

City of Capitola

Special Joint City Council and Planning Commission Meeting Agenda

Wednesday, February 26, 2025 – 5:30 PM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Joe Clarke

Vice Mayor: Alexander Pedersen

Council Members: Gerry Jensen, Margaux Morgan, Melinda Orbach

Special Joint Meeting of the Capitola City Council and Planning Commission – 5:30 PM

All correspondence received prior to 5:00 p.m. on the Tuesday preceding the Meeting will be distributed to Councilmembers and Commissioners to review prior to the meeting. Information submitted after 5 p.m. on that Wednesday may not have time to reach Councilmembers or Commissioners, nor be read by them prior to consideration of an item.

1. Roll Call and Pledge of Allegiance

Council Members Gerry Jensen, Margaux Morgan, Melinda Orbach, Vice Mayor Alexander Pedersen, and Mayor Joe Clarke.

Planning Commissioners Courtney Christiansen, Paul Estey, Matthew Howard, Nathan Kieu, Susan Westman.

2. Additions and Deletions to the Agenda

3. Additional Materials

Additional information submitted to the City after distribution of the agenda packet.

4. Oral Communications by Members of the Public

*Oral Communications allows time for members of the Public to address the City Council on any “Consent Item” on tonight’s agenda, or on any topic within the jurisdiction of the City that is not on the “General Government/Public Hearings” section of the Agenda. Members of the public may speak for up to three minutes, unless otherwise specified by the Mayor. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue. **A maximum of 30 minutes** is set aside for Oral Communications.*

5. General Government / Public Hearings

All items listed in “General Government / Public Hearings” are intended to provide an opportunity for public discussion of each item listed. The following procedure pertains to each General Government item: 1) Staff explanation; 2) Council questions; 3) Public comment; 4) Council deliberation; 5) Decision.

A. City Council Member and Planning Commissioner Orientation

Recommended Action: Receive orientation presentation and provide feedback regarding potential Administrative Policy updates.

6. Adjournment - *The next regularly scheduled City Council meeting is on February 27, 2025, at 6:00 PM.*

How to View the Meeting

Meetings are open to the public for in-person attendance at the Capitola City Council Chambers located at 420 Capitola Avenue, Capitola, California, 95010.

Other ways to Watch:

Spectrum Cable Television channel 8

City of Capitola, California YouTube Channel

To Join Zoom Application or Call in to Zoom:

Meeting

link: <https://us02web.zoom.us/j/83328173113?pwd=aVRwcWN3RU03Zzc2dkNpQzRWVXAydz09>

Or dial one of these phone numbers: **1 (669) 900 6833, 1 (408) 638 0968, 1 (346) 248 7799**

Meeting ID: **833 2817 3113**

Meeting Passcode: **678550**

How to Provide Comments to the City Council

Members of the public may provide public comments to the City Council in-person during the meeting. If you are unable to attend in-person, please email your comments to citycouncil@ci.capitola.ca.us and they will be included as a part of the record for the meeting. Please be aware that the City Council will not accept comments via Zoom.

Notice regarding City Council: The City Council meets on the 2nd and 4th Thursday of each month at 6:00 p.m. in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

Agenda and Agenda Packet Materials: The City Council Agenda and the complete Agenda Packet are available for review on the City’s website and at Capitola City Hall prior to the meeting. Need more information? Contact the City Clerk’s office at 831-475-7300.

Agenda Materials Distributed after Distribution of the Agenda Packet: Pursuant to Government Code §54957.5, materials related to an agenda item submitted after distribution of the agenda packet are available for public inspection at the Reception Office at City Hall, 420 Capitola Avenue, Capitola, California, during normal business hours.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk’s office at least 24 hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

Si desea asistir a esta reunión pública y necesita ayuda - como un intérprete de lenguaje de señas americano, español u otro equipo especial - favor de llamar al Departamento de la Secretaría de la Ciudad al 831-475-7300 al menos tres días antes para que podamos coordinar dicha asistencia especial o envíe un correo electrónico a jgautho@ci.capitola.ca.us.

Televised Meetings: City Council meetings are cablecast “Live” on Charter Communications Cable TV Channel 8 and are recorded to be rebroadcasted at 8:00 a.m. on the Wednesday

following the meetings and at 1:00 p.m. on Saturday following the first rebroadcast on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings are streamed “Live” on the City’s website by clicking on the Home Page link “Meeting Agendas/Videos.” Archived meetings can be viewed from the website at any time.

Capitola City Council

Agenda Report

Meeting: February 26, 2025

From: City Manager Department

Subject: City Council Member and Planning Commissioner Orientation



Recommended Action: Receive orientation presentation and provide feedback regarding potential Administrative Policy updates.

Background: The City Manager, City Attorney, Assistant to the City Manager, and City Clerk will present on general City Government topics including:

- Brown Act
- Public Records Act
- Conflicts of Interest
- Administrative Policy I-34: City Council Abstentions
- Administrative Policy I-18: Council and Committee Use of Social Media
- Administrative Policy I-42: Council & Board Code of Conduct
- Rosenberg's Rules/Parliamentary Procedure
- Municipal Code
- Assignments to Boards/Commissions
- Council Member Questions

Attachments:

1. Admin Policy I-18: Council and Committee Use of Social Media
2. Admin Policy I-31: City Council Abstentions
3. Admin Policy I-35: Proclamation Procedure
4. Admin Policy I-42: Council & Board Code of Conduct
5. Admin Policy I-44: Additional Materials
6. Rosenberg's Rules of Order

Report Prepared By: Julia Gautho, City Clerk

Approved By: Jamie Goldstein, City Manager



ADMINISTRATIVE POLICY

Number: I-18
 Issued: June 27, 2019
 Jurisdiction: City Council

ELECTED/APPOINTED OFFICIALS & SOCIAL MEDIA

I. PURPOSE

The purpose of this policy is to provide guidance for the appropriate use of social media by elected and appointed City of Capitola officials, and members of City committees subject to the Brown Act. The policy will also outline the proper response if elected/appointed officials and Brown Act committee members use social media inconsistently with this policy.

The First Amendment of the United States' Constitution defines every citizens' freedom of religion, speech, press, assembly, and petition. Under this amendment, the exercise of free speech, including on social media outlets, is protected. All Capitola Officials are entitled to this right, and this policy does not revoke it.

II. DEFINITIONS

- A. Social Media: an online forum or communication tool that enables individuals to create online communities to share information, messages, images and other content.
- B. Quasi-Judicial/Administrative Decisions: "occurs when a) a hearing is held to apply a rule or standard to an individual person, project or circumstance; c) it involves the taking of evidence; d) it results in the rendering of a written decision issued by the hearing officer or tribunal (including adoption of findings); and e) the written decision is based on the facts and arguments submitted at the hearing". These types of hearings affect individual properties or parties.
 - 1. *Examples*: Planning Commission decisions on project applications
- C. Legislative Decisions: Actions include "adoption and amendments to municipal codes, general plans, zoning codes, and personnel regulations". These types of hearings establish public policy and rules that apply to groups of property or people.
 - 1. *Examples*: Zoning Code updates, Ordinance adoption, changes in policy, approval of the budget, etc.
- D. Ex-Parte Communication: any material or substantive oral or written communication with a decisionmaker that is relevant to the merits of an adjudicatory proceeding, and which takes place outside of a noticed proceeding open to all parties to the matter (Gov. Code 11430.10)

III. SOCIAL MEDIA USE

Utilizing social media outlets can be useful for elected/appointed officials to engage with the public and present City information. For the purposes of this policy, a social media post includes the creation of any content; either new or linked to another's, on all social media

platforms. This includes and is not limited to; information posted on your own social media account in picture or text form, commenting on other posts, re-posting or sharing content by other social media users, liking other’s posts, etc. Regardless of username, elected and appointed officials are accountable for their online behavior. Social Media Accounts under private names or dissociated from the City could still come under scrutiny if they are run by an elected or appointed official. For example, Facebook accounts with usernames “Jane Doe” and “Mayor Jane Doe” should both be managed in accordance with this policy. This policy will outline the best practices that should be considered so that all Officials use social media expression in positive ways and avoid potential liability for the City or themselves.

IV. BEST PRACTICES WHEN POSTING ON SOCIAL MEDIA

The chart below (section VII) is designed for easy reference to demonstrate the different levels of appropriate and inappropriate social media engagement. Consequences of writing and posting certain types of content are simply stated in the second row, so that Officials understand their responsibilities after engaging in such types of social media engagement. As an elected or appointed official, you will be called upon to render decisions that affect the City of Capitola, and it is important to remain mindful of how online communication regarding these decisions will be perceived. Because the type of decisions (quasi-judicial vs. legislative) varies, their content type should be considered when posting about them on social media.

- A. Keep it Neutral: Use caution when expressing yourself online. This is a permanent, public record that may preserve your thoughts on a subject that ends up coming in front of the City for a decision. Neutrality can be the easiest way to avoid later recusal and preserve your reputation as an impartial, unbiased decision maker.
- B. Keep it Equal: Treat City Business in a similar way online. This is another way to preserve your neutrality for future decisions.

V. ISSUES WHEN POSTING ON SOCIAL MEDIA

Particularly when related to quasi-judicial decisions, social media content posted by elected or appointed officials can be problematic. Online conversation can also easily lead to Brown Act Violations.

- A. Showing Bias on Quasi-Judicial Hearings: Elected and appointed officials are obligated to remain neutral and unbiased regarding quasi-judicial matters prior to their vote on the matter. Officials should use caution when expressing themselves, in all types of communication including on social media outlets, to remain unbiased.
- B. Using Social Media to Gauge Public Opinion: Communicating online about specific upcoming City decisions may result in valuable resources such as public opinion and community input, which then is left out the public record unless action is taken to disclose it. Purposefully gathering information on quasi-judicial decisions prior to their respective public hearings negates the inherent neutrality of a public hearing; where all information is heard at one time and decisions are made based upon the facts and opinions presented in that public forum.
- C. Conversing with Other Officials Online: The Brown Act dictates much of elected and appointed officials’ behavior both during and outside of public meetings. Online conversation between multiple elected and appointed officials should not relate to quasi-judicial matters.

1. *Ralph M. Brown Act & Serial Meetings:* The general point of this California State Law is that “California 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." A serial meeting, expressly prohibited by the Brown Act, is when multiple members of Council or Committee engage in conversation regarding a quasi-judicial matter outside of a duly noticed public meeting. Serial Meetings can occur between elected or appointed officials when two or more comment, post, or engage in online conversation regarding City business. This type of social media use will put officials in violation of the Brown Act.

VI. TYPES OF SOCIAL MEDIA POSTS

	<u>Acceptable</u>	<u>Potentially Acceptable</u>	<u>Discouraged</u>	<u>Against Policy</u>
Action	<ul style="list-style-type: none"> • Sharing City-created social media posts • Sharing content regarding legislative proceedings, City policy, budget and events • Posting self-created content regarding legislative proceedings, City policy, budget and events 	<ul style="list-style-type: none"> • Sharing or posting content regarding quasi-judicial City matters in a consistent fashion. 	<ul style="list-style-type: none"> • Treating individual quasi-judicial matters differently. For example, only sharing content related to selected development projects and not others. 	<ul style="list-style-type: none"> • Expressing personal opinions on quasi-judicial matters, prior to voting • Violations of the Brown Act
Remedy	<ul style="list-style-type: none"> • No additional action 	<ul style="list-style-type: none"> • Ex-parte Communications must be submitted to the City for inclusion in the record 	<ul style="list-style-type: none"> • Ex-parte Communications must be submitted to the City for inclusion in the record • Official may need to recuse from voting 	<ul style="list-style-type: none"> • Ex-parte Communications must be submitted to the City for inclusion in the record • Official must recuse from voting



ADMINISTRATIVE PROCEDURE

Number: I-31

Issued: March 14, 2013

Jurisdiction: City Council

City Council Abstentions

I. PURPOSE

The purpose of this procedure is to set forth consistent procedures concerning City Council abstentions. The Fair Political Practices Commission (FPPC) has adopted a process for determining when an official must disqualify him or herself from participating in a decision. These regulations state that Council Members are prohibited from participating in governmental decisions that may have a material financial effect on their economic interests, including the economic interest that every public official has in his or her personal finances.

II. POLICY

Each Council Member in attendance at a Council meeting has a responsibility to vote on each item presented to Council for action. It may be tempting to abstain because of concerns about making an unpopular decision or simply not knowing which decision is best. As hard as some decisions are, making decisions is what you were elected to do. Decisions made should reflect the views of every voting elected official who can participate in the decision. Responsibility is a key component of ethical behavior. Attending and being prepared for meetings is a major element of an elected official's responsibilities and hence, ethical behavior. So is voting in general.

III. PROCEDURE

If a member of the Council has any legitimate basis for not voting on a particular item other than that set by FPPC the Council Member may abstain from voting by complying with the following procedures:

- A. It shall be the practice of the Councilmembers to vote on items that are placed on the agenda for consideration if the Councilmember has no conflict of interest. Councilmembers shall not abstain simply to avoid casting a controversial vote.
- B. If a Councilmember has any legitimate basis for not voting on a particular item, the Councilmember may abstain from voting by complying with the following procedures:
 1. During the Council meeting, and prior to the vote on the item being considered, the Councilmember shall announce the intention to abstain from voting on the item, and disclose the basis for abstention in sufficient detail to be understood by the public. Examples of legitimate bases for abstention include:
 - a. The Councilmember does not have sufficient information regarding the item under consideration (for example, the item was previously considered by the Council in the member's absence, and the Councilmember did not have an opportunity to review the record of Council's previous consideration).
 - b. The Councilmember is concerned about the perception of personal or financial conflict even if there is no reasonable good faith belief of a required disqualification (e.g., an effect on the financial interest of a relative [other than a spouse or dependent of the Councilmember]).

- C. It is inappropriate for a Councilmember to participate in a City Council debate, ask questions, express opinions and then abstain from voting.
- D. Any Councilmember who abstains from voting on an item shall be counted as a member of the quorum of the City Council, and the member shall be counted as going along with the vote of the majority of those members voting on the item; provided, however, that Councilmember shall not be entitled to make a motion or make a second on the item, and that Councilmember shall not be entitled to make a motion for reconsideration. (As an example of counting votes of abstention: (a) 2 yes, 2 no, and 1 abstain would fail; (b) 2 yes, 1 no, and 2 abstain would pass; (c) 2 yes, 2 no, and 1 recuse would fail; and (d) 2 yes, 1 no, and 2 recuse would pass).

Note: If a Council Member has reservations regarding potential abstentions it is recommended that he or she contact City Attorney for assistance as early as possible prior to the meeting.

Approved and authorized by the Capitola City Council at its meeting of February 28, 2013.

Jamie Goldstein, City Manager

ADMINISTRATIVE POLICY

Number: I-35
 Issued: May 26, 2016
 Revised: October 14, 2021
 Jurisdiction: City Council

PROCLAMATION POLICY AND PROCEDURE

I. PURPOSE

The purpose of this policy is to outline the process for the public to request and the City to issue proclamations.

II. POLICY

A proclamation may honor an individual, an organization, commemorate a special event, or a special day, month, or year. Members of the public or the City Council may request to have a proclamation prepared. Only proclamations dealing with local, county, state issues or those that positively impact the community and convey an affirmative message to residents will be considered, and are issued in the City's sole and absolute discretion.

Those proclamations selected by the City will be issued. Generally, the following types of proclamations will be considered:

1. Recognition for local individuals and organizations, examples are:
 - Individuals who have positively impacted the City of Capitola, or the greater County/community, examples include:
 - 20 years of service with local nonprofit
 - Retiring from City of Capitola after years of service
 - Businesses or organizations that have positively impacted the City of Capitola, upon significant achievement, examples include:
 - St. John's Helpful Shop, store in the Village for 65 years
 - An organization that runs an effective program that benefits the community
2. Recognition for local regular and special events, or regional or statewide events/recognitions, examples are:
 - Child Abuse Prevention Month
 - Red Cross Month
 - Hunger Fighter of the Year
 - Special Olympics Torch Run

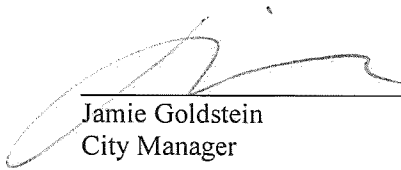
III. PROCEDURE

- All proclamation requests must be made to the City Clerk's Office. Requesters (members of the public and Council Members) are expected to include either a sample proclamation to be used as a guide, or sufficient information to assist City Clerk staff in preparing the proclamation.

Administrative Procedure: I-35
Proclamation Policy and Procedure
Page 2 of 2

- The City Clerk Office will process requests and write proclamations on behalf of the City Council/Mayor.
 - Members of the public, local/regional organizations, and all City Council Members can request proclamations. All proclamations are made in the Mayor's name on behalf of the entire City Council.
1. Proclamations presented at City Council meetings
 - a. Requests should be made at least three weeks prior to the date the proclamation is desired
 - b. Proclamation requests may be made by members of the public or Council members.
 - c. Proclamations presented at City Council meetings must be reviewed and approved by both the City Manager and the Mayor.
 2. Proclamations presented outside of City Council meetings
 - a. Requests should be made at least two weeks prior to the date the proclamation is desired
 - b. Proclamation requests may be made by members of the public or Council members.
 - c. Proclamations presented outside City Council meetings must be reviewed and approved by the City Manager and the Mayor if the request is from the public. If the request is from a Council member, the proclamation will be reviewed and approved by the requesting Council member and City Manager

This policy is approved and authorized by



Jamie Goldstein
City Manager



ADMINISTRATIVE POLICY

Number: I-42
 Issued: September 10, 2020
 Jurisdiction: City Council

**CITY COUNCIL AND COMMISSIONER
 CODE OF CONDUCT**

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1.0 Preamble

The Capitola City Council declares that citizens of the City of Capitola are entitled to have fair, open, ethical, efficient and accountable local government and that City officials should continually strive to earn the public's confidence. Toward that end, these Protocols establish higher standards of conduct for members of the City Council and members of City boards and commissions (collectively "Members") than are currently required under the laws of the State of California.

The Members pledge to hold themselves and other Members responsible for observing the standards set forth in these Protocols, and to enforce these Protocols when necessary to preserve the integrity of City government.

2.0 Core Values

Responsibility

- I conduct myself in a courteous and respectful manner at all times during the performance of my official City duties.
- I will keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit
- I will avoid and discourage conduct which is divisive or harmful to the best interests of Capitola
- I make decisions based on the merits of an issue, including research and facts.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the City and its residents.

Integrity

- I am honest with my fellow City officials, City staff, members of the community, and others.
- I promote equity and non-discrimination in public agency decision-making.
- I encourage diverse public engagement in our decision-making processes and support the public's right to know.
- I do not accept gifts, services or other special considerations for personal benefit because of my public position.
- I excuse myself from participating in decisions when my or my immediate family's financial interests may be affected by my actions as a City Official

Respect/Value others

- I recognize the worth and dignity of individual members and appreciate their individual talents, perspectives and contributions; value in others.
- I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community.

- I help create an atmosphere of respect and civility where individual members, City staff and the public are free to express their ideas and work to their full potential.
- I understand that I am one of five members of the City Council and will work towards consensus building and gain value from diverse opinions.
- I respect the distinction between the role of office holder and staff.

Accountability

- I am prepared to make decisions when necessary for the public’s best interests, whether those decisions are popular or not.
- I do not make promises on behalf of the City without concurrence from the City Council at a duly noticed public meeting.
- I take responsibility for my actions, even when it is uncomfortable to do so.
- I do not use public resources, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.
- I refrain from disclosing confidential information concerning litigation, personnel, property, or other affairs of the City, without proper legal authority, nor use such information to advance my financial or other personal interests.

3.0 Setting a Higher Standard within the Existing Framework

By adopting these Protocols, the Council intends to supplement and not to supersede California’s existing legal framework applicable to local governments. Similarly, the Council intends that these Protocols will not merely restate existing legal obligations but will establish a higher standard of conduct for Members in the governance of the City. Members are referred to Appendix “A” (**Legal Framework & Resources**) for pertinent resources. Members are expected to be familiar with and to seek guidance about the applicability of the legal framework.

4.0 Transparency in decision making.

Transparency in decision making is of the utmost importance in maintaining ethical, representative local governance. Toward that end, Members will adhere to the following standards:

4.1 Public Meetings.

Members will hold public meetings in accordance with the Ralph M. Brown Act (the “Brown Act”). Members will seek guidance from the City Attorney as to the Brown Act requirements and will apply those provisions conservatively in favor of the public’s right to participate in public decisions.

4.2 Council Communications & Serial Meetings.

Members will not engage in “serial meetings” with colleagues – a discussion of City issues among a majority of Councilmembers or Commissioners either collectively (i.e. all meeting together) or in a sequence (A talks to B who talks to C). Members

will not use other persons as intermediaries to accomplish a serial meeting or to circumvent the Ralph M. Brown Act.

4.3 Closed Session Discussions.

As part of a properly agendized meeting, Members may only hold sessions closed to the public, pursuant to the advice of the City Attorney, in accordance with the commonly accepted interpretation of Brown Act requirements. Discussions held in closed session are to be directly limited to the matter at hand. Such discussions, along with materials reviewed, are confidential and shall not be disclosed except as the City Attorney may advise.

4.4 Closed Session Materials.

Confidential materials provided in preparation for and during closed sessions must be returned to the City Attorney at the conclusion of the closed session.

5.0 Fairness of Process

Members will comply with the meeting and hearing procedures set forth by these protocols, the Brown Act, and Rosenberg’s Rules of Order. Additionally, in order to cultivate an environment of fairness and to encourage public confidence in City decisions, Members will adhere to the following standards of conduct:

5.1 Decisions on the Merits.

Members will base their decisions on the facts and merits of each matter, not upon personal or other biases, and will strive to make decisions that are in the best interests of the community as a whole.

5.2 Disclose Information.

Prior to any deliberations on a project or matter at a public meeting, Members shall publicly disclose information about the matter that they have obtained from sources, not presented in the staff report (e.g. their own site visit, from the public, from the applicant, etc.), which may influence their decision or that of Members.

Remain neutral on quasi-judicial hearings. A quasi-judicial hearing occurs when;

- a) a hearing is held to apply a rule or standard to an individual person, project or circumstance;
- b) it involves the taking of evidence;
- c) it results in the rendering or a written decision issued by the hearing officer or tribunal (including adoption of findings); and

d) the written decision is based on the facts and arguments submitted at the hearing.

Elected and appointed officials are obligated to remain neutral and unbiased regarding quasi-judicial matters prior to their vote on the matter.

5.3 Consider All Sides.

Members should consider the various viewpoints related to a project or matter and afford project applicants and interested persons an adequate opportunity to comment upon a project or matter before action is taken.

5.4 Decorum.

To ensure the fairness and integrity of the deliberative process, the presiding officer should preserve decorum and conduct meetings in an orderly manner. Members should remain attentive of the business at hand and conduct themselves in a manner that is civil, polite and respectful. Members should refrain from unnecessarily interrupting speakers and not engage in abusive conduct, personal charges or verbal attacks upon the character or motives of other Members, City staff and/or the public.

5.5 Attentiveness.

Members should remain attentive at meetings. Members should not make or receive phone calls, text messages or e-mails from the dais. Members should place cellphones and other communication devices in “off” or “silent” mode. Members should refrain from side-bar conversations with other Members while at the dais.

6.0 **Ethical Decision Making**

Members should observe the highest standards of ethical conduct in dealing with the community and carrying out their official duties. In every action and decision, Members should avoid even the appearance of impropriety and apply the guidelines for “Making Ethical Decisions” provided below:

6.1 Avoiding the Appearance of Impropriety.

6.1.1 Make Ethical Decisions. Members are referred to Appendix “B” (Guidelines for Making Ethical Decisions) for the process Members are encouraged to utilize in making City related decisions.

6.1.2 You May Need to Refrain from Participating. Conflict-of-interest issues are complex. Some situations are not “legal” conflicts of interest but may nevertheless pose the “appearance of impropriety” to the public. If a Member believes they have a conflict, the Member should contact the City

Attorney or FPPC for advice as soon as possible. The Member should not participate in any matter in which they have a conflict.

6.1.3 Get Help. To assist in making a decision not to participate, Members should consult the guidelines for Making Ethical Decisions (below), the City Attorney or the FPPC helpline, and/or their constituents.

6.2 Ethical Principles to Follow.

6.2.1 **Avoid Personal Interests.**

Members are prohibited from using their official positions to influence decisions in which they have a personal financial interest, are members of an interested organization, or have a personal relationship that would be affected.

6.2.2 **No Personal Gain.**

Members shall not take advantage of, or use, public property and equipment, public services, confidential public information, public resources, or other opportunities afforded by their office, for personal gain.

6.2.3 **City Stationery.**

City letterhead or stationery or other City resources may not be used by Members to promote personal interests.

6.2.4 **Appearing before Council.**

Members shall not appear before the City Council or other City board or commission representing any private interest or community group. Members are permitted to speak as a member of the public on any matter related solely to the Council Member’s personal interest but may not participate in the matter as a Member.

6.2.5 **Gifts.**

Members will refrain from accepting gifts, favors or promises of future benefits that might compromise their independence, or the appearance that they are independent and unbiased.

7.0 Efficiency and Accountability

The City of Capitola operates under a council-manager form of government under which the Council’s role is to provide legislative direction, set City policy and monitor its implementation. The City Manager serves as the City’s administrative head and is

responsible for directing the day-to-day operations of the City and for administering all City business.

7.1 Members Should Not Interfere with Operations.

Implementing this Rule:

- a) City Manager is responsible for City Personnel Members will not interfere with the appointment, evaluation, discipline, or removal by the City Manager of any Department Head or employee of the City.
 - (i) *Exception – City Attorney.* The City Attorney is hired, appointed, evaluated, and removed directly by the Council.
- b) Orders and Direction to Employees. Only the City Manager or applicable Department Head may give orders and direction to City employees. Members may not direct the work or actions of City employees. (CMC Section 2.08.090)
 - (i) *Requests for Information.* All Members should direct requests for information, research, or reports to the City Manager or applicable Department Head. If there is a legal question it should be directed to the City Attorney. Questions regarding elections and disclosure statements may be addressed to the City Clerk.
 - (ii) *Responses.* Substantive responses to Member’s information inquiries will be provided to all Members of the legislative body (e.g. a response to a request by a Councilmember will be provided to all Councilmembers).
 - (iii) *Notifications.* Where the City Manager or Department Head provides general facts or information about the City, a program, or a City event to one Member, the information should be provided to all Members of the legislative body.
- c) Staff Liaisons to City Commissions / Committees and Outside Agencies. Members serving as the City’s representative to a City Commission or Committee or to an outside agency may interact directly with the City employee assigned to that effort by the City Manager.
- d) Operations and Service Levels. Criticisms of City operations and service levels may be made only to the City Manager and not to City employees or Department Heads, unless first cleared through the City Manager or expressed in general during a regular Council, board or commission meeting.

- e) Political Solicitation & Activities. Members will not solicit political support from City employees (e.g., financial contributions, display of posters or lawn signs, name on support list, etc.). Members will not engage in political activities at City Hall or other City facilities. This provision is not intended to impair the free exercise of federal and state constitutional and statutory rights by City employees.

7.2 Interaction of Members.

7.2.1 **Positions of Mayor and Chairperson.**

- a) Honorary Presiding Officer. The positions of Mayor and Mayor Pro Tempore on the City Council and the positions of chairperson and vice chairperson on City boards and commissions are generally considered honorary and ceremonial, but also serve an important procedural role as the presiding officer at meetings of their body. Persons appointed to those positions by a majority of their council, board or commission serve at the pleasure of their appointing body.
- b) Maintain Order, Decorum & Procedure. The Mayor and chairperson are responsible for maintaining order and decorum of their body's meetings and enforcing these policies where necessary. They are responsible for the order of business at meetings, the efficient flow of business during meetings, and for preserving the right of the public to be heard in an orderly fashion.
- c) Ceremonial Head. The Mayor is the ceremonial head of the City and signs all proclamations, officiates at all City functions, and welcomes visiting dignitaries.
- d) Spokesperson. The Mayor is the official spokesperson for the City and has the primary responsibility for communications with the press and public on official City business, with the exception of a state of emergency. During a state of emergency, the Director of Emergency Services may serve as the primary contact for the public, other governing officials and the press. The Mayor will work on press releases and statements to the press with the City Manager and will report the majority position adopted by the Council, and not his or her personal opinion on matters.

7.2.2 **At Public Meetings**

- a) Follow Rules of Order, Decorum and Procedure. Members should adhere to the rules of order, decorum and procedure for the conduct of public meetings adopted by the City Council from time to time. Abiding by these rules will maintain civility and the orderly conduct of business.

- b) Keep Conduct Professional. Members should conduct themselves in an orderly, professional, and business-like manner to ensure that the business of the City shall be attended to efficiently and thoroughly.
- c) Keep Comments On-Topic. Public meetings are to attend to and resolve City business. Members should avoid being overly repetitious and should endeavor to limit their comments to the subject matter at hand. Members are encouraged to fully express their views and to explore the views of others, but Members should also be mindful of avoiding lengthy or unproductive debates.
- d) Ask Questions in Advance. When preparing for public meetings, Members are encouraged to provide their questions far enough in advance to the City Manager or City employee responsible for the meeting so that meaningful information and responses can be shared at the meeting.

7.2.3 Relations with Fellow Members

- a) Civility. Members should always practice civility. By doing so, Members help the City to fulfill its potential by putting the common good ahead of personal rivalries or irritations. Civility is best fostered by a collective commitment to following established rules of procedure.
- b) Different Points of View. Members should exercise tolerance for the different opinions, perspectives, and points of view of their colleagues and recognize their right to express these views on matters of City business within the established rules of decorum and order of business.
- c) Managing Conflict. Members should manage disagreement with civility and professionalism and not allow disagreement to turn into open conflict or hostility. Members should refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other Members, City employees and/or members of the public.

7.2.4 Public Communication and Appearance

- a) Personal versus City Positions. It is an important part of each Member's responsibility to communicate with the public. In communications regarding City business, it is important to distinguish a Member's personal views and opinions and the adopted City position. When appearing before another governmental agency or organization, the Member should clearly set forth the City's official position, and then may express their own position.

- (i) *Expressing Dissent.* Each Member has a right under the First Amendment to express their views and opinions, even if contrary to the official position of the City. However, Members should express their dissenting views with tact and civility.

- b) Use of Official Titles. Members may use their official title only when conducting official City business, for informational purposes, or as an indication of background and expertise, after having carefully considered whether they are exceeding or appearing to exceed their authority.

- c) Response to Public Communication. Members are encouraged to respond promptly to letters, telephone calls, electronic communication, and other communications received from member of the Public who have requested a response. Members are not required to respond to commercial solicitations or to anonymous, obnoxious or harassing communications.

8.0 **Enforcement**

8.1 Member Responsibility.

Upon assuming office each Member shall sign a statement affirming that they have received and reviewed these Protocols. Each Member is responsible for adhering to these Protocols as well as the laws that comprise the basic legal framework for local government.

8.2 Council Authority.

The City Council has authority, but not the legal obligation, to monitor each Member's adherence to these Protocols and to take corrective action for violations, as provided below.

8.2.1 **Training and Education.**

The City Council may sponsor or require periodic training opportunities for Members to become more familiar with the Protocols and the legal framework (See Appendix "A").

8.2.2 **Councilmembers.**

Under California law, the Council does not have the legal authority to remove Members elected or appointed to the City Council or to otherwise deprive them of their office. However, as provided in Section 8.4.3, a majority of the Councilmembers may remove a Councilmember from all Council honorary and/or ceremonial positions and ad-hoc and standing committees, as well as from positions with other governmental agencies or other organizations they hold by virtue of appointment by the City Council.

8.3 Violation of Oath of Office.

8.3.1 **Oath of Office.**

All Members take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State and the Federal government. In addition, Members commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery or other violation of the law.

8.4 Violation of Protocols.

8.4.1 **Complaint.**

Where any Board or Commission Member, Councilmember, City employee, or resident of the City believes that a Member has violated these Protocols or their Oath of Office, they may file a written complaint with the City Clerk who will then provide it to the City Manager and City Attorney. The complaint shall be considered confidential until the City Attorney has determined the appropriate next action.

8.4.2 **Investigation.**

Within thirty (30) days of receipt of a Complaint as provided in Section 7.4.1., the City Manager and City Attorney shall review the complaint. If, in the City Attorney's determination, the complaint alleges a violation of law, the City Attorney shall determine appropriate next steps.

For example, a complaint alleging theft of public funds or bribery, or a complaint from a purported whistle-blower (pursuant to California Labor Code Section 1102.5) may be forwarded to the Office of the District Attorney. Complaints alleging other violations of the law may be forwarded to the City's risk-management pool for a determination. The City Attorney shall have the authority to retain an outside investigator to investigate complaints from employees alleging violations of the Fair Employment and Housing Act.

All complaints, including complaints alleging violations of these protocols and any other City policy or procedure, at the appropriate point in the process as determined by the City Attorney shall be forwarded to the City Council for consideration in open session. The City Council may order an investigation.

8.4.3 **Enforcement.**

The City Council may use any of the following to respond to any and all violations of these protocols: (i) a warning (ii) a written reprimand; or (iii) censure. In addition, the City Council shall have the authority to remove

Board or Commission Members from office as a remedy for violations. (CMC 2.12.020 for Planning Commissioners).

The City Council, Boards and Commissions shall use the following procedure to consider complaints forwarded by the City Attorney:

- a) *Receipt of Complaint.* Upon receipt of the complaint, the Council will hold a public meeting at which it will determine whether the complaint should be dismissed for the reasons stated in section b)(i), below, or added to a future agenda for further discussion and determination. If the complaint is added to a future agenda, the subject Member shall have the opportunity to address the allegations in the complaint at the future meeting.

- b) *Determination.* The Council shall make a determination on the allegations in the complaint based on the following:
 - (i) *Dismissal.* Where the Council determines that no violation occurred or that only a trivial violation occurred, or that the complaint does not have merit for any other reason, the Council may dismiss the complaint.

 - (ii) *Reprimand.* The Council may adopt a verbal or written statement reprimanding the subject Member for their conduct. The subject Member may file a rebuttal to the Reprimand with the City Clerk which will become a matter of public record.

 - (iii) *Censure.* Where the Council, based on the Report, any statement from the subject Member, and other evidence accepted at a public hearing of the matter, determines that there is substantial evidence that the Member has materially violated one or more provisions of these Protocols, and that such violation(s) impugn the integrity or dignity of the City or that such violations are egregious or chronic in nature, then the Council may adopt a resolution censuring the subject member by condemning their actions, removing the Member from all appointive positions representing the City in front of other governments and agencies, demoting them if they hold a position of mayor, mayor pro tempore, chairman or vice chairman, stating that the violations shall cease, and demanding corrective actions. The subject Member may file a rebuttal to the Censure with the City Clerk which will become a matter of public record.

- c) *Commissioner and Board Member Removal from Office.*
 - (i) Planning Commissioner - Notwithstanding any of the provisions in this Section 9.0, the City Council may remove a

Planning Commissioner by following procedure in CMC Section 2.12.020. Nothing in these Protocols affects or diminishes such power nor vests Planning Commissioners with any additional rights, including, without limitation, rights of procedural due procession.

- (ii) Other Commissioners and Board Members - Notwithstanding any of the provisions in this Section 9.0, the City Council may remove any commissioner or board member appointed by the City Council. Nothing in these Protocols affects or diminishes such power nor vests such commissioners or board members with any additional rights, including, without limitation.

APPENDIX A – LEGAL FRAMEWORK & RESOURCES

1.0 Legal Framework

<u>Law or Regulations</u>	<u>Citation</u>
<i>California Laws</i>	
California Constitutions <i>General City Authority</i>	Article XI §§ 2, 5, 7, & 11.
Ralph M. Brown Act <i>Open Meeting Laws</i>	Government Code §§ 54950 <i>et seq.</i>
California Public Records Act <i>Public Records Disclosure</i>	Government Code §§ 6250 <i>et seq.</i>
California Political Reform Act <i>Conflicts, Disclosures & Campaigns</i>	Government Code §§ 81000 <i>et seq.</i>
FPPC Regulations <i>Conflicts, Disclosures & Campaigns</i>	2 Cal. Code Regs. §§ 18109 <i>et seq.</i>
<i>Legally Required Participation</i>	2 Cal. Code Regs. §18708
California Anti-Self Dealing Law <i>Self Interest in Contracts</i>	Government Code §§ 1090 <i>et seq.</i> ,
California Incompatibility of Office Law <i>Holding Two Public Offices</i>	Government Code § 1126 & § 1099
<i>City of Capitola Documents</i>	
City's Charter	
City Municipal Code	
City Council Rules of Order and Protocols	
Reimbursement Policy	
Social Media Policy	
Handbook	
Anti-Harassment and Ethics Training	

2.0 Online Resources

<u>Resource</u>	<u>Web Address</u>
State of California <i>Portal to State Websites</i>	www.ca.gov/index.asp
Official Cal Legislative Information <i>California Bills & Codes Online</i>	www.leginfo.gov
Cal. Fair Political Practice Commission <i>Conflict of Interest Info</i>	www.ca.fppc
Cal. Attorney General <i>See AG Opinions</i>	www.ag.ca.gov
Cal. Senate <i>Bill Information Online</i>	www.senate.ca.gov
Cal. Secretary of State <i>Election Information</i>	www.sos.ca.gov
League of California Cities <i>Municipal resources</i>	www.cacities.org
Institute for Local Government <i>Municipal resources</i>	www.ca-ilg.org
Cal. Joint Powers Insurance Authority <i>Risk Management & Training</i>	www.cjpia.gov
Marrkula Institute for Applied Ethics <i>Ethical Decision Making</i>	www.scu.edu/ethics/practicing/decision
Institute for Local Self Government <i>Government Ethics</i>	www.ilsg.org

APPENDIX B – GUIDELINES FOR MAKING ETHICAL DECISIONS

[Please visit the Markkula Center for Applied Ethics at the University of Santa Clara]

How to Make an Ethical Decision. When presented with an opportunity to participate in making a decision for the City, the City Official should:

A. Recognize whether an ethical issue is involved.

1. Will the decision result in damage or injury to people?
2. Is there a clear good or bad result?
3. Is the result compelled under the law or does it hinge on budgetary, efficiency, or other community concerns?
4. Ethical decisions are often not the easiest decision nor the most popular.

B. Get the facts.

1. Read the staff report and get questions answered by the City Manager in advance.
2. Are there alternatives that would lead to better or worse results?
3. What are the viewpoints of the stakeholders? Are some more important than others?
4. Are there any unanticipated consequences?

C. Evaluate alternative actions. Which option will:

1. Produce the most good and do the least harm? (See the Markkula Center's Utility Test.)
 - a. Identify the *alternative actions* that are *possible* and the persons and groups (the stakeholders) *who will be affected* by these actions.
 - b. For each of the most promising alternatives, determine the *benefits and costs* to each person or group affected.
 - c. Select the action in the current situation that *produces the greatest benefits over costs for all* affected.
 - d. Ask *what would happen if* the action were a *policy for all similar situations*.
2. Best respect the rights of all who have a stake? (See The Markkula Center's Rights Test.)

- a. *Identify the right* being upheld or violated.
 - b. Explain why it *deserves the status* of a right.
 - c. Ask whether that *right conflicts with the rights* of others.
3. Treat people equally or proportionately? (See The Markkula Center's Justice Test.)
- a. What is the *distribution of benefits and burdens*? Is the distribution *fair*?
 - b. If disagreement persists over which outcome is fair, select a *fair process* to decide the issue.
4. Best serve the community as a whole. (See The Markkula Center's Common Good Test.)
- a. *Identify* what parts of the *common good* are involved.
 - b. Explain obligations to *promote or protect* the common good.
 - c. Discern whether the proposed action *conflicts with* an obligation to promote or protect the *common good*.
5. Lead the City Official to act as the sort of person or official as they want to be? (See The Markkula Center's Virtue Test.)
- a. Will the action help to *make you the kind of person you want to be*?
 - b. Will the action fit the City's reputation or vision of what it would like to be?
 - c. Will the action maintain the right balance between *excellence and success* for the City?

D. Make a decision and test it.

1. Which approach best suits the situation and arrives at the *most ethical decision*?
2. Which option is likely to be *most respected* by the Member's colleagues and constituents?

E. Act and reflect on the outcome.

1. How can the decision be *implemented to best reflect the intention and reasons* for the decision?
2. What was the end result of the decision and what feedback has the City Official received?

APPENDIX C – Receipt of Code of Conduct

I affirm that I have read and that I understand, accept and support the City of Capitola City Council and Commissioner Code of Conduct

Board, Commission, Committee Position

(Print Name)

Signature

Date

ADMINISTRATIVE POLICY NUMBER: ADDITIONAL MATERIALS

Number: I-44

Issued: April 27, 2023

Jurisdiction: City Council

PURPOSE

The purpose of this policy is to outline the process for receiving, recording, and distributing additional materials to Council Members, Planning Commissioners, and the public.

Pursuant to Government Code Section 54957.5, any material distributed to all or a majority of members of City Council or Planning Commission (legislative body) that relates to an agenda item for an open session of a regular meeting of the City Council, and that is distributed by the City less than 72 hours prior to that meeting, will be available for public inspection at the time the writing is distributed to all or a majority of the City Council. Materials will be available for public inspection in the City Hall lobby and will also be distributed as is outlined below.

DEFINITION OF ADDITIONAL MATERIALS

- A. Additional Materials: written communications regarding items on a published meeting agenda: 1) emailed to the City Council email group or the Planning Commission email group; 2) emailed to the City Clerk or City Manager or Planning Director, with a request for distribution to the Council or Planning Commission; or 3) delivered or mailed to City Hall to the attention of the City Council or the Planning Commission.
1. Items received after agenda publication but before 4:30pm on the Wednesday prior to the meeting are considered additional materials regarding that agenda item.
 2. Emails and other written communication regarding an agenda item sent to **individual** Council or Planning Commissioners are not considered additional materials. Emails or written communication sent to the entire Council or Planning Commission regarding general topics or items that are NOT on a published meeting agenda are not additional materials.
 3. Emails and other written communication regarding **potential** agenda items or general topics sent to Council, Planning Commission, or City Staff are considered general day-to-day business communication. Written communication that prompts an agenda item may be included as attachments to a written staff report and thus published in an agenda packet, but are not considered additional materials.
- B. Format of Additional Materials: The City will process any written materials consistent with this policy. The City will attempt to process video and audio files consistent with this policy, to the best of its ability, considering technological limitations.

RECEIVING & PROCESSING ADDITIONAL MATERIALS

- A. Processing additional materials: materials will be maintained as part of the record of the meeting; distributed to the Planning Commission or City Council; posted in the City Hall Lobby; reported during the Additional Material section of the City Council or Planning Commission meeting; and shared online as a part of the agenda packet for the meeting.

1. Materials regarding Agenda Items continued to a certain date or Agenda Items set by the City Council for a certain date: communications received regarding an item on a published meeting agenda that is continued during the meeting to a certain date, will also be retained and distributed as regular additional material for the second meeting (the meeting the item is continued to).
 - i. *Example*: additional materials regarding an item from the January 13 meeting, then continued to the January 27 meeting: **any** materials received after the January 13 agenda is published through January 26 (the day prior to the meeting in which the item was continued) should be retained and distributed as outlined below.
 - ii. *Example*: at the first Council meeting in May the City Council sets an appeal hearing for the second June Council meeting. Materials, including correspondence, received following the first May Council meeting, but before the agenda is published for the second June Council meeting, will be included as correspondence for the item, and circulated with the June agenda packet. Materials regarding the appeal received after the June agenda is published will be distributed as additional materials.
 2. Materials regarding Agenda Items continued to a date uncertain: communications received regarding an item on a published meeting agenda, received after the item is continued, shall not be retained, or distributed as regular additional materials.
 - i. *Example*: materials regarding an item on the January 13 agenda, then continued to an unknown future date: **only** materials received prior to the day before the January 13 meeting will be retained and distributed as regular additional materials. Materials received **after** the January 13 meeting will not be retained indefinitely, for potential distribution upon the item being agendized to an unknown future meeting.
- B. Distributing Additional Materials: 1) Upon receipt, all additional materials will be printed and available in the City Hall Lobby and 2) Before the end of the day prior to the Council/Planning meeting, all additional materials will be emailed to the City Council or Planning Commission and the agenda packet distribution list on file with the City Clerk and/or Planner.
- C. Reporting during meeting: During the Additional Materials section of the City Council or Planning Commission meeting, the Clerk will announce how many, if any, additional materials were received for corresponding agenda item/s.
- D. Publication in agenda packet: The City Clerk or Planning Staff will publish a revised meeting agenda, containing the additional materials, within the week following the relevant City Council/Planning Commission meeting.
- E. Information received after 4pm the day before the meeting: Staff will follow the above procedures for information received after 4 p.m. on the day before the relevant meeting, to the best of their abilities given time constraints. Consistent with the City's obligations pursuant to Government Code section 54957.5, any material distributed to a majority or more of the City Council will be simultaneously made available to the public.

RESPONSIBILITY

The City Clerk will process all additional materials received regarding City Council meeting agenda items. Planning staff will process all additional materials received regarding Planning Commission meeting agenda items.

This policy is approved and authorized by:

DocuSigned by:

Jamie Goldstein

D05A9A7B5900485

Jamie Goldstein, City Manager



Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

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ABOUT THE AUTHOR

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.

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INTRODUCTION

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the “ayes” and then asking for the “nays” normally does this. If members of the body do not vote, then they “abstain.” Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: “The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body.”

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member’s desired approach with the words “I move . . .”

A typical motion might be: “I move that we give a 10-day notice in the future for all our meetings.”

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion**, for example, “A motion at this time would be in order.”
2. **Suggesting a motion to the members of the body**, “A motion would be in order that we give a 10-day notice in the future for all our meetings.”
3. **Making the motion**. As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body’s consideration. A basic motion might be: “I move that we create a five-member committee to plan and put on our annual fundraiser.”

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: “I move that we amend the motion to have a 10-member committee.” A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: “I move a substitute motion that we cancel the annual fundraiser this year.”

“Motions to amend” and “substitute motions” are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a “motion to amend” or a “substitute motion” is left to the chair. So if a member makes what that member calls a “motion to amend,” but the chair determines that it is really a “substitute motion,” then the chair’s designation governs.

A “friendly amendment” is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, “I want to suggest a friendly amendment to the motion.” The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed*, the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: “I move we adjourn this meeting at midnight.” It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on “hold.” The motion can contain a specific time in which the item can come back to the body. “I move we table this item until our regular meeting in October.” Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, “I move the previous question” or “I move the question” or “I call the question” or sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it.

When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: “I move we limit debate on this agenda item to 15 minutes.” Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, “I move the previous question,” or “I move the question,” or “I call the question,” or “I move to limit debate,” it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it’s pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the “no” votes and double that count to determine how many “yes” votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote “no” then the “yes” vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote “abstain” or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of “those present” then you treat abstentions one way. However, if the rules of the body say that you count the votes of those “present and voting,” then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are “present and voting.”

Accordingly, under the “present and voting” system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are “present”), but you treat the abstention votes on the motion as if they did not exist (they are not “voting”). On the other hand, if the rules of the body specifically say that you count votes of those “present” then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like “no” votes.

How does this work in practice?

Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are “present and voting.” If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three “yes,” one “no” and one “abstain” also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members “present.” Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a “no” vote. Accordingly, if the votes were three “yes,” one “no” and one “abstain,” then the motion fails. The abstention in this case is treated like a “no” vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an “abstention” vote?

Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”) In fact, any manifestation of intention not to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote “absent” or “count me as absent?” Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually “absent.” That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is “no.” There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, “point of privilege.” The chair would then ask the interrupter to “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person’s ability to hear.

Order. The proper interruption would be, “point of order.” Again, the chair would ask the interrupter to “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, “return to the agenda.” If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair’s determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.




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