

Considering Ethics Reform in Sacramento: An Overview



Photo credit: Yvan Charbonneau (adapted)

Ethics, transparency, accountability, and community engagement are cornerstones of good government. Local government in particular should be attentive to residents' needs, welcome public engagement and scrutiny, and embrace a public service ethic. For this reason, the **League of Women Voters, Eye on Sacramento**, and others are hosting public forums to consider four reforms increasingly embraced in other major California cities: **ethics codes, ethics commissions, open government, and redistricting commissions**. This report offers an introductory survey of each reform.

Ethics Code

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Ethics codes promote public trust by establishing standards of behavior for public officials to follow in performing their duties. While state law establishes minimum ethical standards, many cities go further by adopting codes that provide comprehensive guidance and limits on city officials' conduct.

Ethics Commission

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Ethics commissions are independent bodies responsible for investigating and enforcing a city's ethics laws. Through their independence and non-partisan nature, ethics commissions enable communities to hold their government officials accountable.

Open Government

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Open Government is the principle, embraced by many cities, that government documents and proceedings should be accessible to all residents to promote public engagement in the policy process, improve the quality of official decision-making, and enable more effective public oversight.

Redistricting Commission

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Every 10 years cities must redraw their council district boundaries so they remain substantially equal in population. Generally this is done by city councilmembers who get to self-select their voters, often for political advantage or to hurt opponents. To avoid this, many cities have redistricting commissions, representative of the community and using nonpartisan criteria, draw these lines instead.

A project of:



League of Women Voters of Sacramento

& others

Ethics Code

A Framework for Actions and Decision-Making by Officeholders and Agencies

“ It is important to recognize that the opposite of trust is not distrust, which we need in order to keep our representatives accountable, but a lack of trust. A lack of trust causes people not to accept their government’s decisions as fair. A democratic government does not thrive when there is a lack of trust in those who govern it. ”

Robert Weschler, LOCAL GOVERNMENT ETHICS IN A NUTSHELL, 2013.

Overview

Ethics codes promote public trust by establishing standards of behavior for public officials to follow in performing their duties and making decisions. As explained by the Institute for Local Government, “a key goal of public service ethics is for members of the public to be assured that personal interests play no role in a public servant’s decision. ... The responsibilities of public service are directed by doing what is best for the community.”¹ While state law establishes certain minimum ethical standards local officials must follow (e.g. gift limits, financial interest disclosure, campaign finance reporting), a number of cities go beyond these basic requirements to adopt codes that provide more comprehensive and often stricter limits on public officials’ conduct. In California there are two general types of local ethics codes, rules-based and values-based ethics codes, both of which (discussed below) seek to promote the integrity of public decision-making.

The City of Sacramento does not have a comprehensive or consolidated ethics code. Ethics-related provisions are included in various sections of the city’s municipal code or law. However, many if not most of these provisions simply adopt the state minimum standards.

Rules-Based Ethics Codes

Rules-based ethics codes establish usually bright-line rules prohibiting certain type of conduct. These rules sometimes parallel and often exceed state law. For example, state law prohibits all public officials from receiving more than \$460 in gifts from a single source per calendar year; Los Angeles’s has lowered its gift limit to \$100. Comprehensive rules-based ethics codes, such as those adopted by Los Angeles, San Francisco, and Oakland, will typically regulate many situations where a conflict of interest might arise.

According to a California Research Bureau survey², examples of regulated activities in rules-based ethics codes include:

- Code of Conduct
- Financial Disclosure
- Campaign Reporting and Restrictions
- Nepotism
- Registration/Reporting of Lobbyists
- Conflict of Interest & Appearance of Conflict of Interest
- Restrictions on the Use of Public Funds or Resources
- Use of Confidential Information
- Limitations on Travel and Gifts

¹ Institute for Local Self-Government, *Understanding the Basics of Public Service Ethics: Promoting Personal and Organizational Ethic* (2009).

² Charlene Simmons *et al.*, *Local Government Ethics Ordinances in California*, California Research Bureau (1998).

- Whistleblower Protections
- Limits on Secondary Employment
- Post-Employment Restrictions

Values-Based Ethics Codes

Values-based ethics codes emphasize positive standards for what public servants should aspire to, as opposed to legal prohibitions. As explained by the Institute of Local Government, values-based ethics codes “represent more a list of ‘do’s’ rather than ‘don’ts.’ They are a commitment to uphold a standard of integrity and competence beyond that required by law.”³ For example, the City of Riverside’s Code of Ethics and Conduct states that “The elected and appointed officials of the City of Riverside shall aspire to ensure that their decisions are viewed as unbiased, fair, and honest. ... They will not accept gifts or favors which might compromise the independence of their judgments or actions or give the appearance of being compromised.” Unlike rules-based ethics codes, values-based ethics codes are generally not legally enforceable, but seek to create a culture that embraces responsible public service beyond technical rules.

The Institute of Local Government has compiled a list of several values that are often included in values-based ethics codes:

- Honesty
- Integrity
- Pursuit of Public Interest over Private Interest
- Community Service
- Fairness
- Respect for Fellow Officials and the Public
- Compassion
- Proper, Efficient Use of Public Resources
- Loyalty to the Agency
- Vision

Hybrid

Some municipalities combine both a rules-based and values-based approach into one consolidated ethics code. This blends the benefits of having clear, baseline ethical prohibitions with those of having conduct goals that push officials to embrace an attitude of professional ethics that is incapable of being codified. A potential drawback is that the legalistic, rules-based approach may detract from the sense of personal responsibility for ethical conduct that the values-based approach seeks to instill.

³ Institute for Local Self-Government, *Developing a Local Agency Ethics Code: A Process-Oriented Guide* (2003).

Ethics Commission

Standing Body with Delegated Authority to Interpret & Enforce a Jurisdiction's Ethics Laws

“ The independence of an ethics commission and its staff is essential to obtaining and maintaining the public's trust in an ethics program. Only a truly independent ethics commission that represents the community, as a jury does, can be trusted to see things from the community's point of view and share its concerns. ”

Robert Weschler, LOCAL GOVERNMENT ETHICS PROGRAM, 2013.

Overview

Government ethics is about ensuring that public servants, from elected officials to department heads to civil service employees, make decisions to benefit the public and not their own personal interests. Ethics laws are enacted to prevent and deter conflicts of interest from arising, punish improper behavior, and promote public trust in government. However, without an independent body to enforce these laws, there is the risk and the perception that these laws will go unenforced or, worse, be only selectively enforced for partisan goals.

Many cities, including Los Angeles, San Diego, San Jose, San Francisco, and Oakland, have adopted ethics commissions to address these concerns. According to the Institute for Local Government,

A central goal of an ethics commission is to enhance public trust in governance by means of an ethics enforcement process assigned to a quasi-independent entity. Local California governments have instituted ethics commissions charged with enforcing and taking action with respect to local ethics laws. These laws are aimed at the perception, as well as the reality, that personal interests, not public interests may influence decision making and governmental action. Such commissions also provide advice regarding ethics, as well as training on related laws and regulations. As important, a commission brings the community's voice about ethics in public service to the table.¹

Through their independence, ethics commissions enable communities to hold their government officials accountable. However, the best measure of success is not in how many enforcement actions are brought, but in the level of compliance with the letter and spirit of core ethics laws. For this reason, most ethics commissions serve as more than just a watchdog. At their best, ethics commissions actively and constructively educate people about their ethical obligations and work with legislators and other officials to facilitate compliance and minimize the likelihood of conflicts of interests emerging in the first place.

Currently the City of Sacramento does not have an ethics commission. The City Clerk is responsible for some activities that could fall under the jurisdiction of a local ethics commission (e.g. receiving campaign and financial disclosure records). The City Clerk is appointed by and works at the pleasure of the City Council. The Clerk works with the City Attorney on ethics issues, but does not have independent investigative and enforcement powers. Matters requiring investigations and potential corrective or punitive actions may be referred to the State Fair Political Practices Commission (FPPC); however, the FPPC's mandate is mostly limited to campaign and financial disclosure violations, not all ethics laws, and it cannot be expected to police the day-to-day actions of local officials in nearly 550 municipalities on top of its state and federal responsibilities.

Typical Jurisdiction

¹ Institute for Local Government, *Everyday Ethics for Local Officials – Understanding the Role of Ethics Commissions* (2007).

Ethics commissions are typically given jurisdiction to enforce any laws that would otherwise require city leaders to sit in judgment of themselves, creating a real or apparent conflict of interest. Examples includes:

1. Core ethics laws (e.g., corruption, nepotism, misuse of public resources, gift restrictions, conflict of interest)
2. Financial interest disclosures
3. Campaign laws (e.g. expenditure and contribution limits)
4. Lobbying restrictions
5. Concurrent and post-employment restrictions (e.g. moonlighting, contracting with the city)
6. Open meeting and public records laws.
7. Elected official compensation

Key Elements

According to a California Research Bureau study, “effective ethics agencies exhibit three characteristics: **independence** (insulated from undue political influence; control over staff), adequate **guaranteed annual budgets**, and **enforcement powers** (advisory opinions, investigations, and sanctions).”²

Independence

Commission independence is key to ensuring fair enforcement outcomes, as well as promoting and preserving public trust. Independence is promoted in two ways: through the selection process and through restrictions on commissioners’ political activities. Most cities with ethics commissions prohibit city employees, contractors, or lobbyists from being commissioners. It is common for elected officials to appoint the commissioners, often with a confirmation vote by a majority or supermajority of the city council. The political appointment approach has advantages and drawbacks: political appointees are less likely to engage in “witch-hunts” and are more likely to work collaboratively with city leaders to provide trainings and create programs to promote ethical behavior; however, this can also give the appearance that commissioners are serving the elected officials who appoint them, and are not serious enforcers. Oakland alone uses a hybrid system where elected officials appoint three commissioners and sitting commissioners self-appoint the remaining four commissioners.

Once selected, sitting commissioners are generally prohibited from participating in or even donating to political campaigns during their tenure. Commissioners should not be participants in the political process they are charged to monitor. Most cities also prevent commissioners from running for office one to two years after their service concludes.

Ethics Commission Staffing & Costs

A city’s general fund is the typical source for commission budgets; this puts commissions at-risk of losing funding if they offend the city leadership whose actions they are charged with overseeing. Some cities guard against this by establishing minimum commission funding or staffing levels in the city charter. Oakland’s Public Ethics Commission, for example, when over one year with no staff during the Great Recession and effectively ceased functioning: when Oaklanders amended the city charter in 2014 to strengthen the Commission they required the City to fund at least five staff positions at all times.

Related to commission budgeting is how the commission is staffed. San Jose, for example, does not give its commission any independent staff: it must rely on the assistance of the city clerk and city attorney. The better approach seems to be to give the commission its own staff, accountable only to the commission as a whole. This is particularly the case with commission legal staff: as city attorney staff generally represent and defend the decisions of the city council, it can put these staff in an uncomfortable position to ask them to bring an action against an elected official. San Diego and Oakland provide their commissions with independent legal staff. Other city commissions have authority to use outside counsel, when deemed necessary, but an independent counsel is viewed as the preferable model. In addition, an

² Charlene Simmons *et al.*, *Local Government Ethics Ordinances in California*, California Research Bureau (1998).

executive director appointed by and serving solely at the pleasure of the commission promotes independence, particularly if the director is solely responsible for hiring and overseeing commission staff.

Enforcement Powers

Enforcement is key to an effective ethics commission. A commission that is not empowered to investigate and enforce the ethics laws would be a toothless watchdog. Standard enforcement powers include the power to:

- Investigate claims of violations;
- Subpoena records and compel people to testify;
- Impose penalties (usually fines up to \$5,000);
- Issue orders compelling compliance with ethics laws; and
- Refer violations to appropriate enforcement agencies.

In addition to enforcement powers, many commissions are often tasked with:

- Training local officials and public on ethics laws;
- Answering questions and formally advising local officials on ethics laws;
- Operating a whistleblower hotline; and
- Reviewing/Proposing new governmental ethics law reforms.

Survey: Ethics Commissions in California

	Los Angeles (pop. 3,792,621)	San Jose (pop. 998,537)	San Francisco (pop. 837,442)	San Diego (pop. 1,355,896)	Oakland (pop. 390,724)
Name	City Ethics Commission	San Jose Ethics Commission	Ethics Commission	San Diego Ethics Commission	Public Ethics Commission
Enacted	1984		2001	2001 (amend. 2007)	1995 (amend. 2014)
Size (Term)	5 (5 years x1)	5 (4 years x2)	5 (6 years x1)	7 (4 years x 2)	7 (3 years x2)
Selection Process	<p><i>Political Appointees:</i></p> <ul style="list-style-type: none"> ▪ Mayor, City Attorney, Controller, President of the Council, President Pro Tem of the Council: 1 each ▪ Confirmed by Council majority 	<p><i>Political Appointees:</i></p> <ul style="list-style-type: none"> ▪ Application & interview process ▪ Appointed by 2/3 Council vote 	<p><i>Political Appointees:</i></p> <ul style="list-style-type: none"> ▪ Mayor: public information and meetings background ▪ City Attorney: background in law and government ethics ▪ Assessor: background in campaign finance ▪ District Attorney & Board of Supervisors: represent public 	<p><i>Political Appointees:</i></p> <ul style="list-style-type: none"> ▪ City Council and City Attorney nominate one candidate each ▪ Mayor selects members from the nomination pool ▪ Confirmed by Council majority 	<p><i>Appointment & Self-Selection:</i></p> <ul style="list-style-type: none"> ▪ Mayor: local civic organization ▪ City Attorney: public policy or law, esp. ethics or transparency ▪ City Auditor: background in campaign finance, whistleblower protection, or transparency tech ▪ Commission: other vacancies appointed by current commission after receiving applications
Commission Qualifications & Limitations	<ul style="list-style-type: none"> ▪ Registered voter ▪ Cannot: <ul style="list-style-type: none"> ▶ hold or run for public office ▶ make campaign donations ▶ be a lobbyist 	<ul style="list-style-type: none"> ▪ Qualified elector ▪ Familiar with campaign laws ▪ Representative of community ▪ No city employees, contractors, elected officials, candidates ▪ Cannot endorse campaigns 	<ul style="list-style-type: none"> ▪ Not a city employee, contractor, or lobbyist ▪ Cannot seek election, or participate, contribute, endorse, or oppose a campaign 	<ul style="list-style-type: none"> ▪ Qualified elector ▪ High moral character ▪ Reflect city diversity ▪ 1 must have been a candidate or high level campaign staff ▪ 2 must be attorneys ▪ No more than 3 of the same political party ▪ No member may have run against a current official ▪ Cannot seek election, or participate, contribute, endorse, or oppose a campaign ▪ Not a lobbyist 	<ul style="list-style-type: none"> ▪ Oakland residents ▪ Attend one Commission meeting ▪ Not a city employee, contractor, or lobbyist ▪ Cannot seek election, or participate, contribute, endorse, or oppose a campaign ▪ Mayor, Attorney, Auditor appointee: <ul style="list-style-type: none"> ▶ Cannot have worked, in prior 2 years, on their campaign ▶ City Council can reject appointee within 45 days ▪ Commission appointee: reflect the interests of neighborhood, nonprofit, and business communities
Removal	<ul style="list-style-type: none"> ▪ Removed by: Mayor + Council majority, or 2/3 of Council ▪ For neglect of duty, gross misconduct, inability to discharge duties, violation of charter 	<ul style="list-style-type: none"> ▪ Removed by 2/3 of Council for any or no reason 	<ul style="list-style-type: none"> ▪ Appointing authority can remove member for official misconduct ▪ Misconduct must involve moral turpitude crime or have Ethics Commission recommend removal ▪ Board must remove by 3/4 vote 	<ul style="list-style-type: none"> ▪ Removed by Council majority vote for cause 	<ul style="list-style-type: none"> ▪ Removed by appointing authority with concurrence of the Council ▪ For felony conviction, neglect of duty, misconduct, inability to discharge duties, 3 absences
Post-Service Restrictions	<ul style="list-style-type: none"> ▪ Cannot run for office for 2 years 	<ul style="list-style-type: none"> ▪ Cannot run for office for 1 year 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> ▪ Cannot run for office for 1 year 	<ul style="list-style-type: none"> ▪ Cannot be a city employee, contractor, or lobbyist for 1 year

Survey: Ethics Commissions in California (continued)

	Los Angeles (pop. 3,792,621)	San Jose (pop. 998,537)	San Francisco (pop. 837,442)	San Diego (pop. 1,355,896)	Oakland (pop. 390,724)
Scope of Responsibility	<ul style="list-style-type: none"> ▪ Campaign finance ▪ Lobbying ▪ Conflicts of interest ▪ Governmental ethics 	<ul style="list-style-type: none"> ▪ Campaign and election laws ▪ Lobbying ▪ Conflict of Interest ▪ Ethics laws ▪ Gift limits ▪ Nepotism ▪ Open government ▪ Concurrent and post-employment restrictions ▪ Financial disclosure 	<ul style="list-style-type: none"> ▪ Campaign finances ▪ Conflicts of interest ▪ Lobbying ▪ Campaign consultants ▪ Governmental ethics 	<ul style="list-style-type: none"> ▪ Ethics laws ▪ Campaign finance ▪ Financial disclosure ▪ Gift limits ▪ Conflict of interest ▪ Lobbying 	<ul style="list-style-type: none"> ▪ Laws assuring fairness, openness, honesty, and integrity ▪ Campaign finance ▪ Lobbying ▪ Transparency ▪ Governmental ethics
Powers	<ul style="list-style-type: none"> ▪ Can conduct investigations & audits; subpoena records & witnesses; hold hearings ▪ By 3/5 vote, issue penalties up to \$5,000 or 3x the contribution ▪ Adopt regulations with Council concurrence ▪ Provide education & advice with safe harbor protections ▪ Recommend ethics legislation 	<ul style="list-style-type: none"> ▪ Can conduct investigations; subpoena witnesses and take evidence; hold hearings ▪ By 3/5 vote and with findings, issue penalties up to \$5,000 or 3x the contribution ▪ Recommend ethics legislation 	<ul style="list-style-type: none"> ▪ Can conduct investigations & audits, subpoena witnesses and records; hold hearings ▪ By majority vote, issue penalties up to \$5,000 or 3x the contribution, can recommend removal of officer ▪ Can adopt regulations; effective unless 2/3 vote of Board of Supervisors veto them ▪ Serve as filing officer ▪ Provide education & advice with safe harbor protections ▪ Recommend ethics legislation ▪ Maintain whistleblower hotline 	<ul style="list-style-type: none"> ▪ Can conduct investigations & audits, subpoena witnesses and records; hold hearings ▪ By 5/7 vote, issue penalties up to \$5,000 ▪ Provide education & advice with safe harbor protections ▪ Can adopt implementing regulations, with City Council approval 	<ul style="list-style-type: none"> ▪ Can conduct investigations; subpoena record and take testimony; hold hearings ▪ By 4/7 vote (sometimes 5/7), impose fines & penalties ▪ Provide education & advice with safe harbor protections ▪ Recommend ethics legislation ▪ Accept campaign finance filings ▪ Adjust Council salaries by CPI ▪ Private right of action exists if Commission does not act
Staff	<ul style="list-style-type: none"> ▪ Executive Director, hired by & serving at will of commission ▶ Currently, 23 staff 	<ul style="list-style-type: none"> ▪ City Clerk staffs meetings ▪ Council provides funds to hire a neutral evaluator 	<ul style="list-style-type: none"> ▪ Executive Director appointed and removed by the Commission ▪ City attorney is Commission's legal advisor 	<ul style="list-style-type: none"> ▪ City must appropriate a reasonable budget, at least 3 staff + independent legal counsel ▪ Executive Director selected by Commission, confirmed by City Council 	<ul style="list-style-type: none"> ▪ City must appropriate a sufficient budget, at least 6 staff ▪ Executive Director serves at pleasure of the Commission; Commission recommends 2-3 candidates to City Administrator who selects one.
Citation	City Charter, Article VII	Municipal Code, Title 2, §2.08.1600 et seq.; Title 12, §12.04.025 et seq.	City Charter, Article XV & Appendix C	Municipal Code, Chapter 2, Section 26.0401 et seq.	City Charter, Sections 202 and 603

Open Government

The Philosophy that Government Documents & Proceedings Should be Accessible to the Public to Allow for Effective Oversight

“*Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.*”
Louis Brandeis, *Other People's Money*, HARPER'S WEEKLY, 1913.

Overview

California cities are seeing two major trends. On the negative side, we are seeing a troubling drop in voting in California's municipal elections, with voter turnout falling to record lows especially amongst younger adults and members of minority groups. California cities have some of the lowest voter participation rates in the world. Volunteers in civic and community organizations are dominated by older, white citizens. While reasons for this decline in engagement abound in academic literature, there is a palpable sense that voting in municipal elections is seen as not relevant to the lives of the disconnected, or is unlikely to lead to any change in the status quo.

A big part of the problem is the public's lack of awareness of what local government does. "If a majority of the population is confused about the basic division of responsibilities between local, state and national government, as our results show, the expectations and demands made on policymakers may be unrealistic," said Kim Nadler, CSUS Professor and Director of the Project for an Informed Electorate. How can we expect people to care about local government when they know very little about what city and county governments do? Civic education in our schools largely ignores the vital role of local government in our lives, focusing almost entirely on our national government.

With large portions of our urban population currently tuned out to local government and poorly informed as to its role, a local government which wishes to preserve (or, in some cases, restore) its legitimacy in a democratic society must do everything in its power to make public engagement in city and county government as easy, welcoming, and accessible as possible. A transparent government is one that builds trust, legitimacy, and positive customer-focused relationships with its citizens. Without transparency, citizens become (or remain) detached, distrustful, uninformed, unsupportive, and sometimes even hostile towards local government.

The second trend - the movement towards more open and transparent local government - is a very positive one. It holds out the promise of helping to arrest, if not reverse, the trend of citizen disengagement from local government. We can see this trend in the vigor with which a number of nonprofit groups in California are promoting open government solutions, from California Forward, California Common Sense, Data.gov, Institute for Local Government, The First Amendment Coalition, California Aware, Code for America, California Policy Center, and several others.

This trend has led to at least 12 California cities¹ adopting Open Government, Transparency, or Sunshine Ordinances in recent years, the principal subject of this study. Some were adopted by local government on its own. Some were adopted by voter initiative. Most of these ordinances were the product of close collaboration and extended engagement between experienced open government advocates and organizations, on the one hand, and elected city officials and city staff, on the other.

A major driver of the trend towards greater openness in local government has been the rapid advent of new digital technology, making available to local government robust tools for not just disclosing to the public massive quantities of data (i.e. Big Data) on web sites, but to equip average citizens, watchdog groups and the media with search and analytical tools that enable them to slice and dice data to explain what local government does (or does not do) in ways

¹ As identified by the First Amendment Coalition, they are: Alameda, Benicia, Berkeley, Contra Costa County, Dixon, Gilroy, Milpitas, Oakland, San Francisco, Riverside, San Bernadino, Santa Ana, and Vallejo.

that were almost impossible in earlier eras. It can be a challenge for local government to enact rules that promote such new technological tools and innovations, while still preserving flexibility and regulatory space for further advances.

But the first task is for policymakers to make a serious and abiding commitment to making their local governments as inviting and welcoming as possible. They need to throw open their doors to potential customers and encourage them to check out their merchandise in a very "hands on" fashion. That is the essence of government transparency.

Review of California Transparency Law

The backbone - or baseline - of transparency in local government is established by two seminal California statutes: the state's open meeting law known as the Ralph M. Brown Act ("Brown Act") and the California Public Records Act ("PRA").

The Brown Act sets **minimum standards** for the amount of advance notice governments must provide to the public of regular and special council meetings, the required contents of council agendas, the conduct of council meetings, the rights of the public to speak at council meetings, the narrow circumstances under which a council may go behind closed doors to discuss agenda items, access to council agendas and minutes, and the like.

The PRA sets **minimum standards** that local government must follow in turning over government records to those who request them. The PRA defines what a record is, requires that the public have free access to such records, gives government 10 days to comply with a request, limits copying costs to "statutory fees," and requires the government to justify the withholding of any record by demonstrating that the record is exempt under the PRA or that "the public interest in confidentiality outweighs the public interest in disclosure."

Certain records are exempt from disclosure under the PRA, including records covered by the attorney-client privilege, records that are part of the "deliberative process" in that they reveal the thought process of government officials (although disclosure can be compelled under a balancing test), preliminary drafts, home addresses, personnel, medical and similar files, police incident reports, rap sheet and arrest records, and the confidential financial data of applicants for permits and licenses.

Local Transparency Ordinances Supplement State Law

A universal element of every transparency ordinance adopted by California cities is for it to declare that the rights it grants are **supplemental** to the baseline rights granted by the PRA and the Brown Act. Further preserving and facilitating access to documents is a hallmark of a local transparency ordinance. For example, a transparency ordinance might compel a city to decide whether it will provide requested records in a shorter period than the 10 days allowed under the PRA. If the request is simply for a public document, some ordinances require that the records be turned over in just one business day (known as an "Immediate Disclosure Request" in Benicia). Because some cities have traditionally abused the somewhat subjective "deliberative privilege" exception to withhold documents, some ordinances have done away with it entirely.

Transparency ordinances have also been used to significantly enhance the public's right to be heard at city council meetings, beyond the requirements of the Brown Act. A 2012 transparency initiative in Dixon (which failed) would have allowed 20 registered voters, by petition, to compel that an agenda item be added to the regular agenda of its city council. The Dixon ordinance also would have prohibited a councilmember from using a cell phone or laptop to text or email during a council meeting unless his messages were publicly posted on a screen situated behind the chair of the councilmember. More commonly, transparency ordinances expand citizens' abilities to address their elected officials: for example, several transparency ordinances grant speakers the right to speak anonymously, without revealing their names or addresses, and to comment on every agenda item. (Sacramento compels speakers to divide their allotted time among the agenda items they choose to address.)

Special Transparency Considerations

A review of local transparency ordinances reveals that certain issues, many involving technology, are often the subject of special consideration:

E-mail: Perhaps nothing has raised more concern with the PRA in recent years as e-mail. First is the problem of city officials using their personal cell phones to transmit e-mails that involve city business and then claiming that the e-mails are not "city records" because they were transmitted using a personally-owned device. California courts have divided on whether such e-mails should be properly considered city records. Some cities, however, have avoided legal uncertainty by declaring that all e-mail communications by public officials concerning public business are city records, regardless of where they are kept or how they are transmitted.

A related concern major is with cities' e-mail retention policy. Short retention periods lead to the destruction of documents that may be key to understanding and examining the conduct of city officials and city policy. For example, Sacramento's reversal of its policy of installing water meters in sidewalks instead of in people's yards (so-called "Metergate") would not have occurred without Sacramento News and Review investigative reporter Joe Rubin's exposé of why this was a wasteful policy: his articles, however, were only possible because he had access to city e-mails dating back to 2008. A few transparency ordinances specify a retention period of two years to preserve this type of information that can be so crucial to retrospective analysis.

Archived Video: Many cities, like Sacramento, now stream or make available recorded video of City Council meetings. Such information can provide a window into the legislative history of city resolutions and ordinances, and explain the thought process of elected officials. Transparency ordinances can require the preservation of such video evidence, just as meeting minutes are preserved. Gilroy's transparency ordinance requires that video of council meetings remain posted on the city's website for 10 years and the video's be maintained in the city clerk's office for 20 years.

City Websites: Almost half of the cities surveyed included a specific listing of city records that a city must post and maintain on the city's website. Long-ish documents like city budgets, annual financial statements (known as CAFR's), and Environmental Impact Reports (EIRs) are often required to be posted on city websites to make it easier for the public to download and print. Some cities, like Berkeley, specifically require that data posted on the city website be provided in open and non-proprietary data formats. Milpitas requires that the calendars and appointment books of councilmembers and senior city managers be posted on the city's website on a monthly basis. A few ordinances included a mandate that the city clerk, within nine months to a year after adoption of the ordinance, post on the city's website a "Public Records Research Index" to assist the public in finding information. It requires that the clerk create a uniform reference system and that it be updated quarterly.

Personnel Records: Many ordinances grant access to extensive information on the positions, salaries and benefits of city employees. Some call for the names of city employees to be disclosed along with such personnel information, while others withhold such information. Others require disclosure of all disciplinary cases and lawsuits against police agencies and officers, but most withhold the actual names of the officers involved absent a finding of serious misconduct.

Costs: The charges that cities impose for photocopies of public records is a frequent concern. When the cost is too high it can discourage public review. Several ordinances limit copying costs to five cents or ten cents per page and provide petitioners the option of accepting records electronically to reduce copying cost and facilitate handling.

Misrepresentations by City Officials: Several transparency ordinances require city elected officials and city managers to sign declarations annually, under penalty of perjury, that they have read the city's transparency ordinance and they have attended or intend to attend annual training, led by the city attorney, on the open government rules of city government. Such a requirement could be extended to all city staff.

Limits on Speaker Time: In 2013, EOS conducted a detailed study of the impact of Sacramento city council public comment rule changes, including reducing the time for public comment from three to two minutes per speaker. Overall,

the total time of public comment at council meetings dropped by two-thirds over the course of three years. Several transparency ordinances speak to the right to address the city council. Typically ordinances provide three to five minutes of public comment, subject to the right of the mayor to reduce the time allotted to each speaker when there are large crowds, with one city specifying that there will be no time limit. A few ordinances allow proponents and opponents of a proposal to bundle their time and allocate it to a single spokesperson. Sacramento used to follow this practice, but it has since been discontinued. To many, bundling can improve the quality of debate while reducing the length of the public comment period by allowing the best informed and articulate representatives of a group to speak.

Agenda & Materials Posting Deadlines: While the Brown Act requires 48-hour prior posting of council agendas, the transparency ordinances typically extend the required notice period from four days to as much as 15 days (Berkeley). In Sacramento, the city typically posts agendas and agenda packets on the city's website five calendar days before council meetings, although it is not uncommon for staff reports to be posted the day of a council meetings. Some ordinances require the continuance of an agenda item under such circumstances.

Special Provisions on City Managers: A few ordinances require that all performance and compensation reviews of the city manager and all goal-setting involving the city manager be conducted in public session. Sacramento's Measure L would have required that the council hold at least one public session to review the qualifications of candidates being considered for the post of city manager and to allow the public the chance to ask questions of the candidates.

Annual Compliance Reports: A number of ordinances require city governments to prepare annual, detailed reports to city council on the city's compliance with records requests, including logs and summaries of the number of requests received, requests fully honored, requests partially or wholly rejected, the reasons for rejection, and the number of requests honored within 24 hours, two days, or more than ten days from the date requests were received. Such public reports add accountability to the mandates of transparency ordinances.

Ad Hoc Committees of the City Council: Sacramento has regular standing committees (i.e. Law & Legislation, Budget & Audit) and it has *ad hoc* committees, such as the council *ad hoc* committee on city governance, the *ad hoc* committee on the arena transaction and, previously, the *ad hoc* committee on utilities infrastructure and rate hikes. Standing committees are fully subject to the Brown Act: meeting times and locations are noticed, agendas are publicized, meetings are open to the public, and public testimony is allowed. *Ad hoc* committees, always comprised of less than five councilmembers to avoid triggering the Brown Act, are subject to none of these things. Their meetings are unnoticed and held behind closed doors so the public knows nothing about what transpires during their meetings. The city clerk informed EOS that she is not sure whether minutes are kept of meetings of *ad hocs*, but she doesn't think so.

Ad hocs have been criticized as a form of secret government, rather than open and transparent government. They can be hidden from public scrutiny and deprived of public input, which create real problems as the "Metergate" scandal described earlier may illustrate. A Sacramento transparency ordinance could ban the creation of any *ad hoc* council committee for a purpose other than one that could be heard exclusively in closed session of the city council. In other words, only if secrecy is truly required should an *ad hoc* be formed to handle any matter of city business.

Redistricting Commission

An Independent Body with Delegated Authority to Draw Council District Boundaries

“*Redistricting encourages manipulation of our elections by allowing incumbent politicians to help partisan allies, hurt political enemies and choose their voters before the voters choose them. The current process is used as a means to further political goals by drawing boundaries to protect incumbents and reduce competition, rather than to ensure equal voting power and fair representation.*”

Center for Voting and Democracy, *The Redistricting Problem*, accessed 2015.

Overview

Just like with federal and state legislative districts, every ten years cities must redraw the boundaries of their city council districts to ensure they are substantially equal in population. This process, known as redistricting, is traditionally done by the city council. In Sacramento, for example, the City Council adopted new maps for the eight council districts in 2011. The traditional process, however, has been subject to criticism because of the actual and perceived conflict of interest in having politicians draw their own districts, for example:

- Districts may be drawn by incumbent politicians to favor their reelection and to disadvantage challengers (or draw them out of the district entirely);
- A council majority may redraw the lines to harm their political opponents and solidify their own political power; and
- Politically-drawn districts may split up neighborhoods and communities of interest to dilute their voting power and silence their political voice.

Increasingly, to avoid such conflicts, Californians have been taking the redistricting process out of the hands of elected officials and vesting it instead in an independent redistricting commission. In 2008, Californians placed the authority for state and federal redistricting in a Citizen’s Redistricting Commission. Several large California cities have adopted permanent redistricting commissions in one form or another, including Los Angeles, San Francisco, San Diego, San Jose, and Oakland. Ideally, these commissions draw district maps by putting the interests of communities and neighborhoods before the interests of incumbents.

Key considerations for creating a local redistricting commission include:

- **Authority:** are the Commission’s district maps final and binding or recommendations?
- **Independence:** how are commissioners selected and what restrictions are placed on their service to ensure their independence?
- **Criteria:** What standards govern how the Commission goes about drawing district lines?

Traditional Redistricting

Under the U.S. Constitution, legislative districts, *including City Council districts*, must have “substantially equal” populations. This requirement protects the “**one person, one vote**” principle that the weight of a person’s vote should not depend on where they live. For example, if council districts could be of any size, one district could have only 100 people, while a neighboring district could have 100,000 people; the voters in the smaller district would then have substantially more individual power to sway an election than their neighbors in the larger district. Even where districts start out equal in population, with time this may not remain the case: as people move around, cities and neighborhoods can grow and shrink. For this reason, every ten years, following the U.S. census, states and local governments must reassess and sometimes redraw the boundaries of legislative districts to ensure they remain substantially equal. This process is known as **redistricting**.

Traditionally, redistricting has been done by the very legislators whose districts would be affected. Sacramento is no exception: here, the power to draw new council district lines is controlled by the City Council. As an empirical matter, when the redistricting process is controlled by politicians it is frequently used as a tool for incumbents and majority coalitions to maintain and expand their power. This is often the result of **gerrymandering**, a process where district maps are drawn with odd contortions or extensions to achieve primarily political goals, often splitting up natural communities in the process. The *Sacramento Bee* made the following observation about the council district maps adopted out of the 2001 local redistricting process:

*Sacramento's City Council districts are a mess. They split too many neighborhoods. There's far too big a gap in populations among the districts, making a mockery of the democratic ideal of one person, one vote. And, to suit politicians, they're contorted into ridiculous shapes.*¹



Redistricting Commissions

Some states, including California, and several California municipalities have attempted to eliminate or reduce political self-interest from the redistricting process by establishing independent commissions to draw district maps. The hope is that commissions will establish legislative boundaries based on community (over political) interests. Studies comparing legislative and commission-based redistricting at the state level have found that commissions produce significantly more compact districts, which suggests less gerrymandering.² The 2011 California redistricting process under the commission model has been favorably compared to the old legislatively-adopted model:

*There is little doubt that the maps produced by the [Commission], and the process through which these plans came about, represented an important improvement on the legislature-led redistricting of 2001. The new district boundaries kept more communities together and created more compact districts while at the same time increasing opportunities for minority representation. ... They have the potential to modestly increase competition in California elections and the responsiveness of the legislative branch to changing voter preferences.*³

At the local level, five of the ten largest cities in California have established permanent redistricting commissions. Sacramento established an advisory redistricting commission for the 2011 redistricting cycle only. While all commissions have as a goal removing political self-dealing from the redistricting process, they vary to lesser and greater degrees in commission **authority** to adopt or recommend maps; commissioner **independence**; and the use of redistricting **criteria**.

Authority

A fundamental question with redistricting commissions is whether they should have the authority to **adopt**, or only **recommend**, new maps. The State of California, San Diego, San Francisco, and Oakland give their commissions the power to adopt new maps. Los Angeles, San Jose, and Sacramento (2011 cycle only) give their commissions only the power to recommend maps to the Council.

¹ Sacramento Bee, *Editorial: Give public more say on redistricting*, Jan. 18, 2011

² Azavea, *Redrawing the Map on Redistricting – Addendum*, 2012.

³ V. Kogan & E. McGhee, *Redistricting California: An Evaluation of the Citizens Commission Final Plans*, 4 Cal. J. Pol. & Pol'y 1 (2012)

Under an advisory commission model, the City Council remains free to adopt, amend, or ignore a commission's recommended maps. Some may prefer this approach as it keeps the redistricting process accountable through the electoral process. To others, advisory commissions provide only the appearance of impartiality, as incumbents can always ignore recommendations that do not align with their interests. In 2011 the Sacramento Redistricting Citizens Advisory Commission proposed four possible district boundaries; the Council instead adopted their own, different maps. Moreover, electoral accountability may not be possible where a community's voting power has been diluted by the redistricting process itself.

Political Independence

Commissioner independence will depend largely on the manner in which commissioners are appointed and what restrictions are placed on commissioners' service. There are three general methods for selecting commissioners:

- ***Political appointees:*** Some commissions are composed entirely of incumbent political appointees. This may be a positive: elected officials may be in a good position to identify and appoint community leaders to a commission and ensure key city constituencies are represented. However, political appointees run the risk of either being proxies for the appointed official or approaching the line-drawing process to maximize their own political advantage. Sacramento's 2011 redistricting commission included neighborhood leaders and an ethics expert, as well as labor and business leaders, political aspirants, and incumbent campaign staff.
- ***Independent appointees:*** Some commissions use independent third parties to appoint commissioners. In San Diego, retired judges appoint commissioners. In San Francisco, one-third of appointees are selected by the city's Ethics Commission. Independent appointers are more politically neutral, but may know less about a city's diverse neighborhoods and communities.
- ***Random and self-selection:*** The most recent trend, adopted by the state and Oakland redistricting commissions, is for a relatively neutral party (auditors and City Administrator, respectively) to assemble a pool of qualified applicants, then to have a subset of the commission be randomly selected from the pool. The randomly-selected commissioners then select the last commissioners from the remaining pool to round out the commission in terms of skill and diversity. This process can create independent and diverse commissions; however, the process is often confusing to the public and interest groups can try and stack the applicant pool.

Some cities further ensure commissioner independence by placing restrictions on who can serve on the commission. City employees, contractors, lobbyists, and major campaign donors are commonly prohibited from serving. Several cities also restrict commissioners from running for office during and after their service on the commission.

Criteria

Almost every city includes some criteria that commissioners must follow or consider in drawing district boundaries. Most cities reiterate that the districts must be of substantially equal population and must comply with state and federal law. The federal ***Voting Rights Act*** (VRA), in particular, prohibits redistricting practices that deny minority voters an equal opportunity "to participate in the political process and to elect representatives of their choice." Other common factors to be considered, as listed in Sacramento's City Charter, include: "topography, geography, cohesiveness, continuity, integrity and compactness of territory, community of interests of the districts, existing neighborhoods and community boundaries."

Survey: Redistricting Commissions in California

	Sacramento (pop. 475,122)	Los Angeles (pop. 3,792,621)	San Jose (pop. 998,537)	San Francisco (pop. 837,442)	San Diego (pop. 1,355,896)	Oakland (pop. 390,724)	California (pop. 38,802,500)
Name	2011 Sacramento Redistricting Citizens Advisory Committee	Redistricting Commission	Advisory Commission	Elections Task Force	Redistricting Commission	Oakland Independent Redistricting Commission	Citizens Redistricting Commission
Enacted	2011 (2011 cycle only)	1999	1994 (amended)	2001	1992	2014	2008 (amend. 2010)
Role	Advises Council	Advises Council	Advises Council	Adopts new districts	Adopts new districts	Adopts new districts	Adopts new districts
Size	13 commissioners	21	11	9	7	13	14
Selection Process	<i>Political Appointees:</i> <ul style="list-style-type: none"> ▪ Mayor and Council Members (8): 1 each ▪ At-large: 4 selected by City Council ▪ All appointees require City Council approval 	<i>Political Appointees:</i> <ul style="list-style-type: none"> ▪ City Attorney, City Controller, Council Members (15): 1 each ▪ Council President: 2 ▪ Mayor: 3 	<i>Political Appointees:</i> <ul style="list-style-type: none"> ▪ Mayor appoints chair ▪ Council Members (10): 1 each 	<i>Political Appointees:</i> <ul style="list-style-type: none"> ▪ Mayor: 3 ▪ Bd. of Supervisors (as a body): 3 ▪ Elections Commission: 3 	<i>Independent Appointees:</i> <ul style="list-style-type: none"> ▪ Panel of 3 randomly-selected retired judges select from applicant pool 	<i>Random + Self-Selection:</i> <ul style="list-style-type: none"> ▪ City Administrator creates pool of 40 qualified applicants ▪ Screening Panel narrows pool to 30 ▪ 6 commissioners randomly selected from remaining pool ▪ Those 6 select final 7 + 2 alternates 	<i>Random + Self-Selection:</i> <ul style="list-style-type: none"> ▪ 3 randomly-selected certified auditors create pool of 60 qualified applicants ▪ Dem. and GOP legislative leaders veto up to 24 applicants from pool ▪ 8 commissioners randomly selected from remaining pool ▪ Those 8 select the final 6
Commission Qualifications	<ul style="list-style-type: none"> ▪ Qualified electors ▪ Must disclose financial interests ▪ Reflect demographic & geographic diversity 	<ul style="list-style-type: none"> ▪ No city employees 	<ul style="list-style-type: none"> ▪ Ethnically representative 	None.	<ul style="list-style-type: none"> ▪ Registered voters ▪ Select for competency & impartiality ▪ Ensure geographic, social, & ethnic diversity 	<ul style="list-style-type: none"> ▪ 3-year residents ▪ Select for analytical skill, impartiality, & collegiality ▪ Representative of ethnic, geographic, & economic diversity ▪ No city employees ▪ In prior 10 years, no: politicians, political staffers, lobbyists, candidates, campaign staff, large campaign donors 	<ul style="list-style-type: none"> ▪ Voted in 2 of 3 last elections ▪ Composition: 5 Dem., 5 GOP, 4 Ind. ▪ Select for analytical skill & impartiality ▪ Reflect racial, ethnic, geographic, & gender diversity ▪ In prior 10 years, no: politicians, political staffers, lobbyists, candidates, campaign or party staff, large campaign donors
Post-Service Restrictions	None.	None.	None.	None.	<ul style="list-style-type: none"> ▪ Cannot, for 5 years, run for office 	<ul style="list-style-type: none"> ▪ Cannot, for 10 years, run for office ▪ Cannot, for 4 years, be a political staffer, appointee, lobbyist, or no-bid contractor 	<ul style="list-style-type: none"> ▪ Cannot, for 10 years, run for office ▪ Cannot, for 5 years, be a political staffer, appointee, or lobbyist

Survey: Redistricting Commissions in California (continued)

	Sacramento (pop. 475,122)	Los Angeles (pop. 3,792,621)	San Jose (pop. 998,537)	San Francisco (pop. 837,442)	San Diego (pop. 1,355,896)	Oakland (pop. 390,724)	California (pop. 38,802,500)
Redistricting Criteria	<ul style="list-style-type: none"> ▪ Factors to consider: <ul style="list-style-type: none"> ▶ Equal population ▶ Topography ▶ Geography ▶ Cohesiveness ▶ Continuity ▶ Integrity & compactness ▶ Communities of interest ▶ Neighborhoods and community boundaries 	<ul style="list-style-type: none"> ▪ Comply with state and federal law ▪ Where feasible: <ul style="list-style-type: none"> ▶ keep communities, neighborhoods intact ▶ use street lines or natural boundaries ▶ be geographically compact 	<ul style="list-style-type: none"> ▪ Nearly equal population ▪ Consider: <ul style="list-style-type: none"> ▶ street lines, natural boundaries, & City boundaries ▶ geography ▶ cohesiveness ▶ contiguity ▶ integrity & compactness ▶ community of interests 	<ul style="list-style-type: none"> ▪ Conform to all legal requirements ▪ Equal population (within 1% of mean) <ul style="list-style-type: none"> ▶ 5% deviation allowed to keep neighborhoods intact & to prevent dividing minority voters ▪ Reflect communities of interest 	<ul style="list-style-type: none"> ▪ Equal population, as practicable ▪ Conform with federal law ▪ Fair & effective representation for all <ul style="list-style-type: none"> ▶ e.g. racial, ethnic, & language minorities ▪ Where practicable: <ul style="list-style-type: none"> ▶ keep communities of interest whole ▶ be geographically compact & contiguous ▶ use whole census units ▶ not purposefully protect incumbents 	<ul style="list-style-type: none"> ▪ Prioritized criteria: <ul style="list-style-type: none"> ▶ Reasonably equal population ▶ Comply with federal and state law, including federal and Cal. Voting Rights Act ▶ Contiguous ▶ Respect neighborhoods & communities of interest integrity ▶ Compactness ▶ No favoring or dis-advantaging incumbents 	<ul style="list-style-type: none"> ▪ Prioritized criteria: <ul style="list-style-type: none"> ▶ Equal population, as practicable ▶ Comply with Voting Rights Act ▶ Contiguous ▶ Respect integrity of counties, cities, neighborhoods, & communities of interest ▶ Compactness ▶ Nest 2 Assembly districts in 1 Senate district ▶ No considering incumbent residency
Process	<ul style="list-style-type: none"> ▪ Meet weekly, comply with Brown Act ▪ Encourage robust public participation ▪ Map recommended by 7/13 vote. 	<ul style="list-style-type: none"> ▪ Seek public input throughout process ▪ Present Council with recommended map 	<ul style="list-style-type: none"> ▪ Conduct at least 3 hearings across city 	<ul style="list-style-type: none"> ▪ Bb.of Supervisors must convene the Task Force 	<ul style="list-style-type: none"> ▪ Public meetings ▪ Conduct at least 7 hearings across city ▪ Data & records publicly available ▪ Preliminary plan with rationale due 30 days before adoption ▪ 5/7 vote to adopt new map 	<ul style="list-style-type: none"> ▪ Public meetings, complying with Brown Act & local Sunshine law ▪ Open hearing process for public input & deliberation ▪ 14 day notice of maps ▪ 9/13 vote + report to adopt new map 	<ul style="list-style-type: none"> ▪ Public meetings, complying with Bagley-Keene Act ▪ Data & records publicly available ▪ No <i>ex parte</i> communication ▪ 9/14 vote + rationale to adopt new maps: 3/5 Dem. + 3/5 GOP + 3/4 Ind.
Citation	Feb. 8, 2011 City Resolution (<i>expired</i>)	City Charter §204; Admin. Code §2.21	City Charter §403	City Charter §13.110; Ordinance 93-11 (<i>expired</i>)	City Charter Art. II, §5.1; Mun. Code Art. 7, §27.1401 <i>et seq.</i>	City Charter §§202, 203	State Constitution Art. XXI; Gov. Code §8251 <i>et seq.</i>