D. Resignation by operation of law

As previously discussed, if a commissioner no longer meets the eligibility requirements to serve on a board or commission, the commissioner may no longer serve, regardless of whether the commissioner has formally submitted a resignation.

E. Post-separation processes

Within 15 days after a member leaves office for any reason, the appointing officer must provide written notice to the Ethics Commission of the name of the person leaving office. C&GC Code § 3.1-105. And as discussed above and in Part Two below, the commissioner or board member must file a final Statement of Economic Interests within 30 days after leaving office.

VI. The roles of commissions, their members, and their staff

A. Powers, duties, and restrictions relating to commissions

1. Powers and duties

Charter section 4.102 sets forth the powers and duties of boards and commissions in the executive branch. Section 4.102 provides that each board or commission shall:

1) Formulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City, as established by the Mayor and the Board of Supervisors through the adoption of legislation;

2) Develop and keep current an Annual Statement of Purpose outlining its areas of jurisdiction, authorities, purpose and goals, subject to review and approval by the Mayor and the Board of Supervisors;

3) After public hearing, approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the Board of Supervisors, subject to the Mayor's final authority to initiate, prepare, and submit the annual proposed budget on behalf of the executive branch and the Board of Supervisors' authority under Charter section 9.103 (each department is responsible for providing the Mayor and Board of Supervisors with a mission-driven budget that describes each proposed activity of the department and the cost of the activity, under Charter § 9.114);

4) Recommend to the Mayor, for further submission to the Board of Supervisors, rates, fees and similar charges for items coming within the body's jurisdiction;

5) Unless the Charter provides a different procedure for appointing department heads, submit to the Mayor at least three nominees, and if rejected, make additional nominations in the same manner, for the position of department head, subject to appointment by the Mayor. (The three-nominee process is intended to give the Mayor a range of choices. If the Mayor does not object, the board or commission may submit fewer than three names. The Mayor may indicate a preferred nominee before the body submits its nominee(s), but the body does not have to honor the Mayor's preference. The Mayor may also decline to accept any of the body's nominees and ask for further nominations. See City Attorney Opinion No. 2014-01.);

6) Remove a department head; if the Mayor recommends removal of a department head to the board or commission, the body must act on the recommendation by removing or retaining the department head within 30 days; failure to act on the Mayor's recommendation is official misconduct (under Charter section 4.109, the Mayor, acting independently of the Police Commission, may remove the Chief of Police);

7) Conduct investigations into any aspect of governmental operations within its jurisdiction through the power of inquiry, and make recommendations to the Mayor or the Board of Supervisors;

8) Exercise such other powers and duties as prescribed by the Board of Supervisors; and

9) Appoint an executive secretary to manage the affairs and operations of the board or commission.

To carry out its duties, a commission may hold public hearings and take testimony. Charter § 4.102(10). In addition, relative solely to the affairs under its control, a commission may examine the department's documents, hold public hearings, subpoena witnesses, and compel production of documents. Charter § 16.114.

2. Restrictions on commissions

Along with giving powers to commissions, Charter section 4.102 also restricts how a commission may deal with the administrative affairs of its department:

> Each board or commission, relative to the affairs of its own department, shall deal with administrative matters solely through the department head or his or her designees, and any dictation, suggestion or interference herein prohibited on the part of any member of a board or commission shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the board or commission's power of hearing or inquiry as provided in this Charter.

This restriction, which originated in the 1932 Charter, establishes a chain of command that governs the operation of departments under commissions. The commission sets policy and communicates that policy to the department head, who in turn is responsible for its execution. See City Attorney Opinion 90-01. There is no prohibition against a board or

commission dictating administrative policy for its department, so long as it proceeds in the manner provided by the Charter.

The requirement that a commission address administrative matters solely through the department head does not apply to actions taken through the commission's power of hearing or inquiry. Charter § 4.102. "The commission's power of inquiry includes the authority to call any department officer or employee before the commission to answer questions regarding the operations of the department. But if the commission wants to make changes in departmental operations as a result of those inquiries, it must still address its directives to the department's chief executive officer." City Attorney Opinion 90-01, p. 4.

B. The role of and restrictions on individual commissioners

The Charter places the power and duties of a board or commission in the body as a whole, not in individual members. Charter § 4.102. The Charter, as well as State law and the City's Sunshine Ordinance, requires boards and commissions to act at public meetings. Charter § 4.104(a)(2); Cal. Govt. Code § 54953(a); Admin. Code § 67.5. A quorum of the board or commission must be present for the body to act. Charter § 4.104(b); see also Cal. Govt. Code § 54952.6 (defining "action taken" as a collective decision or commitment made by a majority of members of the body). Thus, commissioners lack the authority, as individuals, to exercise powers of the board or commission, although the body may designate individual commissioners to perform assigned duties, such as monitoring the progress of a departmental program and reporting on the program to the body.

In addition, as noted above, Charter section 4.102 provides that "any dictation, suggestion or interference [in administrative affairs] herein prohibited on the part of any member of a board or commission shall constitute official misconduct ...." Thus, in addition to requiring that a board or commission deal with administrative matters solely through the department head or the department head's designees, section 4.102 prohibits individual members of boards and commissions from dictation, suggestion, or interference in administrative matters. This prohibition does not prevent individual commissioners from requesting information from the department head about the department's operations. With the department head's consent, commissioners may also seek information directly from department staff.

C. The role of commission officers

Unless the board or commission's rules or enacting legislation provide otherwise, neither the president nor vice-president of a body has any greater authority than any other member. As noted below, the Charter permits a board or commission to adopt rules and regulations consistent with the Charter and City ordinances. Charter § 4.104(a)(1). Under this authority, most Charter boards and commissions adopt rules providing for the election of a president and possibly other officers. The president presides over meetings and may call special meetings of the body. Cal. Govt. Code § 54956(a); Admin. Code § 67.6(f).

If the board or commission so chooses, it may give additional powers to the president in its rules or bylaws. Frequently, such rules authorize the president, operating often in conjunction with the department head, to set agendas for meetings. In addition, some rules authorize the body's president to create committees and/or assign members to committees, or to act as a spokesperson for the body. Even if not formalized by rule or bylaw, in some instances the longstanding custom or practice of a board or commission will include the president's exercising some of these powers, such as setting the agenda for meetings and on occasion serving as the body's spokesperson. When speaking publicly regarding the business of the body, the president must clearly state whether the president is speaking personally or for the body. If the latter, the president must have authority to do so.

Typically the vice-chair of a board or commission will preside over meetings in the chair's absence. If the vice-chair also is absent, the body should begin its meeting by voting to determine which member will serve as acting chair for that meeting.

D. The role of a department head

The Charter and Administrative Code set forth the responsibilities of department heads. The department head is responsible for the administration and management of the department. Charter § 4.126; Admin. Code § 2A.30. Among other things, department heads may:

- Appoint qualified individuals to fill positions within the department that are exempt from the civil service provisions of the Charter, and discipline or remove such employees. Charter § 4.126; Admin. Code § 2A.30.
- Act as the appointing officer under the civil service provisions of the Charter for the appointing, disciplining, and removal of employees. Admin. Code § 2A.30; Charter § A8.329.
- Issue or authorize requisitions for the purchase of materials, supplies, and equipment required by the department. Admin. Code § 2A.30.
- Adopt rules and regulations governing matters within the jurisdiction of the department, subject, if applicable, to Charter section 4.104(a)(1). Charter § 4.126.
- With the approval of the City Administrator, reorganize the department. Charter § 4.126.

Thus, the department head acts as the day-to-day manager of the department, subject to the direction of the board or commission and the Mayor. Unless the Charter or Municipal Code expressly provide otherwise, the law does not require the department head to seek the body's approval before signing contracts and making other decisions on behalf of the department. Nevertheless, the board or commission and the department head may choose as a matter of policy which matters warrant the body consideration.

Department heads under a board or commission generally serve at the pleasure of the body. Unless the Charter expressly provides otherwise, only the board or commission may remove the department head. One exception to this principle is that the Mayor acting alone, in addition to the Police Commission, may remove the Chief of Police. Charter § 4.109. And one exception to the principle that department heads serve "at will" is that, following a

probationary period for the Director of Elections, the Elections Commission may remove the Director only "for cause." Charter § 13.104. Further, as previously noted, the Mayor may request that a board or commission remove its department head, and the body must act, one way or the other, on that request within 30 days. But the board or commission, not the Mayor, must make the final decision whether to remove the department head. Charter § 4.102(6).

The Charter does not specify who becomes department head when the position becomes vacant, for example, due to resignation, retirement, death, or incapacity to serve. Yet at all times someone must have the powers of the department head. The person who is serving in the next highest position in the department, i.e., the person whom the department head typically designates to run the department when the department head is absent, will function as department head until a new department head is appointed. See, for instance, Memorandum to San Francisco Police Commission re Designation of Assistant Chief Godown to fulfill the duties of Chief of Police, dated January 12, 2011, available on the Legal Opinions section of the City Attorney's Office's website.

E. The role of commission secretary

Subject to the budgetary and fiscal provisions of the Charter, each Charter board or commission may appoint a secretary to manage the affairs and operations of the body. Charter § 4.102(9). Generally, the secretary is responsible for: arranging board or commission meetings; preparing and distributing notices, agendas, minutes, and resolutions of the body; providing information to the public regarding the body's affairs; maintaining its files and records; and carrying out additional duties as directed by the body. The secretary is also responsible for notifying commissioners of mail, including e-mail, addressed to them, and for ensuring that they have an opportunity to read such mail if they so choose.

Usually, a board or commission secretary is appointed by and serves at the pleasure of the body. The secretary's duty is to the body as a whole, not to individual members. Accordingly, a commissioner does not have the right to demand from the secretary reports, favors, or special considerations beyond what the commissioner is entitled to as a member of the public. If a commissioner wants information that will require a significant amount of staff or secretarial time, the commissioner should bring the request to the commission to determine whether the secretary (or other staff) should pursue the task.

F. The role of the City Attorney

The City Attorney is the legal counsel for the City. In that capacity, the City Attorney's Office represents the City and its officers and employees in lawsuits; drafts and approves legislation, contracts, and other documents; and provides legal advice to the City and its officers and employees. Charter § 6.102. The City Attorney's powers and duties include the broad range of functions that attorneys customarily perform for clients in both the public and the private sectors. Likewise, the attorneys in the City Attorney's Office are subject to the same rules of professional conduct that apply to all attorneys in California.

1. The City is the client of the City Attorney's Office

The City as a whole is the client of the City Attorney. While the City can act only through individual officers and employees or constituent bodies, such as boards and commissions, those City actors are not separate clients of the City Attorney's Office. Accordingly, the Office does not have a conflict of interest in advising multiple City officers and departments, who often may have differing policy views about issues giving rise to the need for legal advice. See, e.g., *Ward v. Superior Court*, 70 Cal.App.3d 23 (1977). The Office does not have a separate attorney-client relationship with individual officers or entities who act on the City's behalf.

A Deputy City Attorney assigned as counsel to a department will typically become familiar with and often expert in laws affecting that department, and may gain an understanding of its special needs and interests. But, based on subject matter expertise, the Deputy may be assigned a task, such as drafting an ordinance for a member of the Board of Supervisors, that is at odds with the department's views or preferences. In a similar vein, a Deputy City Attorney may be responsible for drafting, for different Supervisors, different ordinances on the same subject that may have policy objectives that are sharply at odds with each other. These examples illustrate that specific components of City government are not discrete clients of the City Attorney's Office, but rather are all parts of the same client – the City.

For more information on the City as a whole being the client of the City Attorney, see the memorandum entitled "Client of the City Attorney" (December 12, 2003), available online at the City Attorney's website.

This legal principle stems from two authorities: The Charter and the California Rules of Professional Conduct. Charter section 6.102 designates the elected City Attorney as the legal representative of the City as a whole. The purpose of creating an elected City Attorney was to ensure that the City Attorney would serve the people of San Francisco rather than any particular City official. "Made appointive by either a Mayor or Chief Administrative Officer, [the City Attorney] would be exposed to the possibility of conflicting allegiances." Francis V. Keesling, *San Francisco Charter of 1931*, at p. 41 (1933). With one City Attorney representing the City as a whole, the City speaks with one voice on legal issues and avoids the chaos, as well as taxpayer expense, that would result if each City department could hire its own counsel to represent its view of the City's interests.

The California Rules of Professional Conduct also provide that the City as a whole is the client of the City Attorney. The Rules specify that when representing any organizational client, whether a corporation or a municipality, a lawyer must treat the organization as the client, acting through the highest officer, employee, or constituent part overseeing each particular issue. Cal. Rules of Prof. Cond. 1.13(a). Thus, the City Attorney generally does not have a conflict in representing multiple persons and/or bodies that are part of City government. For example, the State Bar has explained that a city attorney, asked to advise both a mayor and a city council regarding the power to adopt an ordinance where the two city actors disagreed on the legality and appropriateness of the action, does not have a conflict of interest and may advise both the mayor and the city council. Both have a role, at different times, in speaking for the city on the legislation, and neither may sue the other over the dispute. See Cal. State Bar Ethics Op. No. 2001-156.

Notwithstanding its primary role in representing the City, the City Attorney's Office may enter in other types of attorney-client relationships. First, the City Attorney, under a contractual arrangement, sometimes represents separate legal entities that are related to but not part of the City, such as the San Francisco County Transportation Authority or the Successor Agency to the San Francisco Redevelopment Agency. In addition, as required by state law, the City Attorney sometimes represents officers and employees in their individual capacities in tort lawsuits against them for acts performed in the course and scope of their City employment.

2. Attorney-client privilege

Non-public advice that the City Attorney provides to City officials acting in their official capacities is confidential and privileged. See Cal. Evid. Code §§ 952, 954; Cal. Rule of Prof. Cond. 1.6.

Only the City, acting through the body or office to whom the City Attorney directs the attorney-client communication may waive the attorney-client privilege. See Cal. Evid. Code § 912; *People ex rel. Lockyer v. Superior Court*, 83 Cal. App. 4th 387, 398 (2000); *Ward v. Superior Court*, 70 Cal.App.3d 23, 35 (1977); Cal. Rule of Prof. Cond. 1.13. When the City Attorney provides confidential advice directly to an individual City officer or employee, that individual recipient may not have the authority to waive the privilege on behalf of the City. Only the highest authorized officer, employee, body or constituency overseeing the particular engagement may properly waive privilege and should only do so after consulting with the City Attorney's Office.

When the City Attorney provides confidential advice to a board or commission, only the body to whom the City Attorney directs the communication – and not its individual members – may waive the privilege and disclose the confidential information. To effect such a waiver, the board or commission must act at a properly noticed public meeting. And, because the privilege is held by the body as an institution rather than the particular individuals constituting the body at the time it received the legal advice, the body may waive the privilege at any time, including in the future when the membership of the body has changed. But because of the sensitivity of confidential legal advice this Office provides, City commissioners should not waive the privilege without conferring with the City Attorney's Office first. If a board or commission waives the privilege, the advice becomes a matter of public record available to any member of the public upon demand. Cal. Gov't Code § 6254.5.

Failure to abide by these procedures may unduly increase the City's legal exposure. City officials who make unauthorized attempts to waive attorney-client privileged advice may also face individual liability, including monetary penalties, and potential removal from office. See Charter § 15.105; S.F. Campaign & Gov'tal Conduct Code § 3.228.

For additional guidance concerning waiver of the attorney-client privilege, consult the City Attorney's August 20, 2009 Memorandum entitled "Disclosure of Attorney-Client Privileged Advice from the City Attorney's Office" available on the City Attorney's Legal Opinions webpage.

3. Respecting confidences within City government

While the City is the client of the City Attorney, when an individual City actor requests advice and asks that the request not be shared with others, the practice of the City Attorney's Office is to honor that request to the extent possible. This practice allows each City official to obtain the legal advice the City official needs to perform organizational functions, without concern that the discussions will be shared with someone with whom the official has a policy disagreement.

This practice is based on principles of comity and prudence. The City Attorney respects the autonomy, needs, and policy views of different entities and individuals in City government and recognizes there may be disagreements among them. Further, if the City Attorney's Office freely disclosed within City government its legal advice given to subparts of the government, officials and employees would probably become less inclined to seek legal advice, which would be contrary to the best interests of the City.

But this practice of respecting confidences within City government does not entitle an officer or employee to have the City Attorney withhold that same advice from other persons or entities acting on behalf of the City. Because the City as a whole is the client of the City Attorney's Office, no breach of attorney-client confidentiality arises from sharing such communications within City government. To the contrary, one of the roles of the City Attorney's Office is to provide consistent, objective legal advice to all affected policy makers. If two City officers ask for confidential legal advice on the same question, the City Attorney will provide the same legal advice to each of them. For the same reasons, City officers and employees need to understand that they may not demand that a Deputy City Attorney not consult with other Deputy City Attorneys on a legal matter. Each Deputy City Attorney will consult with the appropriate colleagues to ensure the accuracy and consistency of the advice to be provided.

The City Attorney may share advice with multiple City officials in other limited circumstances. For example, if a member of the Board of Supervisors requests this Office to draft an ordinance that the Office believes raises serious legal questions, we will advise the member about the legal problems, but will also provide the same advice to the full Board of Supervisors and the Mayor if the ordinance is introduced. And in limited circumstances, where an official has a legally recognized "need to know," the City Attorney will have to share information obtained from one part of City government with that official.

4. Consulting outside attorneys

On occasion, City officials may wish to consult with attorneys who do not work for the City Attorney's Office. City officials may discuss City business with a person who is not a City official or employee, including a private attorney, so long as such discussions do not divulge privileged advice from the City Attorney's Office or other confidential City information that is not available to the general public. But before consulting outside attorneys, City officials should be aware of certain considerations and risks.

Discussions with persons outside the City Attorney's Office may subject the City and the commissioner to legal risk. Non-attorneys could be called to testify against the City or one

of its officials regarding the content of their discussions, and a private attorney, who owes no duty of loyalty to the City, could attempt to sue the City or pressure the City into settlement using as a roadmap the City Attorney's legal analyses and strategies that a City official inadvertently or intentionally communicates to private counsel.

Additionally, it may be in the City official's best interests to consult with the City Attorney's Office rather than rely on the advice of an outside attorney. A City official, though free to consult private counsel, is well advised to seek the advice of the City Attorney with regard to that official's public duties powers and responsibilities.

Lastly, the unauthorized disclosure of confidential communications can lead to significant penalties for the individual making the disclosure. City law prohibits City officers and employees from "willfully or knowingly disclos[ing] any confidential or privileged information, unless authorized or required by law to do so," or from using confidential or privileged information to advance the private interest of themselves or others. C&GC Code § 3.228. An official who violates these laws can be subject to administrative penalties, civil penalties of up to $5,000 per violation, and criminal penalties. *Id*. § 3.242. A violation can also subject the City official to removal from office due to official misconduct. Charter § 15.105.

5. Due process screens

At times the City Attorney will assign one group of lawyers to a City board, commission, or hearing officer that is adjudicating a matter, such as an appeal of a permit, tax assessment, or employment decision, and will assign a separate group of lawyers to the departmental staff appearing before the board, commission, or hearing officer. The two groups do not share information about the pending matter.

A screen of this sort dividing lawyers within the City Attorney's Office is not made for reasons of legal ethics; in such a circumstance, the City, on both sides of the divide, is still the client, and the City Attorney's Office's provision of advice to and representation of both entities does not pose a conflict of interest. But to protect the due process interests of persons appearing before the adjudicating board, commission, or hearing officer, the City Attorney assigns and screens off from one another separate lawyers to advise that body and to represent the City department presenting the matter to the body.

6. The City Attorney's role in providing ethics and open government advice

The preceding discussion about the role of the City Attorney is particularly relevant to legal advice this Office provides to public officials about the ethics and open meeting laws discussed in the other parts of this Guide. When City officers and employees seek advice on ethics laws or open meeting laws, the City Attorney's Office does not provide that advice to the officer or employee in that person's individual capacity, but rather in that person's capacity as a City actor performing City duties. The individual City officer or employee does not have a separate attorney-client relationship with the City Attorney's Office.

The City Attorney's Office generally does not disseminate the information a person provides when seeking assistance in complying with these laws, nor does the Office disclose advice that it has provided to individual officers or employees unless the individual consents to the disclosure. Section 67.24(b)(1)(iii) of the Sunshine Ordinance purports to require the disclosure of such advice, when provided in writing, but a state appellate court has held that the City's Charter preempts this provision. See *St. Croix v. Superior Court*, 228 Cal.App.4th 434 (2014). Accordingly, the attorney-client privilege as provided in State law for municipal governments is not limited in any way by City law.

But the Office may share that information or advice with other City officials who require that information to perform their functions. For example, if this Office advises a member of a commission not to participate in the commission's discussion on a contract because of a conflict of interest and a third party later asks the Office whether the commissioner has a conflict, we generally will decline to discuss the details of our advice. But if that commissioner proceeds to vote on the contract anyway, the City Attorney's Office will advise the full commission that the individual commissioner has a conflict of interest. The commission requires this information because the conflict of interest could invalidate the commission's actions on the contract.

The Office encourages City officials to contact us for advice before taking any action that could violate the ethics laws described in this Guide. The Office does not provide ethics advice to individual officials about activities that have already occurred, except in rare instances when the Office may advise about whether a potential conflict affected the validity of an official action or could compromise other official City business.

Finally, the Sunshine Ordinance states that the City Attorney shall not act as counsel to a City employee or custodian of a public record for purposes of denying access to the public. Admin. Code § 67.21(i). This provision does not prohibit the City Attorney from performing the Charter-mandated function of advising departments on all legal matters, including public records issues. Where the law permits or requires a department to deny a public records request, the City Attorney is duty bound under the Charter and Rules of Professional Conduct to so advise the department upon request. But this provision serves as a reminder that in performing that advisory function, the City Attorney must remain faithful to state and local open government laws and decline to defend denial of access to a public record where no plausible legal basis supports denial.

G. City contracting laws

City law requires competitive bidding on most contracts to protect against fraud, corruption, and favoritism as well as to ensure that honest bidders participate in the contracting process. See, e.g., Admin. Code § 21.1. City officers and employees must follow these processes when awarding any City contracts. While public City Attorney opinions and other City resources explain these laws in greater detail, we mention them here to stress the importance of ensuring fair processes in government contracting decisions.

VII. Operations of boards and commissions

A. Governing law

The Charter sets forth the general powers and duties of City boards and commissions in sections 4.102 through 4.104. The Charter often provides more specific powers and duties for each Charter body. Also, the Municipal Code establishes additional duties for some boards and commissions.

In addition to the local laws that govern boards and commissions, some state laws affect their operations. For example, as described in Part Three, state open meeting and public records laws, along with their local counterparts, apply to the operations of City bodies.

This section summarizes some of the principles pertaining to the operation of boards and commissions. Certain aspects of this subject are also discussed in Part Three.

B. Rules and regulations

In addition to the laws described above, a board or commission may adopt rules and regulations consistent with state and local law. Charter § 4.104(a)(1). These bodies often adopt regulations that specify the manner in which they will implement the duties given them in the Charter or in an ordinance, or clarify ambiguities in laws they are charged with enforcing.

A board or commission seeking to adopt, amend, or repeal a rule or regulation must give at least ten days' notice of a hearing regarding such a proposal. Charter § 4.104(a)(1). The board or commission should post notice of the hearing in the same manner as other meeting notices – at the Main Public Library, and on the board or commission's website. It may be a stand-alone notice, but it is also permissible to include the notice on the agenda for a meeting of the board or commission, if it is displayed prominently on the agenda and readily visible to the reader. Whatever the form of the notice, it must comply with the ten-day requirement.

A copy of the rules and regulations, once adopted, must be filed with the Clerk of the Board of Supervisors and be available at the central office of the board or commission and at the Main Public Library. Charter § 4.104(a)(1); Admin. Code §§ 8.15, 8.16.

A board or commission's rules of order or bylaws address matters relating to the operation of the body that are not addressed by the Charter, Municipal Code, or other state or local laws. Such rules may address matters such as the election, terms, and duties of officers; the establishment of the body's regular meeting time and place; the procedure for setting agendas; the procedure for consent calendars (if any); and procedures relating to the establishment and appointment of committees of the board or commission. The bylaws of many bodies provide that Robert's Rules of Order govern the commissions' operations where the bylaws do not address a matter. But, just as a commission may not adopt any rule that conflicts with state or local law, it may not rely on a provision of Robert's Rules that is inconsistent with those laws. Subject to state and local law, boards and commissions are

ultimately responsible for construing their bylaws and parliamentary issues that may arise in meetings.

C. Quorum

Generally, under the Charter, a majority of the voting members of a board or commission constitutes a quorum for the transaction of business. The majority must consist of a majority of the number of members designated by law, rather than the number of seats actually filled. Charter § 4.104(b). See also Cal. Govt. Code § 54952.2(a) (defining "meeting" by reference to majority of members); Admin. Code § 67.3(b) (same).

Many boards and commissions have seats designated for persons with certain backgrounds, characteristics or expertise. For example, seats may be divided among two or more appointing authorities; may be designated for members with ties to a neighborhood, the community, a profession, or possessing some other credential or experience; or may be reserved for particular types of individuals, such as the disabled. As a general rule, unless the law creating the body with the restricted seat expresses a contrary intent, such a body may conduct business where a restricted seat is vacant so long as the body has and retains a numerical quorum.

When a quorum of a board or commission fails to attend a scheduled meeting or the body loses a quorum because of the departure of some of its members, the only official actions that the body may take are to: (1) fix the time to which to adjourn; (2) adjourn the meeting; (3) recess the meeting; or (4) take measures to secure a quorum. See generally Cal. Govt. Code §§ 54955, 54955.1. Any other action taken by the body is void.

Once a meeting ceases, members of the board or commission may remain to discuss any matter they choose among themselves or with the members of the public who have attended. If documents are collected, notes taken, or a recording made, they may be presented at the next meeting of the board or commission so that they may become part of its record.

If there is a lack of a quorum at a meeting of a board or commission that has committees, the parent body may not reconstitute itself as a committee of the whole or as one of its committees, even if a quorum of that committee happens to be present. Such a committee meeting would require a separate notice and posting of an agenda for a meeting of that particular committee.

D. Voting

Boards or commissions may not vote by secret ballot. They must conduct all votes, other than those permitted in a closed session, publicly. Further, an absent member may not vote by proxy. See generally Charter §§ 2.104, 2.108, 4.104(a)(3), 4.104(b); Cal. Govt. Code § 54953(c); Admin. Code §§ 1.29, 67.16.

Also, once it has taken an action, the policy body must disclose the action and announce the vote of each member of the body. Cal. Govt. Code § 54953(c)(2). Similar but more specialized rules govern disclosing of actions taken and votes in closed session. With certain exceptions, members of boards or commissions must vote on every matter before them. First, as we

note elsewhere in this Guide, a member may not vote on a matter where the member's vote would violate a conflict of interest law. Second, by a majority vote of members present, a board or commission may excuse a member from voting on a matter for any reason. Charter §§ 2.104(b), 4.104(b); Admin. Code § 1.29. Also, as we discuss elsewhere in this Guide, as a general rule, if the body is hearing an adjudicative matter, such as deciding whether to grant a permit application, participation of a member who has not been present during part of the hearing and has not reviewed the evidence that was submitted during the member's absence could violate due process rights of the party before the body.

The Charter requires that the number of votes necessary to approve an action (i.e., majority, 2/3, 3/4, etc.) be based on the total number of seats, rather than the number of seats currently filled, the number of members present, or the number of members qualified to vote on the item. Charter § 4.104(b). But a board or commission may adopt a rule or bylaw that authorizes the body to decide procedural matters based on a majority vote of the members present, provided a quorum is present. Charter § 4.104(b).

E. Election of officers

As we describe above, boards or commissions generally adopt rules establishing officers and terms for the officers. Some of these bodies establish in their bylaws or rules a particular method for electing officers. Voting for officers, like all votes, must occur publicly and only after there has been an opportunity for public comment.

Where a board or commission has not adopted a specific process for electing officers, it may look to Robert's Rules of Order for guidance. Robert's Rules of Order provide several methods for electing officers. City bodies frequently use the following process. First, the presiding officer takes public comment on the agenda item. Then the presiding officer requests nominations for the office from the members of the body. No second is required under Robert's Rules of Order. When no additional nominations are offered, the presiding officer closes the nominations. The commission then votes on the nominations in the order they were received. The first candidate to receive a majority of the votes is elected to the office.

F. Vacancies on boards and commissions

By the end of each calendar year, the Board of Supervisors and the Mayor must prepare a list of all boards, commissions, and committees for which they have the power to make appointments, showing current appointees and date of appointment and qualifications for office, and the expiration dates for each term. The appointing authority must give public notice as specified by law of any unscheduled vacancy to enable citizens to pursue the opportunity to participate in and contribute to the operations of local government. Cal. Govt. Code §§ 54970-74.