

AMADOR CITY

AGENDA OF THE MEETING OF THE CITY COUNCIL

THURSDAY OCTOBER 17, 2019, 7:00 P.M.

Discussion and possible action on all items

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL-
APPROVAL OF AGENDA
4. CONSENT AGENDA – Minutes of September 19, 2019, Financial Statements

**CLOSED SESSION WITH LEGAL COUNSEL TO CONSIDER POSSIBLE LITIGATION PURSUANT TO
GOVERNMENT CODE SECTION 54957**

5. PUBLIC MATTERS NOT ON THE AGENDA – Discussion items only, no action to be taken.
Any person may address the council at this time on any subject matter within the jurisdiction of the Amador City Council. Any item that requires action will be deferred to a subsequent council meeting. Five minute time limit. -

6. Public Hearing

- A. Solar panel at sewer pond – Susan Bragstad
- B. Traffic Calming on Main Street
- C. Civility training for Council members
- D. Committees: Maintenance, ARSA, Air, Culbert Park, Design Review, ACTC/RTMF, LAFCO, Homeless, Museum, Air BnB, Fire, Roads

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, then please contact Joyce Davidson at (209)890-6284 or e-mail cityclerk@amadorcity.net. Requests must be made as early as possible, and at least two full business days before the start of the meeting.

AMADOR CITY

MINUTES OF THE MEETING OF THE CITY COUNCIL

THURSDAY SEPTEMBER 19, 2019, 7:00 P.M.

Discussion and possible action on all items

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL- Groth, Bragstad, Marks, Robinson present, Kel-Artinian absent
APPROVAL OF AGENDA – Bragstad moved, 2nd by Marks, approved unanimously
4. CONSENT AGENDA – Minutes of August 15, 2019, Financial Statements -
5. PUBLIC MATTERS NOT ON THE AGENDA – Discussion items only, no action to be taken.
Any person may address the council at this time on any subject matter within the jurisdiction of the Amador City Council. Any item that requires action will be deferred to a subsequent council meeting. Five minute time limit. -
6. **Public Hearing**
 - A. **Council Member – Training and Civility requirements – Discussion item only – No action**
 - B. **ACRA JPA Amendment allowing non-elected persons to be on ACRA Board – Carolyn Fregulia -Bragstad moved to approve ACRA JPA Amendment, second by Marks, approved unanimously**
 - C. **Pursue grant for solar power at sewer pond – Susan Bragstad – Motion made by Robinson to research cost of installation of solar power and to pursue grant money , second by Marks, approved unanimously**
 - D. **Possible zoning change to allow second detached residence on Budrick property on Water Street – Discussion only**
 - E. **Fire sprinkler pipe in Amador Hotel – Supporting documentation - provided by Ray Brusatori – Closed session to precede October City Council Meeting to obtain legal opinion from counsel.**
 - F. **Discussion of Oak Tree in Cemetery – Discussion item only – No action -Not an imminent risk**
 - G. **Continued discussion of "traffic calming" on Main Street**
 - H. **Committees: Maintenance, ARSA, Air, Culbert Park, Design Review, ACTC/RTMF, LAFCO, Homeless, Museum, Air BnB**

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Council Conduct with City Staff, the Public, and Each Other

Council Conduct with One Another

"In life, courtesy and self-possession, and in the arts, style, are the sensible impressions of the free mind, for both arise out of a deliberate shaping of all things and from never being swept away, whatever the emotion, into confusion or dullness."

--William Butler Yeats

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may "agree to disagree" on contentious issues. The City's Code of Ethics & Values should be referred to for positive statements of ethical behavior.

IN PUBLIC MEETINGS

Use formal titles.

It is preferred that Council refer to one another formally during public meetings as Mayor, Vice Mayor or Council Member followed by the individual's last name.

Practice civility and decorum in discussions and debate.

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. However, making personal, slanderous, threatening, abusive, or disparaging comments is not appropriate. No shouting or physical actions that could be construed as threatening will be permitted.

Honor the role of the Chair in maintaining order.

It is the responsibility of the Chair to keep the comments of all participants on track during public meetings. Council Members should honor efforts by the Chair to focus discussion on current agenda items. If there is disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, following procedures outlined in Robert's Rules of Order.

Demonstrate effective problem solving approaches.

Council Members have a public stage to show how individuals with disparate points of view can find common ground and understanding, negotiating solutions that benefit the community as a whole.

IN PRIVATE ENCOUNTERS

Continue respectful behavior in private.

The same level of respect and consideration of differing points of view, that is deemed appropriate for public discussions, should be maintained in private conversation.

Be aware of the insecurity of written notes, voicemail messages, and e-mail.

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message was played on a speakerphone in a full office? What would happen if this e-mail message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially “public” communication.

Even private conversations can have a public presence.

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may or may not know. Lunch table conversations can be eavesdropped upon, parking lot debates may be watched, and casual comments between individuals before and after public meetings noted.

Council Conduct with City Staff

“Whenever there is a human being, there is an opportunity for kindness.”
--Seneca

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and the City Manager and staff, who implement and administer the Council’s policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

Treat all staff as professionals.

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

Direct staff issues and assignments to the City Manager.

Assignments for City staff and/or requests for additional background information should be directed only to the City Manager.

Requests for follow-up or directions to staff should only be made through the City Manager or the City Attorney when appropriate. Materials supplied to a Council Member in response to a request will be made available to all members of the Council so that all have equal access to information.

Never publicly criticize an individual employee.

Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee’s supervisor. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Comments about staff in the office of the City Attorney should be made directly to the City Attorney.

Allow staff to handle administrative functions.

Council Members must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

Check with the City Manager on correspondence before taking action.

Before sending correspondence, Council Members should check with the City Manager or Executive Assistant to the Mayor and City Council to see if an official City response has already been sent or is in progress.

Limit requests for staff support.

Routine secretarial support will be provided to all Council Members. All mail for Council Members is opened by the Executive Assistant to the Mayor and City Council, unless other arrangements are requested by a Council Member. Mail marked personal or confidential is not opened.

Requests for additional staff support – even in high priority or emergency situations – should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

Do not solicit political support from staff.

Council Members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace. City employees are prohibited from using City resources, City time or appearing in uniform in relation to political activities.

Council Conduct with the Public

“If a man be gracious and courteous to strangers, it shows he is a citizen of the world, and that his heart is no island cut off from other lands, but a continent that joins to them.”

–Francis Bacon

IN PUBLIC MEETINGS

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council Members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

Be welcoming to speakers and treat them with care and gentleness.

Most residents may be nervous speaking before the City Council since they do not do it very often. They may feel uncomfortable and emotional. Putting speakers at ease will allow them to express their viewpoints more effectively, make Council meetings run more efficiently, and help the democratic process be fulfilled.

Be fair and equitable in allocating public hearing time to individual speakers.

The Chair will determine and announce limits on speakers at the start of the public hearing process, per Council policy. Generally, each speaker will be allocated four minutes with applicants and appellants or their designated representatives allowed 10 minutes. If many speakers are anticipated, the Chair may ask for speaker cards to be filled out and may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Chair reopens the public hearing for a limited and specific purpose.

Give the appearance of active listening.

It is disconcerting to speakers to have Council Members not look at them when they are speaking. It is fine to look down at the documents or to make notes, but reading for a long period of time, gazing around the room, or entering into prolonged dialogue with adjacent Council Members or staff gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as “smirking,” disbelief, anger or boredom.

Ask for clarification, but avoid debate and argument with the public.

Only the Chair – not individual Council Members – can interrupt a speaker during a presentation. However, a Council Member can ask the Chair for a point of order if the speaker is off the topic or exhibiting behavior or language the Council Member finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council Members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Council Members’ personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

Undertake no personal attacks of any kind, under any circumstance.

Council Members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

Follow parliamentary procedure in conducting public meetings.

The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to Roberts Rules or Order. Final rulings on parliamentary procedure are made by the Chair, subject to the appeal of the full Council.

IN UNOFFICIAL SETTINGS

Make no promises on behalf of the Council.

Council Members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information or appropriate action. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.)

Make no personal comments about other Council Members.

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Council Members, their opinions and actions.

Remember that Council Members are always on display.

Council Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in their city. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Council Members, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

Council Conduct with Other Public Agencies

Be clear about representing the City or personal interests.

If a Council Member appears before another governmental agency or organization to give a statement on an issue, the Council Member must clearly state if his or her statement reflects personal opinion or is the official stance of the City.

If the Council Member is representing the City, the Council Member must support and advocate the official City position on an issue, not a personal viewpoint.

If the council Member is representing another organization whose position is different from the City, the Council Member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council Members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

Correspondence should also be equally clear about representation.

City letterhead may be used when the Council Member is representing the City and the City's official position. A copy of official correspondence should be given to the Executive Assistant to the Mayor and City Council to be filed in the Council Office as part of the permanent public record.

Correspondence of Council Members representing a personal point of view on a City issue, or a dissenting point of view from an official Council position, should make it clear that the views expressed represent only the individual Council Member.

Council Conduct with Boards, Commissions and Committees

“We rarely find that people have good sense unless they agree with us.”
–**Francois, Duc de La Rochefoucauld**

The City has established several Boards, Commissions and Committees (collectively referred to as City Commissions) as a means of gathering more community input. Citizens who serve on City Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City’s leadership and should be treated with appreciation and respect.

If attending a City Commission meeting, express personal opinions only.

Council Members may attend any City Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation – especially if it is advocating a certain position – could be viewed as unfairly affecting the process. Any public comments by a Council Member at a City Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council, unless the Council has taken a position on the topic. Council Members should not appear before a commission on behalf of an individual, business or developer.

Remember that City Commissions serve the community, not individual Council Members.

The City Council appoints individuals to serve on City Commissions, and it is the responsibility of City Commissions to follow policy established by the Council. But City Commission members do not report to individual Council Members, nor should Council Members feel they have the power or right to threaten City Commission members with removal if they disagree about an issue. Appointment and re-appointment to a City Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A City Commission appointment should not be used as political “reward.” Concerns about an individual City Commission member should be discussed with the Mayor.

· Be respectful of diverse opinions.

A primary role of City Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council Members may have a closer working relationship with some individuals serving on the City Commissions, but must be fair and respectful of all citizens serving on City Commissions.

Keep political support away from public forums.

City Commission members may offer political support to a Council Members, but not in a public forum while conducting official duties. Conversely, Council Members may support board and commission members who are running for office, but not in an official forum in their capacity as a Council Member.

Tips for Chief Executive/Staff Success

October 10, 2012 Version

The Difference of Perspective between Electeds and Staff

Elected officials and staff bring important but different perspectives to their respective roles as part of a democratic institution at the local level.

- **Elected officials.** Elected officials focus on what their constituents value and need from the agency; and
- **Staff.** Staff has technical expertise in policy areas and what can work, given their day-to-day experiences with implementing agency policies, practices and service delivery that can help inform the decision-making process.¹

Both perspectives are important in making decisions in the community's interests. The chief executive plays a key role in helping agency staff understand and respect this difference of perspective.² Understanding and embracing these different perspectives can be helpful for all concerned.

Resources on Maximizing the Success of Board/Chief Executive Relations

Companion pieces to this tip sheet are available:

- Governing Board Member Strategies
- Board/Executive Staff Communications Strategies
- The Importance of an Annual Evaluation Process

Visit our website at:

<http://www.ca-ilg.org/Board-Chief-Executive-Relations>

Acknowledgements

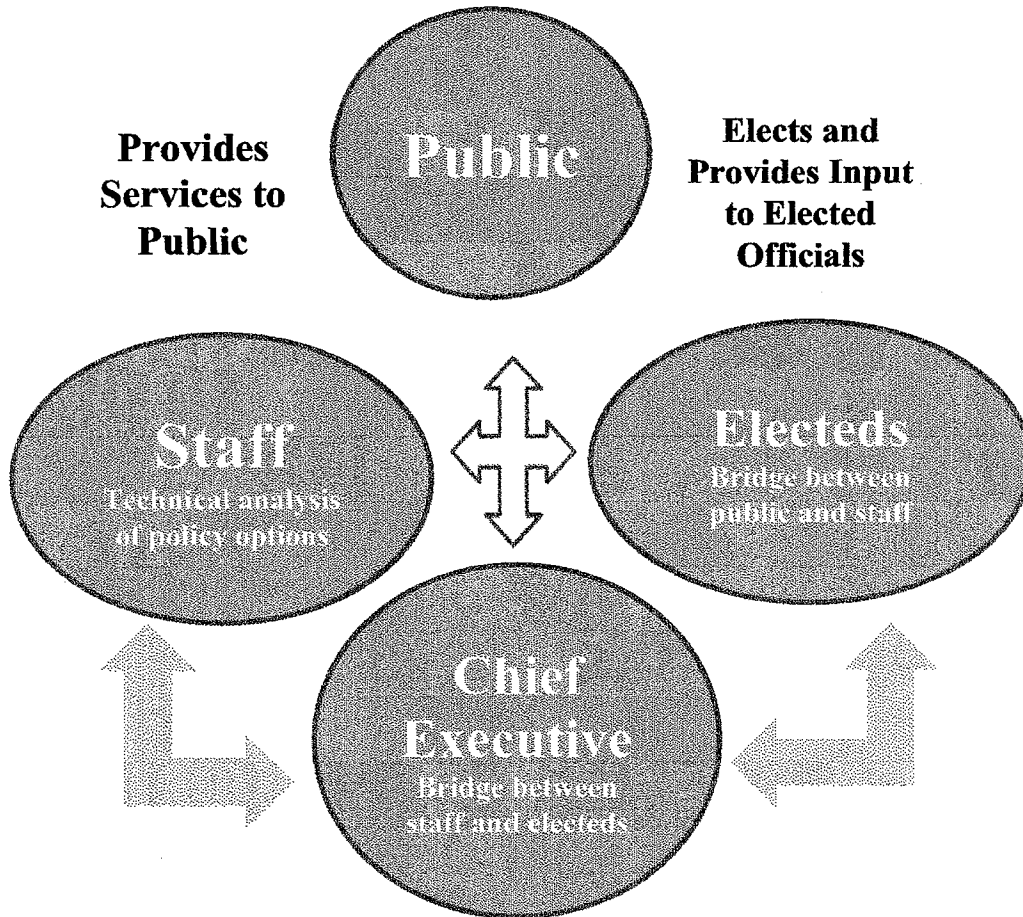
This resource reflects the insights and thoughts of a number of individuals, including Kevin C. Duggan, West Coast Director, International City/County Management Association, Pete Kutras, Retired County Executive, Santa Clara, and Principal Consultant, Municipal Resource Group, LLC, Richard A. Haffey, County Executive Officer, Nevada County, and William Chiat, Director, CSAC Institute for Excellence in County Government.

In addition, the following publications are helpful on this topic:

- International City/County Management Association and National League of Cities, *Working Together: A Guide for Elected and Appointed Officials* (1999); and
- International City/County Management Association and National League of Cities, *Leading Your Community: A Guide for Local Elected Leaders* (2008).

Bridging Function

Elected officials play an important bridging role between the public and staff; the agency's chief executive plays an important bridging function between staff and elected officials.



Clear Goals and Priorities

A key task is for the governing body and chief executive work together to assure staff have clear direction on the agency's goals and priorities.

Goal setting workshops can be useful forums for establishing governing board and organizational priorities. This includes holding annual workshops in which goals are set, reviewed, updated and/or retained, as well as direction on how the group wants to be kept updated on progress, goals and priorities.³ Follow up, of course, is critical to maximizing a goal setting session's value.⁴

Such clarity enables staff to know where to devote scarce/limited resources in proposing budget and work program priorities for the governing board's consideration

Documented goals and priorities serve as a reference point when issues and potentially competing priorities come up throughout the year. Priorities may need to change of course; the key is if a new priority is added, an old one must be subtracted.⁵

Engaging a broad range of the community in the conversation about hard choices can help the governing body in aligning agency goals with community wishes. Such processes offer important opportunities to inform and consult the community on what can be difficult tradeoffs due to scarce resources. Such engagement can also make the resulting decisions more enduring.

Focus on the Core Functions

For those areas over which the agency has discretion (for example, non-state mandated efforts without maintenance of effort requirements), the conversation can focus on identifying what is most important for the agency to accomplish. This tends to be an intersection of three things:⁶

What the Community
is Passionate About

What The
Organization Can
Be Best At

What Resources
Are Available
(What the Community
Will Support)

Identifying this intersection does not necessarily mean that tasks outside the intersecting area will not get accomplished. Some functions may be more effectively accomplished by other agencies, community-based organizations or the private sector.

Capacity Building

The entire community benefits from well-prepared and knowledgeable local officials. Some tools for assisting with this goal include:⁷

- Leadership academies that help the public, including potential future governing board candidates, understand key elements of the agency's work and processes.
- Candidate orientations that provide information about agency functions, pending policy issues, including budget issues, and any regulations that apply to the campaigning process.
- Newly elected official orientations conducted as soon as possible after election results are certified. Content should include the nuts and bolts of how to accomplish objectives in their new role, as well as briefings on current issues the agency faces, the status of long-range plans and capital projects, and the budget process. Connecting newly elected officials with former electeds who are respected in the community and can offer advice and share experience is also helpful.⁸
- Ongoing education through local workshops, references to helpful information about local governance and policy issues, and conference attendance.

Credit for Commitment to Elective Office

One dimension of staff's role is to help governing board members receive the recognition they deserve for their actions as public servants.⁹ As media opportunities occur, ensure the electeds are aware so they may receive recognition for their service on community issues.

Role Clarity

A shared understanding of the chief executive's role and the governing board's expectations optimizes the working relationship. This understanding is informed by local charter and ordinance provisions that provide the overall framework for the relationship.

- Within each agency's legal framework, the hiring process is a good opportunity for each participant in the process to be forthright about their respective expectations.
- An annual evaluation process is an ongoing opportunity for such communication, particularly as governing board members change.

Staff will be most able to perform to expectations if those expectations are clear and mutually acceptable.

Role Division

Current thinking is that elected and appointed officials operate in all four dimensions of the governance process: mission, policy, administration and management, although to differing degrees.¹⁰ The next graphic¹¹ illustrates this phenomenon. The curved line illustrates a typical division of roles between governing boards and executive staff.

In the public eye, city council members are at the top of the city's government structure, presiding over large and small bureaucracies that may include police officers, firefighters and many other types of employees charged with serving the public interest. Accordingly, when residents are aggrieved by or interested in the conduct of a particular employee, they may view their council member as that employee's ultimate "boss" or de facto CEO of the city, who can cause the employee to be disciplined or even terminated, and who could certainly take such lesser actions as communicating with the employee's direct supervisor or reviewing the employee's personnel file for information relevant to the issue.

City councils often have appointing authority over the city's highest officials, such as the city manager and city attorney. But otherwise, individual council members and the council as a body have virtually no role with regard to individual city employees. In fact, a council member's role with respect to such employees probably has more in common with that of a city resident (who is an interested "outsider" looking at the city employment structure) than with that of a private company's CEO.

This article describes several legal reasons why city council members' roles with regard to individual employees have such substantial limitations and includes some practical approaches for dealing with individual employees.

WHY A CITY COUNCIL MEMBER'S ROLE IS SO LIMITED

City council members are meant to act as part of the council, not individually. A primary reason why council members have virtually no role with regard to individual city employees is that applicable law provides that council members will act as a body, not as individuals. Indeed, the law requires that, with limited exceptions, the council conduct city business only through duly convened meetings "in full view of the public."¹ Thus, when an individual city council member takes unilateral action, his or her conduct may well lose the sanction of the law. The council member may then lose certain protections and immunities from liability, and his or her actions may more easily be rescinded or disputed.²

Legislative immunity is limited. Second, city council members may well *not* have legislative immunity with regard to actions toward individual

employees. This is particularly true if the council member acts unilaterally. Typically, when a city council member acts as a legislator, he or she has absolute immunity. But that immunity can be lost when the legislator takes actions outside the “sphere of legitimate legislative activity.”³ Accordingly, if a council member takes any unilateral actions concerning an individual employee, he or she could risk loss of legislative immunity. Even actions taken collectively with the full council might conceivably lack immunity if they relate to specific individuals instead of furthering general city policy.

Under California law, city council members can be liable for invasion of privacy, among other things. Third, the threat of liability presents another factor that limits council member roles toward individual employees. One potential type of liability is for invasion of privacy. In one case, *Braun v. City of Taft*, a city council member was subject to censure by the council for removing documents from a city employee’s personnel file and revealing them to the press. Although the court ultimately determined that the particular documents were public records that could legally be disclosed, the court remanded the case to the council to allow it to decide whether the member should suffer censure for other reasons. These possible reasons included his “unilateral decision regarding [the documents’] suitability for disclosure.”⁴ Other courts have articulated that public employees can have limited privacy rights in their personnel files.⁵ Employees can thus argue that improper review and/or disclosure should result in personal liability for invasion of privacy.⁶

Other officials, such as city managers, are charged with overseeing city employees. Fourth, council member actions with regard to individual employees may be considered suspect because other high level city officials are officially charged with supervising and/or overseeing individual employees. Most cities appoint city managers to provide overall supervision to a city’s human resources function. Because a designated official already has this responsibility, there should be little need for city council members to become involved with individual employees.⁷

PRACTICAL ADVICE FOR DEALING WITH INDIVIDUAL EMPLOYEES

Refrain from doing so, unless it is a part of one's obligations to the city. The most prudent course for a city council member is to refrain from taking action or otherwise becoming involved in any supervisory role, with respect to individual city employees.

Proceed as part of properly convened city council meetings and not individually. If a council member must become involved in decisions with respect to an individual employee, the member should not act unilaterally but should instead act as part of the council. The member should also act pursuant to the requisite formalities that will ensure legislative immunity applies.

The city manager or other appropriate city employee should interface with employees. Tasks such as reviewing employee personnel files, gathering information from supervisors and providing instruction as to particular employees should be done by the city manager or other official charged with overseeing the city's employment structure. This is true even for matters of public interest. If city residents object to the conduct of particular employees, the council can respond by asking the city manager to investigate and take appropriate action regarding the objections. For example, in a small city experiencing resident complaints about rude police officers, the council should itself refrain from taking direct action as to those officers. Instead, it can ask the city manager to investigate and respond to the issue globally. The city manager can then, as part of his or her comprehensive response, take appropriate employment action as to the officers in question.

Comply with the Brown Act. The Ralph M. Brown Act provides that certain official bodies, including city councils, may only act through duly called and regularly held meetings that are open to the public. A city council can conduct closed meetings to discuss certain personnel matters. These include meetings in which the council discusses the "appointment, employment, evaluation of performance, discipline, or dismissal of a public employee ..."⁸ This closed meeting exception, however, may apply only to the council's consideration of employees over whom the council has appointing authority (for example, city managers, city attorneys and others). A

California attorney general opinion describes that the closed meeting exception does *not* apply to a body's consideration of an employee over whom it does not have appointing authority.⁹ Lack of compliance with the Brown Act may lead to adverse legal consequences, which include voiding the actions that the council takes.

Consult with legal counsel. These issues can be complex. Also, situations where council members must take a role with regard to city employees will be rare. Council members should obtain legal advice when such circumstances arise to ensure they undertake their role appropriately.

FOOTNOTES:

[1] *Wolfe v. City of Fremont*, 144 Cal. App. 4th 533, 541, 543 (2006); *see also Moreno v. King*, 127 Cal. App. 4th 17, 20 (2005) (city council's termination of finance director was ineffective because of failure strictly to comply with notice provisions of Brown Act).

[2] *See Braun v. City of Taft*, 154 Cal. App. 3d 332, 338-40, 347-48 (1984) (considering council member's censure for unilaterally disclosing personnel records to the public).

[3] *Bogan v. Scott-Harris*, 523 U.S. 44, 54, 118 S. Ct. 966, 140 L.Ed.2d 79 (1998) (council members have immunity from civil rights liability for all actions taken "in the sphere of legitimate legislative activity"). For legislative immunity under federal law, courts apply a four-part test: "(1) whether the act involves *ad hoc* decision-making, or the formulation of policy; (2) whether the act applies to a few individuals, or to the public at large; (3) whether the act is formally legislative in character; and (4) whether it bears all the hallmarks of traditional legislation." *Kaahumanu v. County of Maui*, 315 F.3d 1215, 1220 (9th Cir. 2003). "Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it." *Bogan*, 523 U.S. at 54.

[4] *Braun*, 154 Cal. App. 3d at 338-40, 347-48.

[5] *Id.* at 346-48.

[6] *See Hill v. National Collegiate Athletic Assn.*, 7 Cal. 4th 1, 35-38 (1994).

[7] Indeed, at least one Attorney General Opinion describes that the Brown Act closed meeting exception does not apply to a body's discussion of employees over whom the body does not have appointing authority. *See* 85 Ops. Cal. Atty. Gen. 77 (2002). This supports the position that a council should delegate decision-making over such employees, since it would otherwise have to consider their performance in open session.

[8] Cal. Gov. Code § 54957(b)(1).

[9] 85 Ops. Cal. Atty. Gen. 77 (2002).