who resided in the hotel within the 180-calendar-day period preceding the application filing date. The *applicant* shall provide or make available the relocation benefits and notices specified in Sections 143.0570 and 143.0580. The permit to demolish, convert, or rehabilitate shall not be issued until the San Diego Housing Commission verifies full compliance with this Section and Sections 143.0570 and 143.0580.
- (b) The relocation provisions in this division shall not apply to proposed *developments* for which greater relocation benefits and payments are required under state or federal law.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§143.0570 SRO Hotel Relocation Assistance Benefits

- (a) Each tenant of an *SRO hotel* to be demolished, converted, or rehabilitated who has resided in the *SRO hotel* for at least 90 consecutive calendar days preceding the permit application date shall be considered a long-term tenant for purposes of this division and is entitled to the benefits and rights described in Section 143.0570(b) through (e). Each tenant of an *SRO hotel* to be demolished, converted, or rehabilitated who has resided in the *SRO hotel* for at least 30 consecutive calendar days preceding the permit application date is entitled to the benefits and rights described in Section 143.0570(c) through (e).

(b) Financial Assistance

- (1) Except as provided in Section 143.0570(b)(3), each long-term tenant is entitled to one lump sum payment in an amount equal to two times the tenant's average monthly rent for the preceding 12 months if the *SRO hotel* is being demolished or converted or an amount equal to the tenant's average monthly rent for the preceding 12 months if the *SRO hotel* is being rehabilitated. In addition, each long-term tenant is entitled to a rent rebate of \$10.00 per month for each month's residency in excess of 90 calendar days, not to exceed \$210.00. Length of residency shall be calculated from the date of initial occupancy to the date of application for a building or other permit.
- (2) The financial benefits shall be paid by the *SRO hotel* owner to the long-term tenant within 5 *business days* of written notice by the tenant that he or she will vacate the *premises* on a date specified by him or her, but no more than 30 calendar days in advance of the move-out date. Written notice forms approved by the San Diego Housing Commission shall be provided to the long-term tenants by the owner.
- (3) If the *SRO hotel* is being rehabilitated, the financial assistance benefits required by this section need not be provided if comparable accommodations, as defined by the California Code of Regulations, are provided on or off the *premises* to the long-term tenants during the period of rehabilitation. The owner shall give a right of first refusal to relocate to a rehabilitated unit to each long-term tenant who qualifies as *very low income*. When comparable living space is provided, the *applicant* shall pay each affected long-term tenant all reasonable moving and related expenses.

(c) Technical Assistance

The San Diego Housing Commission shall provide assistance in locating decent, safe, and affordable housing opportunities to tenants who have resided in the *SRO hotel* for at least 30 consecutive calendar days.

(d) Notice of Termination of Tenancy

To terminate a tenancy or the purpose of demolition, conversion, or rehabilitation of an *SRO hotel* or *SRO hotel room* regulated under the *SRO hotel* regulations, the owner must fully comply with Sections 143.0560, 143.0570, and 143.0580. The notice of termination of tenancy may not be given before the date of the notice required by Section 143.0580.

(e) Evictions

- (1) This subsection 143.0570(e) applies to any *SRO hotel* that received a certificate of occupancy prior to January 1, 1990, and for which the owner or operator did not deliver to the City on or before January 1, 2004, a notice of intent to withdraw accommodations from rent.
- (2) In addition to the tenant list required by Section 143.0560(a), the *applicant* shall submit a list of the names of any tenants who have moved, been removed, or evicted during the preceding 180 calendar days and the reasons for the move, removal, or eviction.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 9-7-2004 by O-19313N.S.; effective 10-7-2004)

§143.0580 SRO Hotel Relocation Assistance Notice

- (a) Before submittal of an application for a permit for or related to the demolition, conversion, or rehabilitation of all or part of an *SRO hotel* or *SRO hotel room*, the owner must deliver a Relocation Assistance Notice to each tenant. The notice shall clearly state the benefits established by Section 143.0570 for all tenants.
- (b) The San Diego Housing Commission shall have available a sample notice format that the owner must use.
- (c) The notice required by this section shall be delivered to each tenant personally or by mail, and written acknowledgment of service on and receipt by the tenant shall be secured.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§143.0590 SRO Hotel Long-Term Tenant Rights

A long-term tenant of an *SRO hotel*, as described in Section 143.0570(a), who is injured by any violation of these regulations, shall be entitled to declaratory relief, injunctive relief, and damages in a civil action. Counsel for the aggrieved party shall notify the Office of the City Attorney of the City of San Diego of any action filed pursuant to this section.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)