

**Independent Office of Law Enforcement Review and Outreach (IOLERO)
Community Advisory Council (CAC)
Public Meeting Agenda
June 5, 2023 6:00 p.m.
Sonoma County Office of Education
5340 Skylane Boulevard
Redwood A and B rooms
Santa Rosa, CA. 95403**

The June 5, 2023 Community Advisory Council meeting will be held as an in-person/online hybrid format.

MEMBERS OF THE PUBLIC MAY ATTEND THIS MEETING IN PERSON AT THE ADDRESS ABOVE, OR MAY JOIN THE MEETING VIRTUALLY THROUGH ZOOM.

Members of the Community Advisors Council will attend the meeting in person, except that they may attend virtually via ZOOM, to the extent allowable by the Brown Act for good cause pursuant to AB-2449.

Join the Zoom meeting application on your computer, tablet or smartphone:

Go to:

<https://sonomacounty.zoom.us/j/93555494022?pwd=ZGVaQ0xWYWVYV0dxOHM2cjlBazUzZz09>

Please be advised that those participating in the meeting remotely via Zoom do so at their own risk. The CAC's public meetings will not be cancelled if any technical problems occur during the meeting.

Call-in and listen to the meeting:

By telephone: Dial 1-669-900-9128

Webinar ID: 935 5549 4022

Passcode: (IOLERO) 465376

1. Spanish interpretation will be provided as an accommodation if requested in advance. Please contact the CAC Community Engagement Analyst at (707) 565-1534 or by email cac@sonoma-county.org by Noon on Friday, June 2, 2023. We will make every effort to provide for an accommodation. Spanish interpretation will be provided within the zoom application, you must use version 5.9.0 or later.
2. **Interpretación al español se proveerá si usted lo pide antes de la junta.** Por favor llame a la secretaria al 707-565-1534 o notifícanos por correo electrónico cac@sonoma-county.org antes de las 5:00 p.m., Viernes, 2 de Junio del 2023. Haremos todo lo posible para complacerlo. Para traducción en español, se tiene que usar la versión de Zoom 5.9.0 o una versión más adelantada.

3. If you have a disability which requires an accommodation or an alternative format to assist you in observing and commenting on this meeting, please contact the CAC Secretary at (707) 565-1534 or by email cac@sonoma-county.org by Noon on Friday, June 2, 2023. We will make every effort to provide for an accommodation.

Public Comment at Community Advisory Council Meetings

Members of the public are free to address the CAC. Public comments:

- Should fall under the subject matter jurisdiction of the CAC (as noted in the founding documents).
- Are time-limited. Time limitations are at the discretion of the Director and Chair and may be adjusted to accommodate all speakers.

In addition to oral public comment at the meetings, the community is also invited to communicate with IOLERO staff and CAC members through email. Members of the public who would like to make statements that may exceed the time limits for public comment, suggest topics to be placed on future agendas, or suggest questions to be raised and discussed by CAC members or staff, may send an email addressing these matters to CAC@sonoma-county.org

CAC members may not deliberate or take action on items not on the agenda, and may only listen and respond briefly in limited circumstances. Should CAC members wish to deliberate on an issue raised during public comment, that issue may be placed on a future agenda of the CAC for discussion and possible action. Materials related to an item on this Agenda submitted to the CAC after distribution of the agenda packet are available for public inspection in the IOLERO office at the above address during normal business hours or via email.

Agenda

1. CALL TO ORDER, ROLL CALL

2. APPROVAL OF MAY 1, 2023 MEETING MINUTES

3. OPENINGS AND APPOINTMENTS

A. Introduction of Robin Jurs, new CAC appointee (filling District 1 vacancy)

B. Current Vacancies:

- District 2
- District 3

4. CORRESPONDENCE ITEMS

The Chair will report out on correspondence items relevant to CAC business.

5. DIRECTOR'S REPORT

A. Letters of Agreement Update & Discussion

6. SHERIFF'S LIAISON REPORT

7. BUSINESS ITEMS

A. Discussion and Possible Action on the Report and Recommendation Introduced by the Ad Hoc Committee on Extremism

B. Consideration and Possible Approval of the Revised CAC Bylaws

C. Consideration and Possible Approval of Letter in Support of AB 817 (Pacheco): Local Government: Open Meetings

8. CAC COMMITTEE REPORTS

A. Community Engagement

B. Extremism in Policing

C. Racial and Identity Profiling Act (RIPA)

D. Recruitment and Hiring Practices

9. OPEN TIME FOR PUBLIC COMMENT

This section is intended for items not appearing on the agenda but within the subject matter jurisdiction of the CAC. Please state your name and who you represent, if applicable. Comments will be limited at the discretion of the chairs based on number of comments and other factors.

10. REQUESTS FOR FUTURE AGENDA ITEMS

11. ADJOURNMENT

The CAC meeting for July has been canceled. The next regular meeting of the Community Advisory Council will be announced at this meeting.

Commitment to Civil Engagement

All are encouraged to engage in respectful, non-disruptive communication that supports freedom of speech and values diversity of opinion. We, the members of the CAC, have adopted a list of norms referred to as our “Designed Team Alliance”, which describes the way we want to show-up and be in community while modeling collaborative behavior. We request that CAC members, staff, and the public follow the CAC’s agreed upon norms, which are:

- Be tough on the topic not on people
- Respect all participants in the meeting
- Respect others’ perspective, even when you disagree
- Respect each other’s time
- Stay within the meeting’s time and content parameters
- Practice active listening
- Listen with an open mind to all information, including dissenting points of view
- Speak to others as you would like to be spoken to
- Allow others to speak without comment or intrusive sounds
- Honor freedom of speech
- Call each other “in”



Community Advisory Council Meeting Minutes
Independent Office of Law Enforcement Review and Outreach
May 1, 2023

Members of the public and CAC members attended this meeting in person/online hybrid format. May 1, 2023 Community Advisory Council meeting was held hybrid in person and via zoom.

PRESENT

Council Members: Tom Rose, Nathan Solomon, Nancy Pemberton, Lorena Barrera, Darnell Bowen, Maxwell Pearl (by zoom)

IOLERO Staff: John Alden, Director; Lizett Camacho, Community Engagement Manager

Members of the Public: 1 member of the public attended via ZOOM. 5 members attended in-person.

Sheriff's Office: Lt Sean Jones

Absent: Marcy Flores, Evan Zelig

Sonoma County HR: Amy Kraus, Spencer Keyword

Call to Order

The meeting was called to order at 6:00 p.m.

AGENDA

1. WELCOME AND ROLL CALL

Facilitated by CAC Chair Barrera

A. Motion to approve: Councilmember Pearl to attend via zoom due to illness.

2nd: Councilmember Rose

Vote:

Ayes: Solomon, Rose, Pemberton, Barrera, Bowen

B. Agenda Review

C. Commitment to Civil Engagement

2. APPROVAL OF APRIL 3, 2023 MEETING MINUTES

A. Motion to approve: Councilmember Rose

2nd: Councilmember Solomon

Vote:

Ayes: Solomon, Rose, Pemberton, Barrera
Abstain: Pearl, Bowen

3. OPENINGS AND APPOINTMENTS

A. Introduced Darnell Bowen as new CAC appointee (filling at-large vacancy)

Total of 11 CAC positions, 2 per district (5 total districts) which are assigned by each District Supervisor, 1 at-large vacancy filled by the IOLERO Director.

B. We continue to have the following vacancies:

1. District 2
2. District 3

4. CORRESPONDENCE ITEMS

A. No items

5. DIRECTOR'S REPORT

Director Alden is working with the Board of Supervisors to fill the remaining CAC vacancies. There are vacancies in District 2, and District 3. CAC appointments are for a two- year commitment, and most of the CAC members' terms expire this year. Chair Barrera plans to renew her term.

This past month, Director Alden visited the Regional Training Center, which is a police academy for agencies in Sonoma County. He was encouraged to see a class of recruits with more than half of them speaking Spanish fluently. This is due to the changing state law, which no longer requires one to be a U.S. Citizen to be a Peace Officer in California. This has made it easier to recruit people from different cultures and languages, making it the most diverse class they had ever had. They expect this to continue due to the changing state law.

At our next CAC meeting, we will be talking about the Letters of Agreement between the county and applicable unions about the implementation of Measure P. We are almost done with that and look forward to talking to you all about that in my next presentation.

Last week, IOLERO had a budget workshop in front of the Board of Supervisors. This was an opportunity for the board to explore broad policy issues that come up at each department that might be affected by budget. The conversation with the Board of Supervisors was that IOLERO is coming up on an exciting period where they have the ability to implement Measure P in its entirety and are close to having full staffing. IOLERO should spend the next fiscal year finding out what it looks like when they have full staffing and full powers and see if those match up. There will be another budget presentation in June.

Wednesday Night Market will be starting soon and we look forward to participating .5 de Mayo in the Town of Sonoma will be this weekend. We also participated in the Dia del Niño Festival in Santa Rosa.

We are starting a project with Wine Country Radio on ads about who we are and what we do at IOLERO as an effective way to get to the Spanish speaking community. The county has been putting together short videos as well about different agencies. We have filmed that recently in Spanish and in English.

We are working on changing parts of the IOLERO office. We are working on having a more effective interview space. Since we now have this ability to do investigations in certain kinds of cases, we want to have a secure and confidential interview space. This could mean that during the summer our office might be closed for a few weeks while that remodel is happening. More information and details will be posted on our website.

The county has also asked that all departments try to alter their branding and publicity to adhere to a common standard across all county departments. All county departments have logos that you might not realize that any of them have anything to do with each other. We will keep you posted on those changes.

Tomorrow the county is having a special meeting called the Mental Health Workshop. The discussion will include how the county responds to mental health crises and the services it provides. This meeting will be available via zoom. Registration is required. Further information is provided on the Board of Supervisors website.
No member of the public addressed the IOLERO Director.

6. SHERIFF'S LIAISON REPORT

A. Lt. Sean Jones was present but because he is not involved in the hiring process at the Sonoma County Sheriff's Office, he could not answer any questions related to the Recruiting and Hiring Best Practices presentation by the Human Resources (HR) Department. The CAC Ad Hoc Committee created later in the meeting will work with the Sonoma County Sheriff's Office (SCSO) to learn more about the hiring process after it is passed from HR to SCSO.

7. BUSINESS ITEMS

A. Received and Discussed Presentation on Recruiting and Hiring conducted by the Human Resources Department and Sonoma County Sheriff's Office

Presentation included: Foundational Concepts: Civil Service, Merit System, and legal requirements. Job classifications: Defines the work, determines qualifications
Classifications discussed were: Communications Dispatcher I/II, Correctional Deputy I/II, and Deputy Sheriff Trainee/Deputy Sheriff I/II. Outreach and Advertising were discussed. Examinations and referrals were shared.

Public comment: 4 members of the public addressed the Human Resources Department

B. Discussion and Possible Action to Establish an Ad Hoc on Recruiting and Hiring

Discussion included how the CAC could add value and perhaps make recommendations to the Sheriff's Office regarding their recruiting and hiring practices. Will be adding the same agenda item for the next meeting to continue discussion. Councilmembers interested are: Pemberton and Solomon.

Public comment: 3 members of the public addressed the CAC.

C. Discussion and Possible Action on Proposed Changes to the CAC's Commitment to Civil Engagement and Designed Team Alliance

Public comment: 1 member of the public addressed the CAC.

Suggestion is to add: "Allow others to speak without comment or intrusive sounds".

Motion to approve the change by Councilmember Solomon

2nd: Councilmember Rose

Vote:

Ayes: Pearl, Pemberton, Rose, Solomon, Barrera, Bowen

D. Discussion and Possible Action Regarding a Proposed Change in Location and Date of the regularly scheduled meetings of the CAC

Bylaws do state that the CAC meetings are to be held on the first Monday of every month. One of the reasons that has been shared for changing the date is that our local NAACP chapter also meets the first Monday of every month at the same time. Therefore, we have been in discussion about maybe we should pick a different date because that does not seem very inclusive. In addition, post-covid we have been experimenting with location as well and we've received some positive reviews about our current location. Suggestions are 1st Wednesday, 3rd Monday, or 1st Thursday. CAC will vote next week.

Public comment: 4 members of the public addressed the CAC.

8. CAC AD HOC REPORTS

A. Community Engagement: Nothing to report. 1st meeting has not been scheduled. The public is welcomed to suggest any ideas for community engagement.

B. Extremism in Policing- this committee is essentially wrapping up. Last item was to meet with the Sheriff Liaison. We have tried to get in contact for the last month with no success. We are going to move forward with formalizing the policy and

hoping that we can reach out and meet in person. The work is done, its just a matter of communicating the policy recommendation.

C. Racial and Identity Profiling Act (RIPA)- committee did meet last week. The discussion covered was to get a better understanding of how the data collection actually works. The committee is working on drafting a letter that would get sent out to the Sheriff Liaison and Assistant Sheriff in order to get a clear understanding of what triggers data collection that does get sent to the Department of Justice. We will have more to report next month.

9. OPEN TIME FOR PUBLIC COMMENT

Public comment: No members of the public addressed the CAC.

10. REQUESTS FOR FUTURE AGENDA ITEMS

A. Bylaws change/revise to change date of future CAC meetings

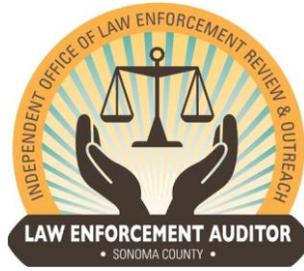
11. ADJOURNMENT

The meeting was adjourned at 8:19 pm.

The next meeting of the CAC is scheduled for Monday, June 5, 2023, at 6:00pm and it will be hybrid (via zoom and in-person).

Location:

**Sonoma County Office of Education
5340 Skylane Boulevard
Redwood A and B Rooms
Santa Rosa, CA. 95403**



DATE: May 25, 2023

TO: Members of the Community Advisory Council (CAC)

FROM: John Alden, IOLERO Director

RE: Update on Letters of Agreement Implementing Measure P

INTRODUCTION

This memo serves as an update to the CAC on the status of the Letters of Agreement implementing Measure P. Note that referenced supporting documents are hyperlinked throughout, and most can be found [here](#).

BACKGROUND

In the fall of 2020, the voters passed Measure P, which provided new powers to IOLERO, among other things. Those new powers became the subject of a litigation brought by a set of Sonoma County public employee associations in 2021. That action primarily addressed whether the County was required to discuss with those associations how those new powers of IOLERO would be implemented. While that litigation was pending, the County began discussions with the associations, as they had demanded. Resolution of those discussions was memorialized in a set of [Letters of Agreement in the summer of 2022](#).

In August of 2022, the CAC issued a [letter](#) expressing three concerns about how the powers of IOLERO under Measure P would be implemented under the Letters of 2022. That letter described three concerns about those powers (among other issues), specifically:

1. Whether Whistleblower complaints would be directly investigated by IOLERO;
2. The timing of IOLERO's independent investigations into deaths in custody and deaths resulting from the actions of Sheriff's personnel (like deputy-involved shootings); and
3. IOLERO access to Sheriff's Office information.

I came on board as Director of IOLERO in September, 2022. Since that time, I have been working with the Board of Supervisors, legal counsel, county staff, stakeholders in the community, and the associations impacted by Measure P to resolve the issues flagged by the CAC in the August 2022 letter.

RESOLUTION OF CONCERNS

1. Whistleblower Complaints

As reported to the CAC in the fall of 2022, the summer 2022 Letters of Agreement do allow IOLERO to still independently investigate whistleblower claims. The reference that appears to have raised concerns at the CAC to “referring” matters to enforcement agencies has to do solely with referring findings to appropriate authorities for remedial action. So, for example, if IOLERO’s independent investigation found an employee of the Sheriff’s Office had violated policy, IOLERO would refer the matter to the Sheriff to take appropriate action, such as concurring in IOLERO’s finding and, if appropriate, issuing discipline. Similarly, if IOLERO’s independent investigation found that funds had been mishandled, those findings could be routed to the Sheriff and also the County Treasurer to consider what remedies, if any, were appropriate. Since IOLERO lacks authority to take any remedial action after investigating whistleblower claims, IOLERO will need to seek the assistance of other agencies where necessary. This collaboration with other agencies to seek remedies does not undercut IOLERO’s ability to conduct the initial investigations.

Currently, IOLERO is developing a web-based anonymous reporting tool, and will be onboarding appropriate auditors for this work in June, 2023. We anticipate a notice to County employees of the existence of this program once the reporting tool and staff are secured. IOLERO is thus currently empowered to investigate whistleblower claims, and will be sufficiently staffed to do so this summer.

2. Timing of Independent Investigations

The summer 2022 Letters of Agreement required IOLERO to wait for the Sonoma County Sheriff’s Office investigation of deaths either in custody or resulting from the actions of Sheriff’s personnel to be completed before IOLERO began its investigations. The CAC expressed a concern that such investigations by IOLERO would therefore start too late to be effective.

The County reached a [new set of Letters of Agreement](#) in early May, 2023, which allows IOLERO to conduct such administrative personnel investigations concurrently with those of the Sheriff’s Office. As part of that agreement, IOLERO and the Sheriff’s Office agreed to start their concurrent administrative investigations only after the parallel criminal investigations – usually conducted by a separate law enforcement agency such as the Santa Rosa Police Department in conjunction with review by the District Attorney – have at least finished their earliest stages.

At IOLERO, we believe that waiting for the criminal investigation to have progressed is a best practice, and thus were willing to memorialize that practice in these new Letters. We believe that

waiting in this regard is best because both IOLERO and the Sheriff's Office have to be careful not to let their work on the administrative case affect the criminal case. This is because deputies can be compelled to talk about the case in the administrative investigation. The criminal investigators, however, are prohibited by the Fifth Amendment from compelling deputies to talk about the case. So federal constitutional law prohibits mixing the evidence from the administrative case into the criminal case, lest the Constitutional rights of officers be violated. See, for example, Garrity v. New Jersey (1967) 385 U.S. 493.

If material from the administrative case is mixed into the criminal case, the criminal case will be dismissed by the courts. This is not a merely hypothetical risk, but rather, has proved to be an issue in other California counties. [This happened recently in San Francisco](#) when an investigation of sheriff's deputies improperly mixed evidence from the administrative case into the criminal case. Therefore, it is vitally important to ensure that the administrative investigation does not interfere with the criminal case. Here in Sonoma County, both IOLERO and the Sheriff's Office want to be sure that the legitimacy and independence of the criminal investigation is maintained.

It is acceptable for information to move in the other direction, from the criminal investigation into the administrative investigation. And getting that information from the criminal investigation makes IOLERO and the Sheriff's Office better prepared in the administrative investigation because the criminal investigators have access to investigative tools we do not, like crime labs and search warrants. Assessing the unique information gathered in the criminal investigation therefore allows both IOLERO and the Sheriff's Office to do a more thorough job in their administrative investigations.

3. IOLERO Access to Sheriff's Office Information

The CAC noted that the summer 2022 Letters of Agreement described IOLERO making a "request" for information, and expressed concern that such requests would undermine IOLERO's powers in Measure P to have direct access to Sheriff's Office information.

Since that time, I have been able to confirm that such requests include requests to have ongoing, direct access to sets of information without need to make requests repeatedly. Thus, for example, we have found that the Internal Affairs Division of the Sheriff's Office has proactively made available to IOLERO case-specific information without need for IOLERO to ask in each case. Likewise, we have direct electronic access to Sheriff's Office video, policies, and other materials without issue. For this reason, we believe this concern has been resolved.

CONCLUSION

Since the summer of 2022, IOLERO has been successful in confirming that two of the CAC's concerns (Whistleblower cases and information access) were resolveable under the summer 2022 Letters of Agreement. The remaining issue, the timing of IOLERO's direct investigation of certain fatalities, we believe has been resolved with amendments to the Letters of Agreement

reached in May, 2023. Thus, we believe all of the CAC's concerns from August of 2022 have been resolved.

This report will be an agenda item at the June, 2023, CAC meeting in order to provide CAC members an opportunity to ask follow up questions, and present these issues to the public.

Final Report of Ad Hoc Committee on Extremism after meeting with SCSO
For Discussion and Approval June 5, 2023

Background

The Community Advisory Council established the ad hoc committee on extremism in 2021 to look at whether the Sonoma County Sheriff's Office (SCSO) had adequate policies and procedures to prevent extremists from joining its force and ferreting out extremism within its existing personnel.

At CAC's May 1, 2023 meeting, the ad hoc committee delivered a report and recommended policy changes. The CAC asked the committee to review the policy with SCSO prior to the CAC voting on whether to approve the policy recommendations. The committee members and IOLERO Executive Director met with Sheriff Engram and Asst. Sheriff Naugle on May 19, 2023. The Sheriff also provided the ad hoc committee with a written response to our report and recommendation that is attached as Exhibit B to this report.¹

The CAC's concern arose from the national conversation about the infiltration into law enforcement agencies nationwide by right wing extremists that began with the release of a 2006 assessment by FBI Counterterrorism Division² and continues to this day.³ Today, it is well-

¹ The ad hoc committee thanks Sheriff Engram for his willingness to meet with us and, more importantly, to consider and respond to our report and recommendation. We look forward to continued collaboration with SCSO.

² White Supremacist Infiltration of Law Enforcement, FBI Counterterrorism Division, October 17, 2006, available at: <https://www.justsecurity.org/wp-content/uploads/2021/06/Jan-6-Clearinghouse-FBI-Intelligence-Assessment-White-Supremacist-Infiltration-of-Law-Enforcement-Oct-17-2006-UNREDACTED.pdf>; see also, Counterterrorism Policy Directive and Policy Guide, FBI Counterterrorism Division, published April 1, 2015, reviewed April 1, 2018.

³ See, e.g., Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement, Brennan Center for Justice, August 27, 2020, available at: <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>; Let's Not Forget the FBI Found Law Enforcement Has a White Supremacist Problem, Esquire, September 30, 2020, available at: <https://www.esquire.com/news-politics/politics/a34224305/fbi-report-white-supremacists-infiltrate-law-enforcement/>; White supremacists 'seek affiliation' with law enforcement to further their goals, internal FBI report warns, ABC News, March 8, 2021, available at: <https://abcnews.go.com/US/white-supremacists-seek-affiliation-law-enforcement-goals-internal/story?id=76309051>;

recognized that right-wing extremist groups actively recruit members of law enforcement and the military to their ranks.⁴

We are aware that all too often adherents of white supremacy and racism are found within police departments and their numbers often go undiscovered. “While it is widely acknowledged that racist officers subsist within police departments around the country, federal, state, and local governments are doing far too little to proactively identify them, report their behavior to prosecutors who might unwittingly rely on their testimony in criminal cases, or protect the diverse communities they are sworn to serve.”⁵ Even if only a few members of a law enforcement agency engage in extremist conduct, the impact on the culture, reputation, and public trust of the agency may be severe.⁶

Our concern is shared with other Sonoma County community members. In March 2021, the Sonoma County Commission on Human Rights (SCCHR) sent an email to law enforcement personnel throughout the County, including to then-Sheriff Mark Essick, asking the agencies to undertake routine investigations to ensure that their personnel do not harbor extremist affiliations.

For this reason, the Commission recently passed unanimously a resolution calling upon the leaders of all local law enforcement agencies to investigate its employees for any evidence of such extremist affiliations. We again call on you to initiate such action immediately. Such investigations are not complicated, requiring only basic investigative techniques. These include regular audits of texts between employees, searches of employee social media postings, the cataloging of employee tattoos, and a requirement that employees declare in writing whether they have any membership or affiliation with any such extremist or hate groups.⁷

⁴See, e.g., White Supremacist Infiltration of Law Enforcement, FBI Counterterrorism Division, October 17, 2006, *supra* at fn. 2; see also <https://www.pbs.org/newshour/politics/elected-officials-police-officers-and-members-of-military-on-oath-keepers-membership-list-report-says>

⁵ Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement, Brennan Center for Justice, August 27, 2020, available at: <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>

⁶ *Id.* “The continued presence of even a small number of far-right militants, white supremacists, and other overt racists in law enforcement has an outsized impact on public safety and on public trust in the criminal justice system and cannot be ignored.”

⁷ Text of email sent from Sonoma County Human Rights Commission on March 3, 2021, available in agenda packet at: <https://sonomacounty.ca.gov/commission-on-human-rights-meeting-may-25-2021>

The private political action organization, Committee for Law Enforcement Accountability Now (CLEAN), followed with a letter sent by email in June 2021 to all Sonoma County law enforcement heads, County Supervisors and City Council members, the County Administrator and Counsel, and City Mayors, Managers, and Attorneys, also asking that such investigations take place.⁸

IOLERO's 2020-2021 annual report, issued November 25, 2021, discusses a specific, reported incident of a deputy using social media to post "racist, anti-Semitic and extreme" remarks.⁹ SCSO received three complaints about two different listings. IOLERO found SCSO's response to these complaints inadequate. Although SCSO "determined that the deputy violated policy for posting content that had 'strong racial undertones,' SCSO concluded that the deputy "may not have intended it as racist content."¹⁰

IOLERO "did not find the deputy's explanations for his/her posting to be credible, concluded that the deputy was dishonest during his/her interview with the SCSO," and urged the SCSO to take further steps.¹¹ The SCSO has not apparently taken additional steps since the IOLERO audit was completed and the annual report published.¹²

In 2022, the ad hoc committee reviewed SCSO's existing policies and reviewed with the lieutenant then liaising with the CAC, Brandon Cutting, about how the policies are implemented. Specifically, we looked at Policy 320, Standards of Conduct (Rules and

⁸ Copy of letter sent to Sheriff Mark Essick attached to this report as Exhibit C. The identical letter was sent to the others identified in the body of the report.

⁹ IOLERO Annual Report 2020-2021 at 23 (Sustained Complaint No. 3).

¹⁰ *Id.*

¹¹ *Id.*

¹² Since this incident, the Ninth Circuit issued its opinion in *Hernandez v. City of Phoenix*, 43 F. 4th 966 (9th Cir. 2022), which addresses a law enforcement officer's use of social media to "denigrate[] Muslims and Islam." The Ninth Circuit found that the posts addressed "matters of social or political concern," thus requiring the law enforcement agency to show adequate justification for punishing the officer's otherwise protected speech. Sheriff Engram (presumably on the advice of county counsel) noted that the posting at issue in the audited incident occurred in the context of the Black Lives Matter protests, thus placing the posting in the context of a "matter of public concern."

Regulations) and Policy 1000.7, Employment Standards.¹³ In our view, the policies as written, can prevent extremists from joining its force and ferreting out extremism within its existing personnel. We agree, however, that SCSO should, as recommended in IOLERO's audit, adopt a policy specifically disavowing white supremacy and extremism and prohibiting speech and association that promotes racist or extreme ideology.^{14 15}

Our larger concern is that, once an individual is hired by SCSO, SCSO currently takes no affirmative steps to ensure that its personnel continue to follow the standards set out in Policy 1000.7 and 320. Although the SCCHR and CLEAN recommended several investigative steps which would constitute a robust effort to ferret out extremism, the ad hoc committee initially proposed that SCSO take two steps. First, we recommended that SCSO require each employee to sign an attestation annually affirming that they have and are abiding by the existing standards addressing extremism, white supremacy, and bias.¹⁶ The proposed attestation, drafted directly from the SCSO policies, is attached to this report as Exhibit A. Second, we recommended that SCSO require each employee to open their electronic communications¹⁷ to a random SCSO audit to be conducted at least biannually.¹⁸

¹³ We also reviewed Policy 319 regarding investigations of hate crimes although it is not used for internal investigations into allegations of hate-related crimes or misconduct.

¹⁴ See, e.g., Oakland City Council Resolution No. 88167, establishing a zero tolerance policy for "racist practices, actions, and behaviors" and "association and/or affiliation with white supremacist groups, organizations, or cells" within the Oakland Police Dept. and other city agencies.

¹⁵ In the Sheriff's response to our draft report, he noted, "White supremacy, extremism and discrimination have no place at the Sheriff's office. The Sheriff's Office has several policies in place aimed to stop and prevent extremism within the Sheriff's Office personnel, and I am always open to consider additional ways to strengthen these policies"

¹⁶ Lt. Andy Cash, the recent liaison to the CAC, did not find the use of an attestation by any neighboring law enforcement agency but that should not deter the SCSO from adopting such a procedure. Oakland P.D. includes an admonishment to job applicants that, "racist practices, behaviors, or actions, or that show affiliations with white supremacist or other extremist organizations" are grounds for immediate disqualification.

¹⁷ "Electronic communications" should be interpreted broadly and should include, but not be limited to, texting via any app including encrypted texts; email via any app including encrypted messages; posts on any social media app; and other forms of digital communications not specifically listed.

¹⁸ We also intended to add a recommendation that SCSO undertake regular "open source intelligence" searches (i.e., searches of publicly available material that can be found on, *inter alia*, on-line publications, blogs, discussion

Attestation recommendation

The Ad Hoc Committee continues to recommend that employees be required to annually attest to their adherence to the specific policies listed in Exhibit A. Three obvious benefits accrue from the annual use of the attestation: (1) it underscores the SCSO's commitment to maintaining a bias-free, hate-free, workforce; (2) it keeps these particular standards front and center in the minds of the employees who must sign the attestation annually; and (3) it gives SCSO another tool in its belt for discipline if an employee is found to have lied on the attestation. A fourth benefit, less important but nonetheless compelling, is the ease with which this recommendation can be adopted.

The Sheriff has agreed to require employees to "attest to their adherence of Policy 320, Standards of Conduct (Rules and Regulations) and Policy 1000.7 on an annual basis.¹⁹ We continue to recommend that he adopt the draft attestation attached as Exhibit A to this report to underscore the Sheriff's view that "white supremacy, extremism and discrimination have no place at the Sheriff's Office." (Exhibit B.) Policy 320 and Policy 1000.7 address many standards of conduct beyond those addressed in Exhibit A and a general attestation to the entirety of the two policies would dilute what could otherwise be a strong and clear statement against extremism, white supremacy, and discrimination.

Monitoring recommendation

We have decided to withdraw our recommendation that employees' electronic communications be monitored on a random basis but at least biannually. We are cognizant of the numerous scandals involving law enforcement officers' use of personal electronic devices that have been uncovered during unrelated investigations, the most recent of which is in the Antioch Police Department. If we believed a monitoring program would be efficacious, we would continue with our recommendation but, for the reasons cited below, we have decided it would not be.

groups, videos, and other websites) on its employees but that recommendation was not sent to SCSO and, in light of our further research, we decided not to propose such searches.

¹⁹ See final paragraph of Exhibit B.

First, California Labor Code section 980 prohibits employers from requiring employees to give access to their social media except under very limited circumstances. Second, case law does not provide clear guidance to government employers about the circumstances and extent to which private texts and emails can be searched without voluntary consent. Third, and perhaps most important on a practical level, we have concluded that these types of audits do not produce the very laudable result of ferreting out white supremacy and extremism.

We met with a San Francisco Department of Police Accountability auditor about San Francisco's experience with auditing electronic communications by San Francisco police. That office has just issued a report of interim findings of their audit of electronic communications monitoring.²⁰

Monitoring electronic communications is an automated process in which suspect words are searched for and flagged when found. The San Francisco auditors found that the monitoring program of department-issued cell phones and emails produced false positives 99.7% of the time. Although some reduction of the false positives is possible, it would require familiarity with current terminology of extremist groups, updating the word lists at least quarterly to reflect the current terminology, and manual review of the positive hits to determine whether the words used actually reflect the views the monitoring seeks to ferret out. Each of these steps is quite labor intensive.

Secondly, keeping track of the devices and email lists that should be monitored can be a difficult process. The Sheriff issues cell phones to only some of its employees. Others use personal phones for both personal and business use.

Sonoma County Sheriff's employees' use of personal devices is guided by SCSO Policy 701 (Personal/County Owned Communication Devices) and Sonoma County Administrative Policy 9 – 2 (Information Technology Use and Security Policy Manual). Under these policies, employees have no expectation of privacy in county-issued communication devices; they retain some lowered expectation of privacy in personal devices voluntarily used for county business; and their expectation of privacy is not affected in personal devices used solely for personal

²⁰ <https://sf.gov/sites/default/files/2023-03/FINAL%20-%20Interim%20Deliverable%20-%20SFPD%20Electronic%20Monitoring.pdf>

use.²¹ SCSO employees are expected to limit their use of personal devices to “exigent circumstances” or where the Sheriff has authorized use of personal devices for routine administrative work. They are not authorized to use them to circumvent other forms of communication such as radios.²² Even with a reduced expectation of privacy, neither the policies nor the law are clear about the extent to which the devices can be monitored.²³

Moreover, should employees want to keep devices from being monitored, they can easily use more than one phone or email address. SCSO employees can also use other means of communicating during working hours such as radios and computer-aided dispatch (CAD). To be thorough, the Sheriff’s Department would have to monitor all devices. Ensuring that all relevant devices are registered is a labor-intensive task, even when a department is only monitoring its own issued devices and email addresses.

Thirdly, although monitoring of electronic devices has been recommended by the United States Department of Justice (and others) for many years, we have not found evidence that such monitoring has resulted in ferreting out the kinds of attitudes and behaviors we hope to reach.²⁴

Thus, we have concluded that a monitoring program is not an efficacious means to achieve our ends.

Conclusion

We urge the Community Advisory Council to approve our recommendation that the SCSO require every employee to sign annually the attestation attached as Exhibit A.

²¹ See, Policy 701.3 and 701.5(f); *see also*, Administrative Policy 9 -2, VII. A.

²² Policy 701.5(d).

²³ See, Administrative Policy 9-2, VII. A. 2. “The County of Sonoma will only request access to the personally-owned device and password in order to implement security controls; to respond to litigation hold (aka e-discovery) requests arising out of administrative, civil, or criminal directives, Public Record Act Requests, and subpoenas; or as otherwise required or permitted by applicable state or federal laws. Such access will be performed by an authorized Local Information Service Provider technician or designee using a legitimate software process.”

²⁴ The Brennan Center for Justice did not include monitoring of electronic communications in its recommendations for local law enforcement agencies in its report, “Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement” (German, Michael, Aug 27, 2020), available at: <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>

EXHIBIT A

DRAFT ATTESTATION FOR SONOMA COUNTY SHERIFF EMPLOYEES (to be administered annually on (1) beginning of calendar year, (2) beginning of fiscal year, or (3) on anniversary of date of hire)

I, (employee name), do solemnly swear (or affirm) that in the past year I:

- (a) Have continued to meet the standard for duty that requires me to be free from any bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation which might adversely affect the exercise of police powers;²⁵
- (b) Have not joined or been a member of any extremist group;²⁶
- (c) Have not, unless required by law or policy, discriminated against, oppressed, or provided favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, or any other classification or status protected by law;²⁷
- (d) Have not intentionally denied or impeded another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful;²⁸
- (e) Have not associated with or joined a criminal gang, organized crime, and/or criminal syndicate, knowing or with reason to have known, the criminal nature of the organization;²⁹
- (f) Have not, on a personal basis, associated with any person who demonstrated recurring involvement in serious violations of state or federal laws, knowing or with reason to have known of such criminal activities, except as specifically directed and authorized by the SCSO.³⁰

I (employee name) do further solemnly swear (affirm) that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

²⁵ SCSO Standards of Conduct (Rules & Regulations) §1000.7.1(g)

²⁶ SCSO Standards of Conduct (Rules & Regulations) §1000.7(h)

²⁷ SCSO Standards of Conduct (Rules & Regulations) §320.5.3

²⁸ SCSO Standards of Conduct (Rules & Regulations) §320.5.3

²⁹ SCSO Standards of Conduct (Rules & Regulations) §320.5.4

³⁰ SCSO Standards of Conduct (Rules & Regulations) §320.5.4



SONOMA COUNTY SHERIFF'S OFFICE

EDDIE ENGRAM
Sheriff-Coroner

JAMES NAUGLE
Assistant Sheriff
Law Enforcement Division

MICHAEL MERCHEN
Assistant Sheriff
Detention Division

HEIDI KEITH
Chief of Financial and
Administrative Services

May 19, 2023

RE: CAC Ad Hoc Committee on Extremism Recommendation Response

I, along with County Counsel have reviewed the CAC ad hoc report on extremism and its recommendations, including that the Sheriff's Office

- adopt a policy disavowing white supremacy and extremism, and prohibiting speech and association that promotes racist or extreme ideology,
- require its employees to sign an attestation affirming that they have and are abiding by the existing standards addressing extremism, white supremacy, and
- require every employee to open their social media to an SCSO audit biannually.
- subject every employee to regular cataloging of their tattoos.

White supremacy, extremism and discrimination have no place at the Sheriff's Office. The Sheriff's Office has several policies in place aimed to stop and prevent extremism within the Sheriff's Office personnel, and I am always open to consider additional ways the strengthen these policies, including a commitment by Sheriff's Office personnel to follow these policies while serving and representing our diverse communities.

These policies and measures must be evaluated within legally permissible limits to ensure that they consider not only public safety, but also operational needs, employees' duties and obligations, as well as employees' private off-duty speech and association rights, privacy rights and labor laws. When an employee engages in improper speech or association while acting in an official capacity that potentially violates Sheriff's Office policy, the employee may be subject to a professional standards investigation under the Sheriff Office's existing policies.

However, when an employee speaks as a private citizen addressing a matter of public concern off-duty, the employee's private rights to free speech and association may also be implicated. To restrict those rights, an agency would have to show that the speech has an actual and disruptive impact on the agency's operations, which can vary depending on the circumstances and may be difficult to enforce through broad policy prohibitions effectively and legally.

In addition, requiring employees to open their private social media accounts for routine audits outside an investigation of alleged misconduct, may also impermissibly impact constitutional privacy rights, as well as labor, medical and other privacy laws that prohibit an agency from accessing employees' personal social media accounts outside of alleged misconduct investigations.

As it pertains to the cataloging of tattoos. At the preemployment stage, the Sheriff's Office has broad authority in respect to acceptable tattoos that align with our philosophy of an inclusive, discrimination free workplace. However, the regular cataloging of tattoos presents similar free speech and unreasonable search issues.

In the case of regular text searches, most Sheriff's Office employees are not issued cell phones. There is no legally permissible way to regularly audit employee's personal cellphones. Subjecting the few employees who are issued cellphones to regular audit places an unfair level of scrutiny on those few who are and would certainly be subject to Meet and Confer with the bargaining units representing the employees. Additionally, the unintended consequences of such a policy may dissuade qualified and diverse candidates for these positions from applying to maintain their privacy.

For these reasons, the Sheriff's Office will not be issuing a policy subjecting employee to routine searches of their personal social media accounts, Sheriff's Office owned phones, cataloging of their tattoos, or broad policy prohibitions that may not be effective, enforceable, or constitutionally valid. I will however continue to explore other ways to strengthen the Sheriff's Office commitment to stop and prevent extremism and discrimination, and to build upon and improve ways to provide public safety services in the communities we serve and live in.

According to your recommendations, you believe Policy 320, Standards of Conduct (Rules and Regulations) and Policy 1000.7, "can prevent extremists from joining its force and ferreting out extremism within its existing personnel" and believe the Sheriff's Office should "require each employee to sign an attestation annually affirming that they have and are abiding by the existing standards addressing extremism, white supremacy, and bias." Accordingly, we will require employees to attest to their adherence to Policy 320, Standards of Conduct (Rules and Regulations) and Policy 1000.7 on an annual basis.

Sincerely,

A solid black rectangular redaction box covering the signature of Eddie Engram.

EDDIE ENGRAM
Sheriff-Coroner



Exhibit C

COMMITTEE FOR LAW ENFORCEMENT ACCOUNTABILITY NOW

ALCINA HORSTMAN BARBARA GRASSESCHI CHANTAVY TORNADO HERMAN G. HERNANDEZ JERRY THREET
JIM DUFFY KIRSTYNE LANGE NANCY PEMBERTON

June 17, 2021

Sheriff Mark Essick
County of Sonoma, CA
mark.essick@sonoma-county.org

Dear Sheriff Essick,

The Committee for Law Enforcement Accountability Now (CLEAN) has become aware that the Sonoma County Commission on Human Rights recently sent a letter to your agency requesting an investigation into possible affiliation of your employees with extremist organizations that call for: the denial of civil rights, the commission of hate crimes, domestic terrorist activity, or the violent overthrow of democratic government in the U.S. We write to support the CHR request and to strongly suggest that your agency follow up on this matter by immediately initiating such investigations.

There are a number of options available to your agency that can be completed in a legal and constitutional manner that respects the right of your employees to due process under the law. These include regular audits of texts between employees, review of employees' public social media postings, a requirement that employees disclose any tattoos indicative of such affiliations, and a requirement that employees declare in writing whether they have any membership or affiliation with any such extremist or hate groups. Prior to hiring new employees, your agency has even greater legal freedom to look for such evidence during the screening process. Your agency also should immediately adopt clear policies making such membership or affiliation or expressed beliefs grounds for termination of employment. Model policies for these purposes already exist and can be easily found.⁸⁸

⁸⁸ Focus: Guiding Principles for the Total Force DoD Policy on Extremist Activities, DoDI 1325.06, "Handling Dissident and Protest Activities Among Members of the Armed Forces" (Department of Defense Instruction 1325.06, November 27, 2009 incorporating change 1, February 22, 2012 USD(P&R); SUBJECT: ***Handling Dissident and Protest Activities Among Members of the Armed Forces***).

- Dignity and Respect: The Department of Defense places the highest importance on treating all personnel with dignity and respect, in an inclusive environment, free from impermissible discrimination, harassment, and hate. And as such, DoD policy expressly prohibits Service members from actively advocating supremacist, extremist, or criminal gang doctrine, ideology and causes. The Department of Defense also holds its civilian workforce to the highest standards of character and conduct required to protect and promote the public trust.
- Service members must reject active participation in organizations that advance supremacist or extremist ideology, which includes those that advance, encourage, or advocate illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin, or those that advance, encourage, or advocate the use of force, violence, or criminal activity or otherwise advance efforts to deprive individuals of their civil rights. (DoDI 1325.06, Encl. 3, para 8.b.)



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As previously mentioned, efforts to root out extremism from your agency need not run afoul of the constitutional protections afforded public employees.⁸⁹ Court have allowed law enforcement agencies considerable latitude in restricting the speech or associational interests of their employees, given their “heightened need for order, loyalty, morale and harmony.”⁹⁰

- Recruitment: Extremist organizations and individuals often target current or former military members or DoD civilian employees for recruitment because of their unique military skills, knowledge, and abilities, as well as to gain legitimacy for their cause. Service members and DoD civilian employees must be vigilant of these efforts.
- Active Participation: Active participation includes, but is not limited to: “Fundraising, demonstrating, rallying, recruiting, training, organizing, leading members, distributing material (including posting online), or knowingly wearing gang colors or clothing, having tattoos or body markings associated with such gangs or organizations; or otherwise engaging in activities in furtherance of objectives of such gangs or organizations that are detrimental to good order, discipline, or mission accomplishment or are incompatible with military service.” (DoDI 1325.06, Encl. 3, para 8.b.) Active participation in such activities may also affect determinations of suitability or fitness for civilian employment or continued employment in the DoD and eligibility for National Security positions and/or access to classified information.
- Indicators: Participation may lead to violence. Some indicators of individual escalation toward extremism include clear identification with or support for extremist or hate-based ideology; making or attempting to make contact with extremist groups; the possession and/or distribution of extremist literature or paraphernalia; and threatening, intimidating, harassing, or harming of others consistent with extremism or hate-based ideology. While such conduct may not constitute “active participation,” such signs offer an indicator for commands, prompting action and intervention that can avoid active participation down the road.
- Duty to Reject: Service members and DoD civilian employees must reject participation in such activities. With regard to Service members, Department policy makes clear that commanders have the authority to employ the full range of administrative and disciplinary actions, including involuntary separation, dismissal, or even appropriate criminal prosecution against those who actively engage in such activity. Supervisors and leaders of all ranks must also take action to maintain good order and discipline and root out extremism.

⁸⁹ “Although the First Amendment’s Freedom of Association provision protects an individual’s right to join white supremacist groups for purposes of lawful activity, the government can limit the employment opportunities of group members who hold sensitive public sector jobs, including jobs within law enforcement, when their memberships would interfere with their duties.” (“White Supremacist Infiltration of Law Enforcement,” FBI Intelligence Assessment, 2006, pg. 6).

⁹⁰ See, e.g., *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006), citing *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Oladeinde v. City of Birmingham*, 230 F.3d 1275, 1293 (11th Cir. 2000); *Doggrell v. City of Anniston*, 277 F. Supp. 3d 1239 (N.D. Ala. 2017), <https://casetext.com/case/doggrell-v-city-of-anniston-1>; and *State v. Henderson*, 277 Neb. 240. See also Robin D. Barnes, “Blue by Day and White by (K)night: Regulating the Political Affiliations of Law Enforcement and Military Personnel,” *Iowa Law Review* 81 (1996): 1085.



COMMITTEE FOR LAW ENFORCEMENT ACCOUNTABILITY NOW

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In considering these factors in a § 1983 action brought by police officers against their public employer, we are required to consider the fact that members of a law enforcement agency are part of a quasi-military organization. *See Hansen v. Soldenwagner*, 19 F.3d 573, 577 (11th Cir.1994) ("The Pickering balance is also affected ... by the special concerns of quasi-military organizations such as police departments."). In a law enforcement agency, there is a heightened need for order, loyalty, morale and harmony, which affords a police department more latitude in responding to the speech of its officers than other government employers. *See Rogers v. Miller*, 57 F.3d 986, 991 (11th Cir.1995) (citing *Hansen*, 19 F.3d at 577); *see also O'Donnell v. Barry*, 331 U.S. App. D.C. 272, 148 F.3d 1126, 1135 (D.C.Cir.1998) ("Because of the special degree of trust and discipline required in a police force there may be a stronger governmental interest in regulating the speech of police officers than in regulating the speech of other governmental employees."); *Dill*, 155 F.3d at 1203 (recognizing that the government's interest is "particularly acute in the context of law enforcement, where there is a heightened interest ... in maintaining discipline and harmony among employees") (quoting *Moore v. City of Wynnewood*, 57 F.3d 924, 934 (10th Cir.1995)); *Campbell v. Towse*, 99 F.3d 820, 829-30 (7th Cir.1996) ("It surely cannot be doubted that individuals who work in the highest echelons of the command of a police department must be assured of the loyalty of their immediate subordinates, as these subordinates are entrusted with carrying out their orders, at times under the most trying conditions.").

(*Oladeinde v. City of Birmingham* (11th Cir. 2000) 230 F.3d 1275, 1293.)

While the January 6 insurrection brought these issues to greater public awareness, that event was consistent with at least 15 years of reports from the FBI, other federal agencies, and investigative journalists, that identified "domestic terrorism" organizations (including "military extremists, white supremacists, and sovereign citizen extremists") that have "active links to law enforcement." These connections fundamentally undermine community trust in law enforcement, the foundation on which effective policing must rest. Without such trust, community members will not cooperate with police in investigating crimes, nor will they report crimes against themselves.

Michael German, a former FBI Special Agent on Domestic Terror and Covert Operations, has stated:

"Explicit racism in law enforcement takes many forms, from membership or affiliation with violent white supremacist or far-right militant groups, to engaging in racially discriminatory behavior toward the public or law enforcement colleagues, to making racist remarks and sharing them on social media. While it is widely acknowledged that racist officers subsist within police departments around the country, *federal, state, and local governments are doing far too little to*



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proactively identify them, report their behavior to prosecutors who might unwittingly rely on their testimony in criminal cases, or protect the diverse communities they are sworn to protect. *The most effective way for law enforcement agencies to restore public trust and prevent racism from influencing law enforcement actions is to prohibit individuals who are members of white supremacist groups or who have a history of explicitly racist conduct from becoming law enforcement officers in the first place, or from remaining officers once demonstrated.*”

The infiltration of law enforcement agencies by “hate groups” undermines law enforcement legitimacy in several ways:

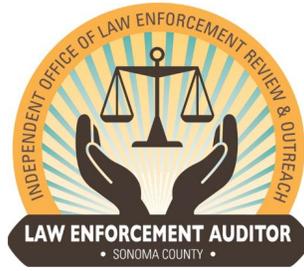
- It threatens the integrity of criminal investigations and the ‘legitimate authority’ of law enforcement in the eyes of the community;
- It increases threats to those targeted by such organizations; and
- It all but guarantees the discriminatory application of laws and provision of services in violation of the U.S. (14th Amendment) and California (Article 1, Sec. 7) constitutions.

Given the long and persistent history of disparate impacts by law enforcement against BIPOC people in our communities, including in Sonoma County, local law enforcement agencies must look into these issues. Every community deserves to have confidence that no extremists work within its local law enforcement agencies. Recent police violence against BIPOC protesters during the BLM protests in the Summer of 2020 (a police response that included officers from every local agency through mutual aid agreements) and the excessive force recently used against two Black men, Lamaricus MacDonald and Jayson Anglero-Wyrick, engendered continued distrust in local law enforcement. These events took place against a backdrop of historical distrust from past impacts of police violence on BIPOC community members. Given this distrust, our community needs fact-based assurances that county police agencies are free of extremist employees.

Thank you very much for your anticipated cooperation in ensuring that our communities are safe and that your agency will be a trusted partner in building relationships of mutual respect that honor the inherent dignity of all people.

Sincerely,

The Clean Committee
cleancommittee@gmail.com



DATE: Friday May 26, 2023

TO: Members of the Community Advisory Council (CAC)

FROM: Lizett Camacho, Community Engagement Manager and CAC Administrative Support

RE: New Meeting Day Update

This memo is to provide background on the proposed CAC meeting day change discussed at the May CAC meeting and agendized for discussion at the June CAC meeting.

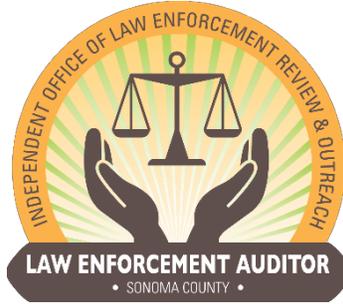
This idea of changing the date was proposed by the CAC, since the National Association for the Advancement of the Colored People (NAACP), holds their meetings on the first Monday of every month, opposite the current CAC meeting date. Also, the Board of Supervisors (BOS) at the County of Sonoma holds their meetings every Tuesday each week. The CAC members looked at other county and community agency meeting dates and they came up with possible dates that would not be a conflict to attend: the first Wednesday, the first Thursday, and the third Monday of every month.

According to the CAC meeting day change survey that we received from all the current CAC members, it appears that all current members are available on the first Wednesday of every month starting August 9, 2023. We do have several vacancies, of course, so whether this continues to be a good day of the month for newer members remains to be seen.

In regards to location, we have found that Sonoma County Office of Education (SCOE) at 5340 Skylane Boulevard in Santa Rosa has been a great location as far as being able to make a reservation on a timely manner. This location offers the space as well as the technology needed to program a hybrid meeting. Sonoma County Office of Education has kindly worked with us on accepting our reservation requests as long as we provide them a request 6 weeks in advance. We have not been able to find any other meeting locations that offer publicly accessible space as required by the Brown Act and also the technology to host hybrid meetings. Thus, unless we choose not to allow electronic attendance, the Sonoma County Office of Education location will have to continue to be the meeting location.

However, they do prioritize their (SCOE) meeting requests as needed. Accordingly, it is always possible that we might not get a reservation request approved in the future. In that case, we anticipate we can sue that as an opportunity to have a special meeting out in the community.

Therefore, staff proposes that our next CAC Wednesday meeting be August 9, 2023 at 6pm and that the by-laws be modified accordingly.



Independent Office of Law Enforcement Review and Outreach Community Advisory Council Bylaws Adopted xxxxx

Article I. Name

The name of this Advisory Body is the Independent Office of Law Enforcement Review and Outreach (“IOLERO”) Community Advisory Council, hereafter referred to as the “CAC.”

Article II. Purpose

The CAC is established to increase visibility for the public into the delivery by the sheriff-coroner of policing and corrections services, to provide community participation in the review and establishment of sheriff-coroner policies, procedures, practices, training, and initiatives, and to engage the public to better understand the role of IOLERO and of the sheriff-coroner.

Measure P, (passed in November 2020 by the voters of Sonoma County) repealed and replaced Sonoma County Code, Title 2, Article XXVII to expand the role and independence of the CAC and authorize the Board of Supervisors and IOLERO Director to appoint members to the CAC.

Sonoma County Board of Supervisors’ Ordinance Number 6174 (adopted September 13, 2016) and subsequent amendments provide governing direction to the CAC.

Following the guidelines of the Creating Ordinance No. 6174, the CAC will continue to reflect and address the expressed needs of the community. It is the intent of the CAC to retain flexibility in the conduct of its affairs.

Article III. Organization

Section 1. Community Advisory Council Membership

The CAC shall consist of eleven (11) members. Each supervisor shall appoint two (2) CAC Members and the IOLERO director shall appoint one (1) Member-at-Large.

A. Terms

All appointments shall be for two years. There is no limit to the number of terms for which a CAC Member may be reappointed.

B. Composition

The CAC shall reflect and represent the diversity and demographics of the County by way of, including but not limited to, racial, ethnic, cultural, gender, socio-economic, and geographic diversity; and who are representative of the community and of community stakeholders of the law enforcement oversight process, and who reside within the County of Sonoma.

C. Qualifications

Members of the CAC must not have been employed by any law enforcement agency for three years prior to appointment. Members should have a demonstrated history of involvement in and engagement with community organizations that work in one or more of the following areas:

- i. Serving or empowering disadvantaged communities;
- ii. Protecting and defending the constitutional rights of individuals;
- iii. Issues concerning the effectiveness or fairness of the criminal justice system;
- iv. Serving or empowering members of communities that experience behavioral or mental health challenges; and/or
- v. Spiritual, faith or religious institutions.

Members of the CAC should have a demonstrated ability to engage in mature, objective decision making. CAC Members should have a demonstrated commitment to transparency and objective decision making and should have a demonstrated commitment to and support for civilian oversight of law enforcement. Members of the CAC should also have residency within the County of Sonoma and must be members of the National Association for Civilian Oversight of Law Enforcement (NACOLE).

D. Compensation

Members of the CAC shall serve without compensation but may, with prior approval, be reimbursed for authorized, reasonable, and necessary expenses incurred in the performance of their official duties, should funding become available for this purpose.

E. Resignation

The resignation of a CAC Member shall be in writing to the appointing Supervisor

(if applicable) the IOLERO Director, the Chair of the CAC, and staff.

F. Removal from The Community Advisory Council

CAC Members serve at the pleasure of the appointing Supervisor. The CAC Member-at-Large serves at the pleasure of the IOLERO Director. The failure of any CAC Member to fulfill the duties designated herein will be brought to the attention of the appointing Supervisor and the Director by an Officer and/or staff.

Section 2. Community Advisory Council Member Role and Duties

CAC Members are expected to fulfill the role and carry out the duties as described below:

A. Attendance at Regular (Monthly) Community Advisory Council Meetings

Attendance at Regular CAC meetings is essential, since a Quorum (as defined in Article IV, Section 4) is required to conduct CAC business. Therefore, CAC Members are expected to attend at least three-fourths (3/4) of the Regular CAC meetings held during any twelve (12) month period.

The CAC ~~members must attend meetings in person or may participate in and act at any meeting of the CAC via teleconferencing or videoconferencing (as allowed by the State of California) using equipment with which all CAC Members participating in the meeting can communicate with each other at the same time.~~

Participation in ~~such~~ meetings not in person shall constitute attendance and presence as though in person at the meeting. Quorum shall be established by either roll call ~~and~~ identification of individual members of the CAC. These meetings shall only be held ~~when in person meetings are not possible and~~ as authorized by the State of California. ~~All information for the CAC meeting shall be posted at the time the agenda is sent out for the public to have the opportunity to participate.~~

CAC Members absent from a Regular CAC meeting on official CAC business (official CAC business must be approved by Officers) will not be counted as having missed a meeting. Instead, any absence due to representation of the CAC at another event that is approved by all Officers is of the same value as being present at a Regular CAC meeting.

However, if it is necessary to miss a Regular CAC meeting, CAC Members are expected to give an Officer or staff prior notice.

Staff will provide a report on attendance at Regular CAC meetings.

The three-fourths requirement is deemed to be met by attending nine (9) of twelve

~~consecutive of twelve (12)~~ Regular CAC meetings ~~held in a twelve (12) month period.~~

B. Conduct

1. Standards and Guidelines

At CAC meetings, events and activities, as well as when representing the CAC in any official capacity, CAC Members shall adhere to generally acceptable standards of business conduct and to any specific guidelines/protocols adopted by the CAC. They shall not engage in:

- a. habitual conduct which disrupts the CAC and/or interferes with the conduct of CAC business, or
- b. conduct which would have a negative impact on the integrity of and/or the community's confidence in the CAC.

2. Ethics

The members of the CAC shall adhere to the most current NACOLE Code of Ethics standards in the conduct of their duties. Using those standards, CAC Members shall:

- a. comply with both the letter and the spirit of the laws and policies affecting operations of the CAC;
- b. be independent, impartial and fair in their judgment and actions; and
- c. conduct public deliberations and processes openly, unless legally confidential, and in an atmosphere of mutual respect and civility.

3. Conflicts of Interest

In order to assure their independence and impartiality on behalf of the public good, CAC Members are prohibited from using their official positions to influence decisions in which they have a financial interest, or an organizational responsibility, or where they have a personal relationship that would constitute a conflict of interest.

CAC Members should avoid taking any action that could be construed as, or create the appearance of, using public office for personal gain, including use of the title of CAC Member and/or CAC stationery or other County resources to obtain or promote personal interests and/or business through any means, including personal social media accounts.

4. Representation of the CAC

CAC Members are encouraged to represent themselves as individual CAC Members in community advocacy and activities related to the adopted

positions and Work Plan of the CAC, and are not to work to undermine the adopted positions and Work Plan of the CAC while serving as Members. However, they are not authorized to represent, speak or act on behalf of the CAC as a whole through any means, including through personal social media accounts unless so authorized by the CAC. Members of the CAC should add an opinion disclaimer to their personal accounts in order to establish clarification that opinions shared on social media are not representative of the CAC.

C. Communication with Appointing Supervisor

Each CAC Member acts as a liaison between the CAC and his/her appointing Supervisor, and thus is expected to communicate regularly with his/her appointing Supervisor about the CAC's activities.

D. Contribution to the Work of the Councilmission

In addition to the other responsibilities stated in this Section, each CAC Member is expected to support the CAC's goals and activities by serving as an Officer, Liaison and/or as Chair of a committee, or by serving as an active member of an Ad Hoc or a Standing Committee.

E. Leaves of Absence

If a Member is unable to fulfill the designated duties due to unusual circumstances, s/he can request a leave of absence from the CAC. Leaves of absence are granted at the recommendation of the Chair and with approval of the appointing Supervisor (or the IOLERO Director for Member-at-Large) and shall not exceed two (2) months.

Section 3. Governance

A. Officers

The Officers of the CAC shall be a Chair and a Vice-Chair. The duties of these Officers shall be those which generally apply to such officers, stated herein, and/or designated by the CAC.

B. Term

The term of Officers and appointments shall be for one (1) calendar year from January 1st through December 30th.

C. Qualifications for Officers

1. Chair

To serve as the Chair, a Member shall:

- a. have attended at least four (4) CAC meetings within six (6) months prior to nomination.

- b. be an able and willing communicator.
- c. express the intention to attend and lead at least ten (10) of the Regular CAC meetings during the one-year term.

2. Vice-Chair

To serve as the Vice-Chair, a Member shall:

- a. have attended at least four (4) CAC meetings within six (6) months prior to nomination.
- b. be an able and willing communicator.
- c. have expressed a willingness to support the Chair and to fulfill the other duties assigned.

D. Powers and Duties of Officers

1. Chair

The duties of the Chair are listed below.

a. Duties for Community Advisory Council Meetings.

At CAC meetings, the Chair shall:

- 1. preside over CAC meetings, maintain orderly procedure in accordance with these Bylaws, and decide questions of procedure subject to the full CAC.
- 2. develop the agenda for CAC meetings with the assistance of other CAC Members, Officers and staff.
- 3. be allowed to participate in discussion relating to any matter s/he deems appropriate.
- 4. recognize any member of the CAC who desires to speak.
- 5. set and adhere to time-limits for any member of the public who desires to address the CAC, consistent with the requirements of the Brown Act.
- 6. rule on all procedural matters or questions not specifically addressed in these Bylaws, subject to the approval of the full CAC.
- 7. work with Officers and Staff to produce minutes of the meetings.

b. Duties Related to Community Advisory Council Operations.

The Chair shall:

- 1. serve as a primary liaison to the IOLERO Director.
- 2. serve as an ex-officio member and remain cognizant of the activities and progress of all committees, if any.
- 3. participate, together with the other Officers and Staff, in creating and monitoring the progress of the CAC's work activities to ensure that CAC goals are met and periodically make a progress report to the CAC.
- 4. serve as a resource to Members in their efforts to contribute to the CAC's work and, when required, collaborate with other Officers and staff to resolve issues related to a CAC Member's

fulfillment of designated duties.

5. represent and speak on behalf of the CAC at public meetings (e.g. Board of Supervisors meeting) on matters relating to the CAC.
6. Create and sustain amicable and effective relationships with County and community leaders/organizations.
7. Advocate for CAC initiatives throughout the County approval process.
8. Remain cognizant of Brown Act requirements, both during meetings and throughout the month; monitor and intervene as needed.

2. Vice-Chair

The Vice-Chair shall:

- a. preside over CAC meetings in the Chair's absence.
- b. assist the Chair in developing the agenda for CAC meetings.
- c. participate, together with the other Officers and staff, in monitoring the progress of the CAC work activities to ensure that CAC goals are met.
- d. serve as a resource to CAC Members in their efforts to contribute to the CAC's work and, when required, collaborate with other Officers and staff to resolve issues related to a CAC Member's fulfillment of designated duties.
- e. fill a vacancy occurring in the office of Chair for the unexpired term.

E. Nominations and Elections

At a Regular CAC meeting prior to the end of the term for current Officers, the Chair will read the duties and qualifications of Chair from the By-Laws, and nominations will be taken from the floor. Any qualified CAC Member is eligible to be nominated (or to nominate him/herself).

The same process shall then be followed for taking Vice-Chair nominations. Elections can be held following the close of nominations, and Officers shall be elected by a simple majority vote. If a CAC Member is unable to attend the CAC meeting, s/he can be nominated and elected, based on prior verbal/written statement that if elected s/he will accept the position and fulfill the duties of the office.

F. Vacancies of Elected Office

1. Chair

Should the office of Chair become vacant during term, the Vice-Chair shall assume the office of Chair for the remainder of the term.

2. Vice-Chair

Should the office of Vice-Chair become vacant during a term, the CAC shall

elect a new Vice-chair at its next regular meeting after the vacancy is announced at a public meeting of the CAC.

3. Removal From Office

An Officer may be removed from office prior to the expiration of his/her term by vote of the CAC.

Section 4. Staff

The CAC shall receive support from management and clerical staff as assigned by the Director of IOLERO.

Article IV. Meetings

Section 1. Regular Community Advisory Council Meetings

A. Schedule

Regular CAC meetings shall be scheduled for the first (1st) ~~Monday~~ Wednesday of each month at 6:00 PM, except as noted in Article IV, Section 1 (E). The time and date will only be changed by the CAC for the purpose of facilitating the conduct of CAC business, and if changed, the date and time will be announced to the CAC and the public with at least thirty (30) days' notice.

Should the meeting fall on a holiday, the meeting will be held on the Monday of the following week (subject to availability), unless the CAC makes other arrangements. This meeting shall be announced with at least thirty (30) days prior notice.

B. Location

Staff will be responsible for securing a facility deemed appropriate for the Regular CAC meetings. Once selected, the location will be announced to the CAC and the public.

C. Ralph M. Brown Act

All Regular CAC meetings shall be called, noticed, held and conducted in accordance with the Ralph M. Brown Act, hereafter referred to as the "Brown Act." Pursuant with Section 54954.3 of the Brown Act, the agendas for Regular CAC meetings shall provide an opportunity for members of the public to address the CAC on items of interest to the public that are within the subject matter jurisdiction of the CAC .

D. Agenda

1. Submission of Items

Staff or any CAC Member may place an item on the agenda, subject to time limitations on CAC meetings and to the discretion of the Chair. Proposed agenda items should be submitted directly to staff of the Independent Office

of Law Enforcement Review and Outreach at least two weeks prior to the Commission meeting. Any member of the public may suggest an item for consideration on a future agenda during public comment at CAC meetings.

2. Preparation and Content

The Chair will work through staff with Officers, and other CAC Members to prepare the agenda for CAC meetings. The agenda will contain a brief general description of each item of business to be transacted or discussed at the meeting.

3. Distribution and Posting

At least seventy-two (72) hours before the Regular CAC meeting, the agenda will be distributed to the CAC Members and posted at a location that is freely accessible to the public, as well as on the internet site for IOLERO.

4. Additions after Posting

No action shall be taken on any item not appearing on the posted agenda, except as permitted by Government Code 54954.2 of the Brown Act.

E. Cancellation of a Regular Meeting

A Regular CAC meeting can be cancelled by the vote or consensus of the CAC or the agreement of the two (2) Officers.

Section 2. Special Community Advisory Council Meetings

A. Call for Special Meeting

Special meetings may be called by the two Officers or the written agreement of the majority of active CAC Members (i.e. CAC Members not on a Leave of Absence, as defined in Article III, Section 2(E)).

B. Purpose

The purpose of the special meeting shall be stated in the call.

C. Notice

Except in cases of emergency, at least twenty-four (24) hour notice, and such other notice as directed by the Brown Act, shall be given prior to any special meeting.

D. Agenda

The agenda for a special meeting shall be limited to the specific issue(s) for which the meeting was called and will contain a brief general description of the business to be transacted and/or discussed at the meeting.

E. Conduct of Meeting

The meeting shall be held and conducted in accordance with the Brown Act.

Section 3. Rules of Order

Meetings of the CAC shall be conducted in accordance with fair and orderly procedures such as those described in **Robert's Rules of Order** and/or **Roberta's Rules of Order**, latest edition, except as required by state law or as provided by these Bylaws.

Section 4. Quorum

A majority of the duly appointed active CAC Members shall constitute a Quorum. CAC action may be taken only by a majority vote of the active Members.

Article V: Structure for Supporting CAC's Goals and Activities

Section 1. Liaisons

Liaisons act as intermediaries with other organizations/agencies. Liaisons are responsible for determining how to carry out their assignment. They may solicit other CAC Members (totaling less than a quorum) and/or community members, and/or staff to assist them as necessary.

Liaisons are responsible for reporting to the CAC on their activities and their progress toward meeting the goals/objectives established.

Section 2. Ad Hoc Committees

Ad Hoc Committees may be established to carry out a specific objective or activity within a stated time frame.

Ad Hoc Committees are disbanded once the specific objective has been accomplished.

Section 3. Standing Committees

Standing Committees may be established to assume responsibility for the CAC's ongoing work in a general topic area. Standing Committees are created by the CAC and remain active over an extended period. Regular meetings will be held according to regular dates, times and locations. Standing Committee meetings are subject to the requirements of the Brown Act.

Article VI: Amendments.

Proposed amendments to these Bylaws shall be submitted to the Officers and then brought to the CAC for discussion and approval.

[INSERT LETTERHEAD]

June 6, 2023

The Honorable Blanca Pacheco
California State Assembly
1021 O Street, Suite 6240
Sacramento, CA 95814

RE: AB 817 (PACHECO) LOCAL GOVERNMENT: OPEN MEETINGS – SUPPORT

Dear Assemblymember Pacheco:

On behalf of the Community Advisory Council (CAC) for the Independent Office of Law Enforcement Review and Outreach (IOLERO), we write to express our strong support for AB 817, which would remove barriers to entry for appointed and elected office by allowing non-decision-making legislative bodies that do not have the ability to take final action to participate in two-way virtual teleconferencing without posting their personal location.

The CAC is comprised of volunteer members from across the County of Sonoma. This body has an important focus in helping IOLERO carry out its mission of strengthening the relationship between the Sonoma County Sheriff's Office (SCSO) and the community it serves through outreach and the promotion of greater transparency of law enforcement operations. The CAC's work also involves making policy recommendations with the aim to improve law enforcement accountability. The approach taken by the CAC is a public-engaging one through the Brown Act meetings and doing so in a way that involves individuals that assist the CAC and the community with understanding data, information, and decision-making through the policies and procedures of the SCSO. In the wake of recent incidents involving SCSO use of force and other issues, the legitimacy of the SCSO has been questioned. The SCSO is not alone as many other law enforcement agencies around the country are also facing similar challenges. Keeping our community involved in the process of oversight and accountability is extremely important for the CAC and having a diverse group of individuals leading the process gives our community a sense of security that the process is representative of those who are served by the SCSO.

Challenges associated with recruitment have been attributed to participation time commitments; time and location of meetings; physical limitations, conflicts with childcare, and work obligations. The COVID-19 global pandemic drove both hyper-awareness and concerns about the spread of infectious diseases, as well as removed barriers to local civic participation by allowing remote participation. This enabled individuals who could not otherwise accommodate the time, distance, or mandatory physical

participation requirements to engage locally, providing access to leadership opportunities and providing communities with greater diversified input on critical community proposals.

Existing law (Stats. 1991, Ch. 669) requires local bodies to publish and publicly notice opportunities that exist to participate in and serve on local regulatory and advisory boards, commissions, and committees under the Local Appointments List, known as Maddy's Act. However, merely informing the public of the opportunity to engage is not enough; addressing barriers to entry to achieve diverse representation in leadership furthers the Legislature's declared goals of equal access and equal opportunity.

Diversification in civic participation at all levels requires careful consideration of different protected characteristics as well as socio-economic status. The in-person requirement to participate in local governance bodies presents a disproportionate challenge for those with physical or economic limitations, including seniors, persons with disability, single parents and/or caretakers, economically marginalized groups, and those who live in rural areas and face prohibitive driving distances. Participation in local advisory bodies and appointed boards and commissions often serves as a pipeline to local elected office and opportunities for state and federal leadership positions.

AB 817 would help address these issues by providing a narrow exemption under the Ralph M. Brown Act for non-decision-making legislative bodies that do not take final action on any legislation, regulations, contracts, licenses, permits, or other entitlements, so that equity in opportunity to serve locally and representative diversity in leadership can be achieved.

For these reasons, we are pleased to support AB 817 and thank you for your leadership on this most important issue.

Sincerely,

[signature]

cc: Assemblymember Jim Wood
Senator Mike McGuire
Members and staff, Assembly Local Government Committee
Ronda Paschal, Deputy Legislative Secretary, Governor's Office of Legislative Affairs
Sonoma County Board of Supervisors



AB 817- OPEN MEETINGS: TELECONFERENCING: NON- DECISION-MAKING BODIES

BACKGROUND

Local governments across the state have faced an ongoing challenge to recruit and retain members of the public on advisory bodies, boards, and commissions. Challenges associated with recruitment have been attributed to participation time commitments; time and location of meetings; physical limitation, conflicts with childcare, and work obligations.

The COVID-19 global pandemic has driven both hyper-awareness and concerns about the spread of infectious diseases, as well as removed barriers to local civic participation by allowing remote participation. This enabled individuals who could not otherwise accommodate the time, distance, or mandatory physical participation requirements to engage locally.

Diversification in civic participation at all levels requires careful consideration of different protected characteristics as well as socio-economic status. The in-person requirement to participate in local governance bodies presents a disproportionate challenge for those with physical or economic limitations,

including seniors, persons with disability, single parents and/or caretakers, economically marginalized groups, and those who live in rural areas and face prohibitive driving distances. Participation in local advisory bodies and appointed boards and commissions often serves as a pipeline to local elected office and opportunities for state and federal leadership positions.

Existing law (Stats. 1991, Ch. 669) declares "a vast and largely untapped reservoir of talent exists among the citizenry of the State of California, and that rich and varied segments of this great human resource are, all too frequently, not aware of the many opportunities which exist to participate in and serve on local regulatory and advisory boards, commissions, and committees." Under the Local Appointments List, also known as Maddy's Act, this information must be publicly noticed and published. However, merely informing the public of the opportunity to engage is not enough: addressing barriers to entry to achieve diverse representation in leadership furthers the Legislature's

February 27, 2023

declared goals of equal access and equal opportunity.

EXISTING LAW

Assembly Bill 2449 (Stats. 2022, Chapter 285) permits a full Brown Act legislative body to permit remote participation for a minority of local government officials for just cause or emergency circumstances.

Assembly Bill 361 (Stats. 2021, Chapter 165) until January 1, 2024, permits the full legislative body to participate remotely without posting physical location when the Governor has issued a specified state of emergency. This bill was narrowly crafted to tie to Executive Order N-29-20 which will be lifted on February 28, 2023.

AB 931 (Stats. 2019, Chapter 819) sought to ensure equal gender representation on local boards and commissions. While provisions were invalidated by the court, the legislative declarations recognize these local bodies establish a pathway to other governmental leadership positions and that California must take affirmative steps to remedy the injustices resulting from underrepresentation in leadership positions.

PROBLEM

Currently, there is no law that governs Brown Act Bodies specific to legislative subcommittees, boards, and commissions.

SOLUTION

- **AB 817** would provide a narrow exemption under the Ralph M. Brown Act for non-decision-making legislative bodies currently governed by Act, such as advisory bodies and commissions, to participate in two-way virtual teleconferencing without posting physical location of members.
- **AB 817** would remove barriers to entry for appointed and elected office by allowing non-decision-making legislative bodies to participate virtually as long as they do not have the ability to take final action on legislation, regulations, contracts, licenses, permits, or other entitlements.

SUPPORT

- California Association of Recreation and Park Districts (CARPD) - **Sponsor**
- League of California Cities (CalCities) - **Sponsor**

Staff Contact

Kierra Paul

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Phone: 916.319.2064

Current law in standard print**Language to be amended into AB 817 Indicated by blue, bolded, underlined italicized text****Assembly Bill No. XXX****CHAPTER XXX**

An act to amend, repeal, and add Section 54953 of the Government Code, relating to open meetings, and declaring the urgency of, to take effect immediately.

SEC. 1. Section 54953 of the Government Code, as amended by Section 3 of Chapter 165 of the Statutes of 2021, is amended to read:

water

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by rollcall.

(B) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and

agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e).

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) The legislative body of a local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

(B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(C) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(E) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(f) (1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

(I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body

may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.

(B) The member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(C) The member shall participate through both audio and visual technology.

(3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

(g) (1) A subsidiary body of a legislative body, as defined in paragraph (6) of subdivision (k), may use teleconferencing without complying with paragraph (3) of subdivision (b) if the body complies with all of the following:

(A) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the subsidiary body.

(B) Each member of the subsidiary body shall participate through both audio and visual technology.

(C) The subsidiary body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the subsidiary body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(D) The subsidiary body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(E) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the subsidiary body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(F) The agenda shall identify and include an opportunity for all persons to attend and address the subsidiary body directly pursuant to Section 54954.3 via a call-in option or via an internet-based service option.

(G) In the event of a disruption that prevents the subsidiary body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the subsidiary body's control that prevents members of the public from offering public comments using the call-in option or internet-based service option,

the subsidiary body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the subsidiary body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(H) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the subsidiary body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(I) The subsidiary body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the subsidiary body and offer comment in real time.

(i) A subsidiary body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (H), to provide public comment until that timed public comment period has elapsed.

(ii) A subsidiary body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (H), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (H), until the timed general public comment period has elapsed.

(J) In order to use teleconferencing pursuant to this subdivision, the board of supervisors, city council, or board of directors that established the subsidiary body by charter, ordinance, resolution, or other formal action, shall make the following findings by majority vote prior to teleconferencing for the first time pursuant to this subdivision, and every 12 months thereafter:

(i) The legislative body has considered the circumstances of the subsidiary body.

(ii) Teleconference meetings of the subsidiary body would enhance public access to meetings of the subsidiary body.

(iii) Teleconference meetings of the subsidiary body would promote the attraction, retention and diversity of subsidiary body members.

(hg) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is

otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.

(i h) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

(i i) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

(2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.

(k j) For the purposes of this section, the following definitions shall apply:

(1) “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person.

(2) “Just cause” means any of the following:

(A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. “Child,” “parent,” “grandparent,” “grandchild,” and “sibling” have the same meaning as those terms do in Section 12945.2.

(B) A contagious illness that prevents a member from attending in person.

(C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (g).

(D) Travel while on official business of the legislative body or another state or local agency.

(3) “Remote location” means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (f), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) “Remote participation” means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) “State of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(6) “Subsidiary body” means:

A legislative body, as defined in section 54952(b), including a standing committee of a legislative body, that serves exclusively in an advisory capacity and is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or other entitlements.

(7) “Teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

~~(87)~~ “Two-way audiovisual platform” means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

~~(98)~~ “Two-way telephonic service” means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform and allows participants to dial a telephone number to listen and verbally participate.

~~(109)~~ “Webcasting” means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

~~(k)~~ This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 2. Section 54953 of the Government Code, as added by Section 4 of Chapter 165 of the Statutes of 2021, is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by rollcall.

(B) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d).

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

(I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.

(B) The member shall publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(C) The member shall participate through both audio and visual technology.

(3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

(f) (1) A subsidiary body of a legislative body, as defined in paragraph (5) of subdivision (i), may use teleconferencing without complying with paragraph (3) of subdivision (b) if the body complies with all of the following:

(A) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the subsidiary body.

(B) Each member of the subsidiary body shall participate through both audio and visual technology.

(C) The subsidiary body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the subsidiary body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(D) The subsidiary body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(E) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the subsidiary body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(F) The agenda shall identify and include an opportunity for all persons to attend and address the subsidiary body directly pursuant to Section 54954.3 via a call-in option or via an internet-based service option.

(G) In the event of a disruption that prevents the subsidiary body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the subsidiary body's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the subsidiary body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the subsidiary body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(H) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the subsidiary body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(I) The subsidiary body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the subsidiary body and offer comment in real time.

(i) A subsidiary body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (H), to provide public comment until that timed public comment period has elapsed.

(ii) A subsidiary body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (H), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (H), until the timed general public comment period has elapsed.

(J) In order to use teleconferencing pursuant to this subdivision, the board of supervisors, city council, or board of directors that established the subsidiary body by charter, ordinance, resolution, or other formal action, shall make the following findings by majority vote prior to teleconferencing for the first time pursuant to this subdivision, and every 12 months thereafter:

(i) The legislative body has considered the circumstances of the subsidiary body.

(ii) Teleconference meetings of the subsidiary body would enhance public access to meetings of the subsidiary body.

(iii) Teleconference meetings of the subsidiary body would promote the attraction, retention and diversity of subsidiary body members.

(g-f) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.

(h-g) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

(h-f) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

(2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.

(i-f) For the purposes of this section, the following definitions shall apply:

(1) “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person.

(2) “Just cause” means any of the following:

(A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. “Child,” “parent,” “grandparent,” “grandchild,” and “sibling” have the same meaning as those terms do in Section 12945.2.

(B) A contagious illness that prevents a member from attending in person.

(C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (f).

(D) Travel while on official business of the legislative body or another state or local agency.

(3) “Remote location” means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (e), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) “Remote participation” means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) “Subsidiary body” means:

(A) A legislative body, as defined in section 54952(b), including a standing committee of a legislative body, that serves exclusively in an advisory capacity and is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or other entitlements.

~~(6)~~ “Teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

~~(7)~~ “Two-way audiovisual platform” means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

~~(7)~~ “Two-way telephonic service” means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

(98) “Webcasting” means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

~~(k)~~ This section shall become operative January 1, 2024, shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 3. Section 54953, as added by Section 3 of Chapter 285 of the Statutes of 2022, is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in

connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A subsidiary body of a legislative body, as defined in paragraph (2) of this subdivision, may use teleconferencing without complying with paragraph (3) of subdivision (b) if the body complies with all of the following:

(A) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the subsidiary body.

(B) Each member of the subsidiary body shall participate through both audio and visual technology.

(C) The subsidiary body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the subsidiary body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(D) The subsidiary body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(E) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the subsidiary body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(F) The agenda shall identify and include an opportunity for all persons to attend and address the subsidiary body directly pursuant to Section 54954.3 via a call-in option or via an internet-based service option.

(G) In the event of a disruption that prevents the subsidiary body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the subsidiary body's control that prevents members of the public from offering public comments using the call-in option or internet-based service option,

the subsidiary body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the subsidiary body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(H) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the subsidiary body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(I) The subsidiary body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the subsidiary body and offer comment in real time.

(i) A subsidiary body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (H), to provide public comment until that timed public comment period has elapsed.

(ii) A subsidiary body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (H), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (H), until the timed general public comment period has elapsed.

(J) In order to use teleconferencing pursuant to this subdivision, the board of supervisors, city council, or board of directors that established the subsidiary body by charter, ordinance, resolution, or other formal action, shall make the following findings by majority vote prior to teleconferencing for the first time pursuant to this subdivision, and every 12 months thereafter:

(i) The legislative body has considered the circumstances of the subsidiary body.

(ii) Teleconference meetings of the subsidiary body would enhance public access to meetings of the subsidiary body.

(iii) Teleconference meetings of the subsidiary body would promote the attraction, retention and diversity of subsidiary body members.

(2) For the purposes of this section, “subsidiary body” means:

“Subsidiary body” means:

(A) A legislative body, as defined in section 54952(b), including a standing committee of a legislative body, that serves exclusively in an advisory capacity and is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or other entitlements.

(f) This section shall become operative January 1, 2026.

SEC. 4. The Legislature finds and declares that Sections 1, 2, and 3 of this act, which amend Section 54953 of the Government Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 5. The Legislature finds and declares that Sections 1, 2, 3 of this act, which amend Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to provide opportunities for public participation in meetings of specified public agencies and to promote the attraction and retention of members of those agencies.

AMENDED IN ASSEMBLY MARCH 16, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL

NO. 817

Introduced by Assembly Member Pacheco
(Coauthor: Assembly Member Wilson)

February 13, 2023

An act to ~~amend Section 54950 of the Government Code, relating to local government.~~ *add Section 54953.05 to the Government Code, relating to local government.*

LEGISLATIVE COUNSEL'S DIGEST

AB 817, as amended, Pacheco. ~~Local government: open meetings.~~ *Open meetings: teleconferencing: subsidiary body.*

Existing law, the Ralph M. Brown Act, ~~requires~~ *requires, with specified exceptions*, each legislative body of a local agency to provide notice of the time and place for its regular meetings and an agenda containing a brief general description of each item of business to be transacted. The act also requires that all meetings of a legislative body be open and public, and that all persons be permitted to attend unless a closed session is authorized. *The act generally requires for teleconferencing that the legislative body of a local agency that elects to use teleconferencing post agendas at all teleconference locations, identify each teleconference location in the notice and agenda of the meeting or proceeding, and have each teleconference location be accessible to the public. Existing law also requires that, during the teleconference, at least a quorum of the members of the legislative body participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.*

Existing law, until January 1, 2024, authorizes the legislative body of a local agency to use alternate teleconferencing provisions during a proclaimed state of emergency or in other situations related to public health that exempt a legislative body from the general requirements (emergency provisions) and impose different requirements for notice, agenda, and public participation, as prescribed. The emergency provisions specify that they do not require a legislative body to provide a physical location from which the public may attend or comment.

Existing law, until January 1, 2026, authorizes the legislative body of a local agency to use alternative teleconferencing in certain circumstances related to the particular member if at least a quorum of its members participate from a singular physical location that is open to the public and situated within the agency's jurisdiction and other requirements are met, including restrictions on remote participation by a member of the legislative body.

This bill would authorize a subsidiary body, as defined, to use alternative teleconferencing provisions similar

to the emergency provisions indefinitely and without regard to a state of emergency. In order to use teleconferencing pursuant to this act, the bill would require the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action to make specified findings by majority vote, before the subsidiary body uses teleconferencing for the first time and every 12 months thereafter.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

~~This bill would make nonsubstantive changes to a provision of the Ralph M. Brown Act.~~

Digest Key

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 54953.05 is added to the Government Code, to read:*

54953.05. (a) (1) The definitions in Section 54953, as that section may be amended from time to time, apply for purposes of this section.

(2) For purposes of this section, “subsidiary body” means a legislative body that meets all of the following:

(A) Is described in subdivision (b) of Section 54952.

(B) Serves exclusively in an advisory capacity.

(C) Is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements.

(b) A subsidiary body may use teleconferencing without complying with paragraph (3) of subdivision (b) of

Section 54953, if the subsidiary body complies with all of the following:

- (1) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the subsidiary body.*
- (2) Each member of the subsidiary body shall participate through both audio and visual technology.*
- (3) The subsidiary body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the subsidiary body:
 - (A) A two-way audiovisual platform.*
 - (B) A two-way telephonic service and a live webcasting of the meeting.**
- (4) The subsidiary body shall give notice of the meeting and post agendas as otherwise required by this chapter.*
- (5) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the subsidiary body shall also give notice of the means by which members of the public may access the meeting and offer public comment.*
- (6) The agenda shall identify and include an opportunity for all persons to attend and address the subsidiary body directly pursuant to Section 54954.3 via a call-in option or via an internet-based service option.*
- (7) In the event of a disruption that prevents the subsidiary body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the subsidiary body's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the subsidiary body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the subsidiary body from broadcasting the meeting may be challenged pursuant to Section 54960.1.*
- (8) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the subsidiary body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.*
- (9) The subsidiary body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the subsidiary body and offer comment in real time.
 - (A) A subsidiary body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to paragraph (8), to provide public comment until that timed public comment period has elapsed.*
 - (B) A subsidiary body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to paragraph (8), or otherwise be recognized for the purpose of providing public comment.**

(C) A subsidiary body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to paragraph (8), until the timed general public comment period has elapsed.

(c) In order to use teleconferencing pursuant to this section, the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action shall make the following findings by majority vote before the subsidiary body uses teleconferencing pursuant to this section for the first time, and every 12 months thereafter:

(1) The legislative body has considered the circumstances of the subsidiary body.

(2) Teleconference meetings of the subsidiary body would enhance public access to meetings of the subsidiary body.

(3) Teleconference meetings of the subsidiary body would promote the attraction, retention, and diversity of subsidiary body members.

SEC. 2. *The Legislature finds and declares that Section 1 of this act, which adds Section 54953.05 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 3. *The Legislature finds and declares that Section 1 of this act, which adds Section 54953.05 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:*

This act is necessary to provide opportunities for public participation in meetings of specified public agencies and to promote the attraction and retention of members of those agencies.

~~SECTION 1. Section 54950 of the Government Code is amended to read:~~

~~54950.(a) In enacting this chapter, the Legislature finds and declares that the public commissions, boards, councils, and the other public agencies in this state exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.~~

~~(b) The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed, so that they may retain control over the instruments they have created.~~