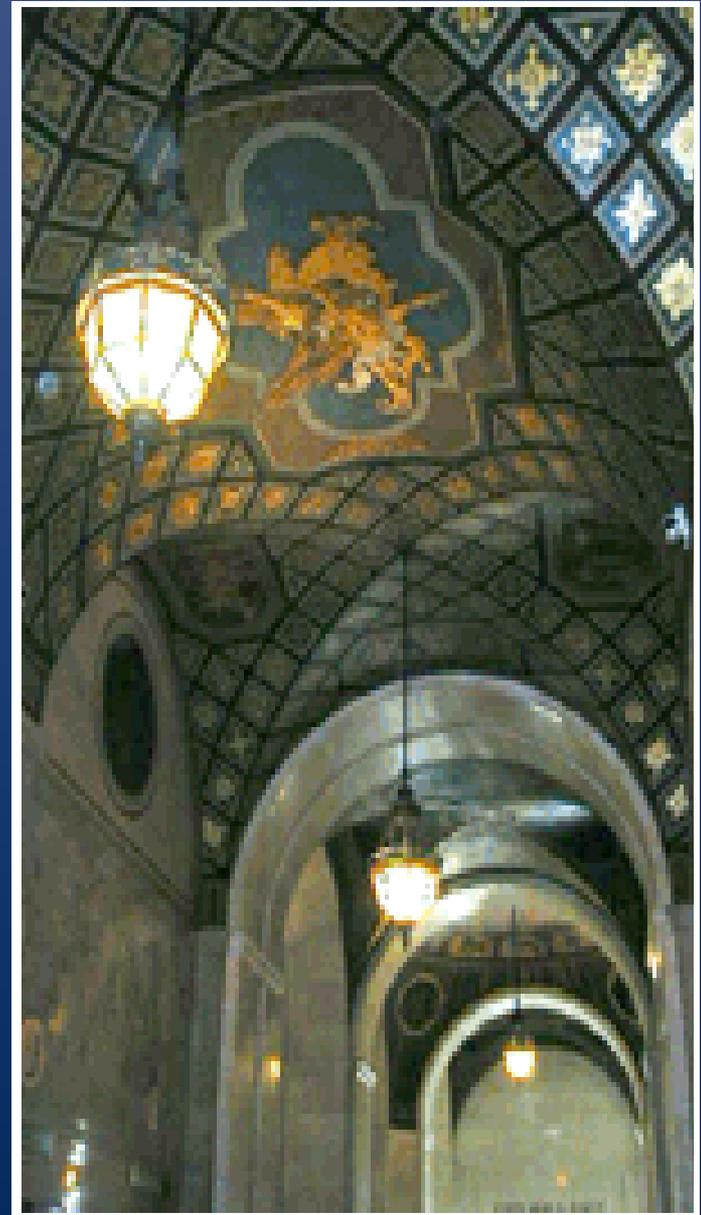


Ethics and Open Government

Fostering Accountability:

Transparency and

Fair Governmental
Processes





Transparency and Fair Processes:

- The Ralph M. Brown Act
- The California Public Records Act
- Contracting Procedures

The Ralph M. Brown Act



Courtesy of www.brownact.org

- “Local legislative agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

Former Speaker of the
California Assembly
Ralph M. Brown



The Brown Act

Legislative bodies must:

- Have meetings, deliberations, and votes in public
- Give notice of business they will address (agendas)
- Allow the public to directly address them



The Brown Act

Bodies Subject to the Brown Act

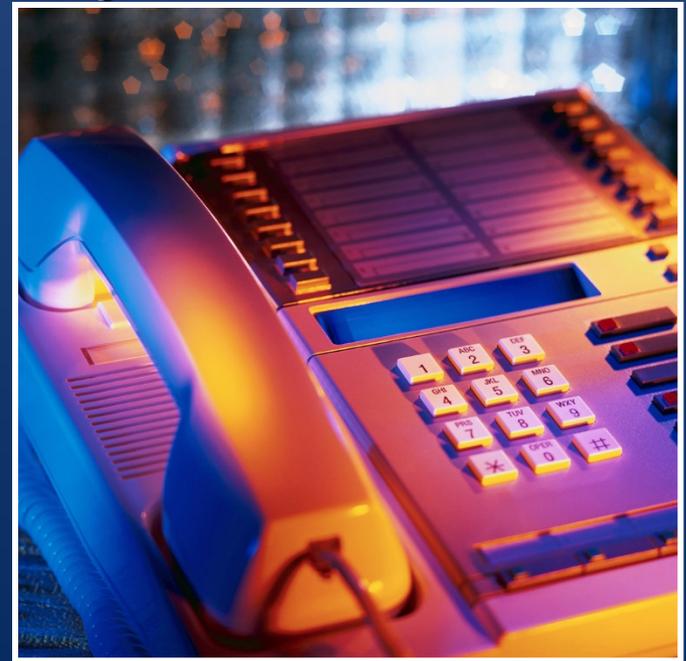
- Local Legislative Bodies such as the City Council, Boards and Commissions, and Neighborhood Council Governing Boards
- Any commission, committee, or board (and some nonprofits) created by a formal act of another Brown Act body
- Standing committee that has continuing subject matter jurisdiction, or a meeting schedule fixed by formal action
- *Advisory committees composed solely of members of the legislative body less than a quorum are not subject these requirements*

The Brown Act

Broad Definition of "Meeting"

Any gathering of a majority of the members of a legislative body to hear, deliberate, or take action on an issue, including any use of:

- direct communication
- personal intermediaries
- technological devices



The Brown Act

Avoid the Serial Meeting



Chain: If board member A contacts board member B, and B contacts board member C, and C contacts board member D, and so on, until a majority of the quorum has been involved



Hub and spoke: A board member contacts at least a majority of the quorum of the members

Note that an exception exists allowing City staff to have separate communications outside of a meeting with the board members to answer questions or provide information if the staff does not communicate to board members the comments of the other members of the board.



The Brown Act

Meeting Exceptions

Individual contacts or conversations that are not "serial" in nature

If no business is discussed, a majority of the members of the body may attend:

- A social or ceremonial occasion
- A conference if open to the public
- An open and publicized meeting of another organization
- A meeting of another public body



The Brown Act

Types of Meetings

"Regular meetings:" must be held at the time and place set by ordinance, resolution, or bylaws

- 72-hour notice

"Special meetings:" Presiding officer or a majority of the legislative body may call a special meeting at any time

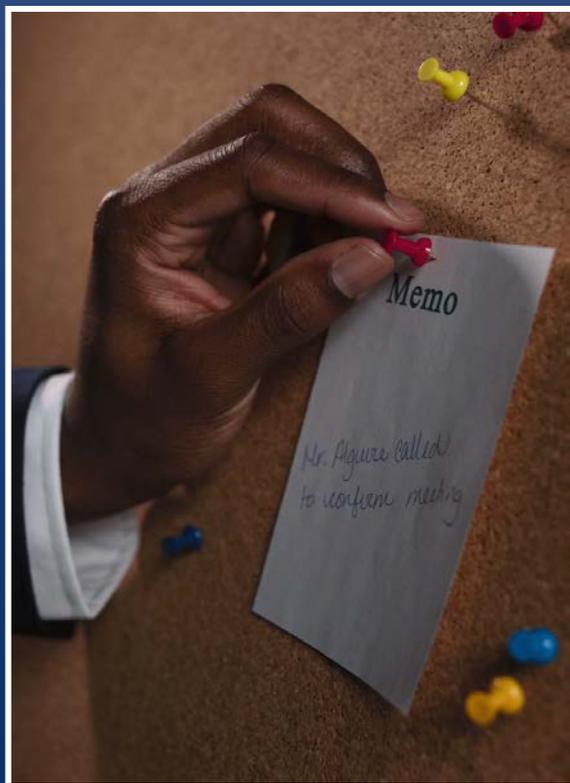
- 24-hour notice

"Emergency meetings:" Called if event severely impairs public health or safety or poses immediate and significant peril

- Special meeting provisions apply, except for the 24-hour notice
- 

The Brown Act

Agenda Requirements



Regular Meetings:

- Written agenda
- 72 hours notice
- Physically posted and ENS (BONC policy)
- Must contain:
 - Time and location
 - Brief description of each item to be transacted or discussed
 - Where to obtain agenda materials



The Brown Act

Agenda Requirements

Regular Meeting - Agenda Must Also Contain:

- Opportunity for public comment on each agenda item and general public comment on matters within the subject matter jurisdiction of the board
- Information for requesting disability-related modifications or accommodations.
- * City Lobbying Language

Special Meeting – Differences

- 24 Hours written notice
- Delivered to members of the body and the news media.
 - General public comment not required if not listed on the agenda



The Brown Act

Non-Agenda Items

Action or discussion on any item not appearing on the posted agenda is generally prohibited

Members may **briefly respond** to statements made or questions posed by the public. Members may:

- ask a question for clarification
- make a brief announcement
- make a brief report on activities
- provide a reference for factual information
- request staff to report back in a subsequent meeting
- may take action or direct staff to place a matter on a future agenda



The Brown Act

Action Taken

Votes and recusals of members must be announced at the meeting and reflected in the meeting minutes.



The Brown Act

Public Participation & Rights



- Must allow an opportunity for members of the public to speak if the item is within the subject matter jurisdiction of the legislative body before or during the legislative body's consideration of an issue
- The legislative body may adopt reasonable regulations, including time limits, on public comments
- Action by secret ballot is prohibited



Virtual Meetings Allowed Due to COVID-19 Emergency

Governor's Executive Order (N-29-20), issued on March 17, 2020, temporarily suspends certain requirements in the Brown Act during the emergency.

If following certain requirements, Neighborhood Councils may conduct meetings entirely telephonically or electronically, without having any physical location available to the public.



Virtual Meetings Allowed Due to COVID-19 Emergency

Under the Governor's Executive Order:

- Board members may participate telephonically or electronically without noticing their remote locations or making the locations open to the public (members may "phone from home")
- All board members can participate remotely from any location. No board member needs to be physically present at a noticed, physical location.
- A quorum of board members no longer need to participate from within the physical jurisdictional limits of the body.



Virtual Meetings Allowed Due to COVID-19 Emergency

The remote meeting system (ex.) Zoom must:

- Allow for the public to observe the entire meeting telephonically or otherwise electronically. "Observe" can be accomplished by allowing the public to "hear" if the meeting is conducted entirely telephonically.
- Allow for the public to give public comment.
- Must "implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities" per the ADA.



Virtual Meetings Allowed Due to COVID-19 Emergency

For a virtual meeting, the agenda must:

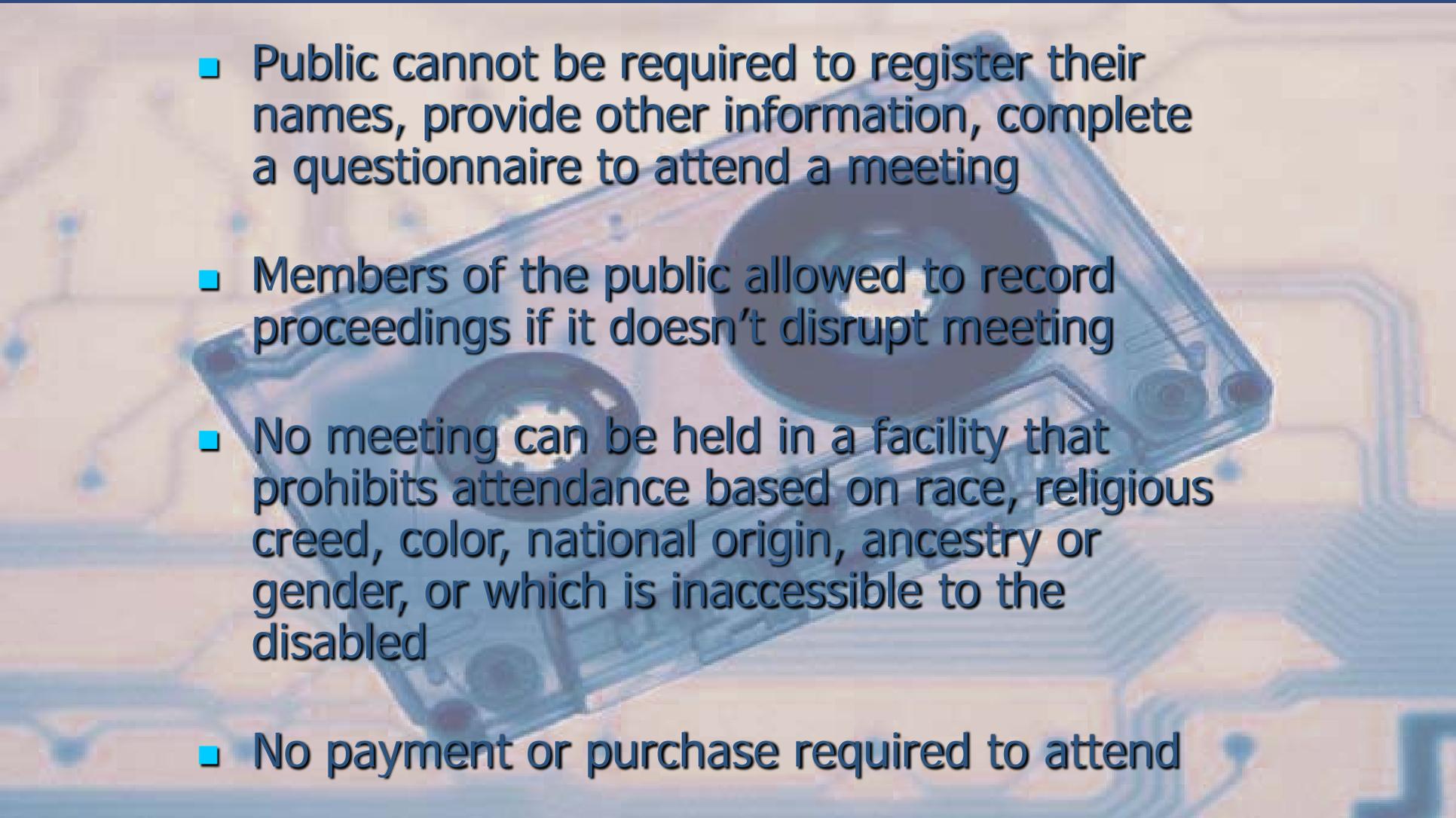
- Indicate how a member of the public may observe the meeting and offer public comment (i.e., call-in number, access codes, instructions on how to participate in the meeting).
- Advertise the procedure for requesting reasonable modification or accommodation from individuals with disabilities, consistent with the ADA.

All other usual agenda posting requirements apply.



The Brown Act

Attending & Recording Meetings

- 
- Public cannot be required to register their names, provide other information, complete a questionnaire to attend a meeting
 - Members of the public allowed to record proceedings if it doesn't disrupt meeting
 - No meeting can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry or gender, or which is inaccessible to the disabled
 - No payment or purchase required to attend

The Brown Act



Public Conduct

- Expressions of support or opposition constitute protected speech
- Body cannot prohibit public criticism of policies, procedures, programs, or services
- Body may recess meetings if persons willfully interrupt proceedings
- If room is cleared, members of the media must be allowed to continue to attend the meeting, unless part of the disturbance

The Brown Act

Meeting Records



Public has the right to review agendas and other writings distributed to the legislative body

Writings must be made public:

- Prior to the meeting: at the time the members receive the materials
- Distributed at the meeting: at the meeting if prepared by the agency
- After the meeting: if prepared by an outside person

The Brown Act

Meeting Records

Any tape or film record of a public meeting made by the agency is subject to inspection under the Public Records Act

Any inspection of a video or tape recording is to be made possible without charge by the local agency

Members of public may request agenda packets on annual basis

Alternate format to persons with a disability if requested



Brown Act Violations & Penalties

- **Past Brown Act violations:**
 - Request to cure required
 - Body has 30 days to correct action
 - Civil action can be filed if it does not
- **Future Brown Act violations:**
 - Cease and desist demand required
 - Body has 30 days to commit and comply
 - Civil action can be filed if it does not
- **Penalties:**
 - Invalidation of body's action
 - Costs and attorney's fees
 - Criminal charges

The California Public Records Act (CPRA)



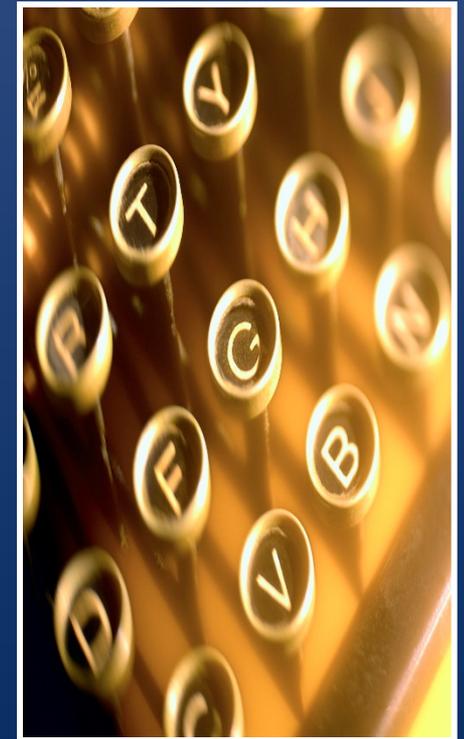
- Basic law that governs access to public records
- Requires the government to produce records to members of the public
- **Purpose:** to permit the public to understand how government conducts the people's business



California Public Records Act

What are public records?

- **"Public records:"** includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency
- **"Writing:"** any handwriting, typing, printing, copy, fax, e-mail or any other tangible recording, communication, or depiction.



California Public Records Act

Records Request Process



- Any member of the public may request
- Public may inspect or copy identifiable public records during agency's normal hours without notice
- Can submit request orally or in writing
- Permitted to describe records by content



California Public Records Act

Obligations to Assist Requestors

- Help identify records responsive to the request or to the purpose of the request
- Describe the format of electronic records or physical location of hard copy records
- Provide suggestions for overcoming any basis for denying the request



California Public Records Act

Obligations to Respond

- Each Neighborhood Council is custodian of its own records
- Responses are sent by the Neighborhood Council in writing
- Make records available or specify when they will be available
- Specify exemptions
- Contact NEA and City Attorney for advice and possible redactions



California Public Records Act

Request Response Time

- Public can inspect public records during an agency's normal hours without notice
- 10 Days to Respond:
 - Records not readily available or need to be reviewed for possible exemptions
- 14 Day Extension (*"Unusual Circumstances Extension"*):
 - May be available; contact your City Attorney

Fees



- Copies (up to 8½ x 14): \$.10 per page
- For oversize copies, photos, or videos: actual cost of the duplication
- Not be charged any research fees
 - Exception: electronic records that require extra work

California Public Records Act Penalties



- Injunctive Relief
- Declaratory Relief
- Attorney's Fees
- Turn Over Records



Transparency in Contracting Competitive Bidding and Procedural Safeguards

Rationale

The purpose of the City's competitive bidding rules and procedural safeguards in letting public contracts is to guard against favoritism, improvidence, fraud and corruption; to prevent the waste of public funds; and to obtain the best economic result for the public.

Competitive Bidding

Contracts subject to competitive bidding requirements

Contracts awarded to the lowest responsive and responsible bidder

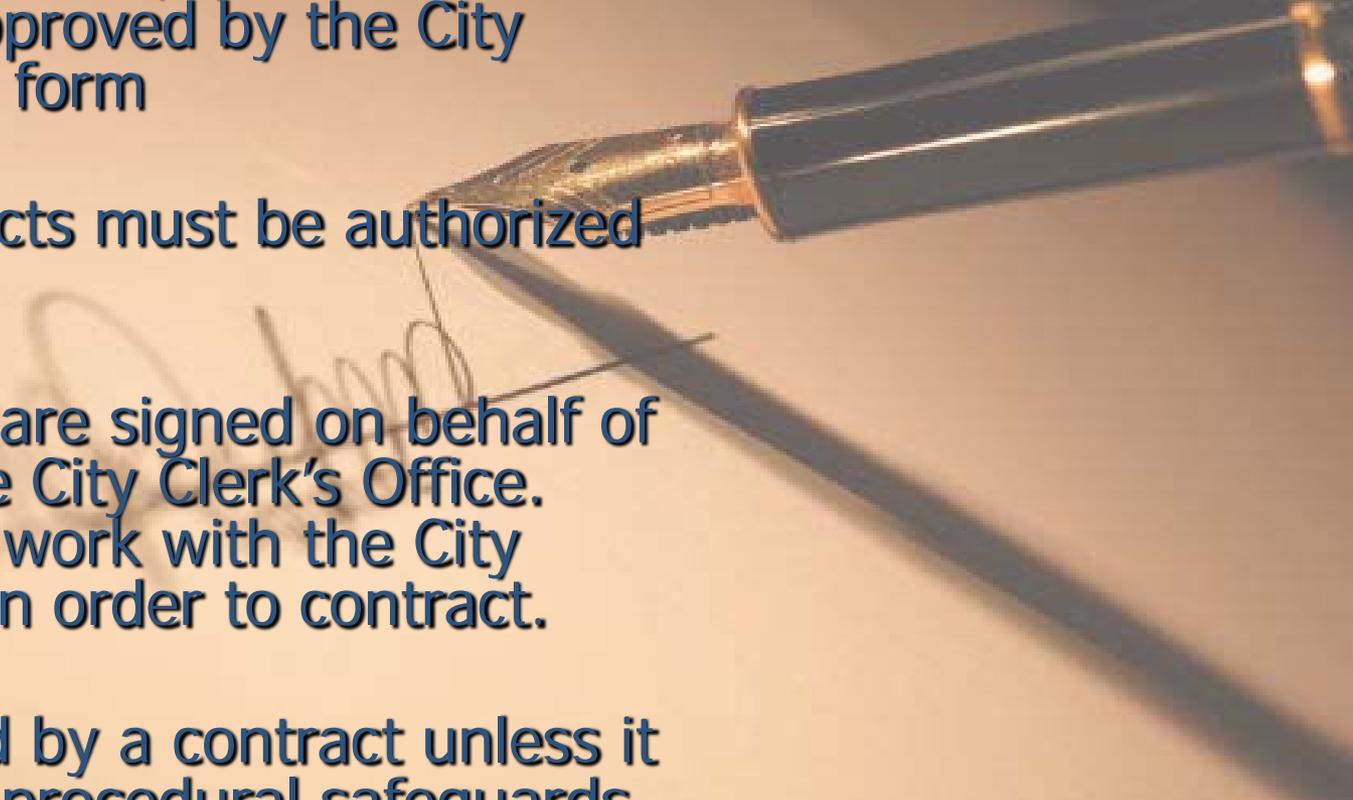
Certain contracts exempt from competitive bidding requirements

- Even when not required, competitive proposals or bids shall be obtained if possible





Procedural Safeguards

- 
- City contracts over \$5,000 must be in writing and approved by the City Attorney as to form
 - Certain contracts must be authorized by the Council
 - City contracts are signed on behalf of the City by the City Clerk's Office. Your NC **must** work with the City Clerk's Office in order to contract.
 - City not bound by a contract unless it complies with procedural safeguards

Online Resources

- Los Angeles City Attorney:
<http://www.lacity.org/atty>
- Fair Political Practices Commission:
<http://www.fppc.ca.gov>
- Department of Neighborhood Empowerment:
<https://empowerla.org/>





*Thank you for your
participation.*

Neighborhood Council Advice Division

Phone Number: (213) 978-8132