

CITY COUNCIL POLICY CITY OF NATIONAL CITY

TITLE: Procedures for Disclosure of Ex Parte Contacts

POLICY # 116

ADOPTED: February 6, 2007

AMENDED: ~~October 8, 2013~~

[August 15, 2023](#)

Purpose

To establish a procedure, applicable to the City Council and all City ~~Boards, and~~ ~~Commissions, and Committees,~~ for the disclosure of ex parte contacts, and to require such disclosure as a matter of City policy.

Background

An "ex parte" contact or communication occurs when, prior to considering a matter on a public meeting agenda, a member or members of the City Council, or one of the City's ~~boards~~ ~~Boards, Commission, or Committees~~ ~~or commissions,~~ receive information, whether oral, written, or otherwise, pertaining to that matter outside the public meeting.

In making certain types of decisions, typically dealing with an individual or an applicant for a permit, and applying rules or laws to a specific set of facts, the decision-making body is said to be acting in a "quasi-judicial" capacity. e.g., i.e., similarly to a court. Examples of quasi-judicial proceedings are applications for conditional use permits and variances, and personnel disciplinary matters.

In quasi-judicial proceedings, due process requires that the decision-maker be impartial and without bias. A personal interest or involvement in the outcome of such a matter or with any participants, which is unrelated to the merits, requires disqualification of the decision-maker. As examples, appellate courts have found impermissible bias on the part of ~~C~~city ~~C~~ouncilmembers in the following cases: *Mennig v. City Council of the City of Culver City*, (~~C~~city ~~C~~ouncil became personally embroiled in controversy over ~~P~~police ~~C~~hief's termination); and *Clark v. City of Hermosa Beach*, (~~court held that a C~~ouncilmember's history of personal animosity to the applicants made him "not a disinterested, unbiased decision-maker").

Considerations of due process in quasi-judicial proceedings also require that the decision not be made based upon information received outside of the administrative hearing. This concept is often referred to as the prohibition against ex parte contacts. For example, in *Safeway Stores v. City of Burlingame*, the court held that opponents of a proposed parking district did not receive a fair hearing where members of a ~~city-City C~~ouncil held conversations with affected property owners outside the hearing and made trips to the area for the express purpose of making determinations of disputed facts. Similarly, in *Jeffrey v. City of Salinas*, a ~~C~~ouncilman talked with property owners concerning the advantages of a parking district and made a personal visit to the area. The court concluded that the ~~C~~ouncilman's¹ vote should not be counted.

~~Fortunately, i~~n the event an ex parte contact occurs, disqualification of the official making the contact can be avoided and "cured" by disclosure of the contact at the time of the ~~P~~ublic

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~~H~~earing. (*Jeffrey v. City of Salinas*). ~~Therefore, if an ex parte contact occurs, it is of the utmost importance that the contact be disclosed.~~

Policy

1. Members of the City Council and of the City's ~~B~~boards, ~~-and-e~~Commissions, and Committees shall keep a written record of all ex parte contacts, as that term is explained in this Policy.
2. At the time an agenda item is called, and prior to any discussion of the item, any member of the City Council or of a ~~B~~board, ~~-or-C~~ommission, or Committee who has received an ex parte contact pertaining to that item shall disclose the occurrence of that ex parte contact on the public record.
3. City staff shall endeavor to inform all persons intending to appear before the City Council or any of the City's ~~B~~boards, ~~-C-or-e~~ommissions, or Committees of this Policy.
4. Under no circumstances shall a person make ex parte contacts with a majority of the members of the City Council or of the City's ~~B~~boards, ~~-C-or-e~~ommissions, or Committees in order to develop a consensus or a collective concurrence as to an item to be considered and/or acted upon by the City Council, ~~B~~board, ~~-or-e~~Commission, or Committee. Such conduct ~~is violative of~~violates the Ralph M. Brown Act ~~or~~ **SB 1439**.

Related Policy References:

None.

Prior Policy Amendments:

~~None~~

February 6, 2007 (Resolution No. 2007-19) Established Policy

June 11, 2013 (Revised – No Resolution – Refer to Meeting Minutes)

October 8, 2013 (Resolution No. 2013-147)