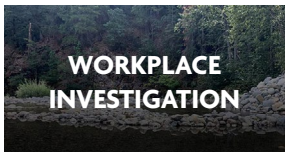
prentice|LONG PC

SUMMER 2023

NEWSLETTER

Prentice|LONG PC - a law firm founded on the principle of service.



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SPRING INTO SUMMER

We just finished a historical winter, cold and wet and welcome except for the flooding. But as usual, it seems that a long winter turns into a short spring and then a long summer. But the wet winter is now producing a bloom which we have not seen for a few seasons. The flowers are everywhere and promise a renewal.

PLPC, like the flowers, is growing again. The firm has added a new attorney, Rhetta Vander Ploeg, who brings a wealth of land use experience after years as a deputy county counsel and county counsel. We are very excited for the opportunity to work with Rhetta. In addition, we have added a few new clients. The City of Willows has selected PLPC's Carolyn Walker as their new City Attorney. The County of San Benito has retained the firm to take on an extensive public records request and companion litigation. All of us at PLPC are grateful for the trust placed in us by these entities.

We also want to highlight the stellar work of attorney Scott McLeran and Partner Margaret Long in obtaining a favorable appellate decision in the Third DCA. In a published decision the court ruled In Re L.J. (2023) 89 Cal.App.5th 741 that the juvenile court correctly rejected evidence consisting of a recording of a child without permission of the child's attorney. The firm is proud of the work of these two attorneys in representing our county client.

We hope you have a wonderful Spring into Summer!

Development Impact Fees, The Mitigation Fee Act, and Fee Studies

By Sean Cameron, Senior Associate

Housing and the need for increased development of housing has taken center stage in California over the last decade. Local governments have been urged and prodded to increase the available housing in the state and, in response, local governments have searched for ways to facilitate and pay for this development. One of the ways local governments have sought to facilitate such development and pay for the underlying infrastructure necessary for these developments has been development impact fees.

As background, Proposition 13, passed in 1978, led to a general decline in local government revenues and, as a result, local governments turned to these development impact fees to help address these decreased revenues and facilitate the growth at the same time. Development impact fees are not a tax, but are an exaction specifically related to the cost of the service provided by the local government for the new development, and are typically less onerous for the local government to impose.

With this increased reliance on development impact fees also came increased litigation and, eventually, legislation with the passage of the Mitigation Fee Act. (Gov. Code § 66000, et seq.) The Mitigation Fee Act codified certain requirements which had been established by the courts; namely, that there must be a reasonable relationship between the fee's use and the type of development project for which the fee was being imposed (i.e., there must be a "nexus" between the impact fee being imposed and the impact being created by the development). There cannot be an extraneous connection between the two. For example, the local government cannot impose an impact fee to help pay for existing deficiencies in the local government's infrastructure.

One of the main mechanisms to establish this nexus has been to prepare a nexus study, and many local governments already prepared these types of studies when looking to put an impact fee in place. It was typically the prudent approach to do so, even if not statutorily required.

AB 602

Now, with the adoption of AB 602, the nexus study has now been codified and made part of the statutory requirements in order to impose such a fee.

AB 602 added Government Code § 66016.5 to the Mitigation Fee Act and specifies that a nexus study must be performed, and also added specific requirements related to the nexus study. These requirements include the following:

- The nexus study is required to identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is appropriate.
- The nexus study must include information that supports the local government's actions, including the purpose of the fee, the use to which the fee is being put, and the reasonable relationship between the fee's use and the development project.
- If a nexus study supports the increase of an existing fee, the local government must review the assumptions of the nexus study supporting the original fee and evaluate the amount of fees collected under the original fee.
- All nexus studies must be adopted at a public hearing with at least 30 days' prior written notice.
- Nexus studies must be updated at least every eight (8) years.

SPOTLIGHT

KELLIE HAIGH

Legal Assistant

Prentice|LONG PC is pleased to shine a spotlight on Legal Assistant Kellie Haigh, who joined the Firm in the fall of 2021. Prior to joining our team, Kellie worked at Trinity County's Child Welfare Services for seven years.

Since beginning with PLPC, Kellie has taken on organizing the CPS files of Trinity, Lassen, Modoc and Sierra Counties electronically and created a better flowing system. She details many Shasta Dependency functions: keeping our contract attorney's informed of hearing dates, collecting statistic sheets for their cases and hours, and assisting attorneys when they are scheduled for appearances. Kellie works to respond to Public Records Act requests in a timely manner and assists with draft responses for attorney review. When asked what Kellie likes about working at PLPC, she stated, "*Our crew! -And I have been interested in the legal side of Child Protective Services since working in Trinity County.*"

When not working, Kellie treasures time spent with her children and grandchildren, workouts at the gym and her home Peloton, hiking and riding mules. *Prentice*|LONG PC would sincerely like to thank Kellie for her dedication and incredible work product! We are incredibly grateful she is a part of our team as she works to serve our many clients throughout the North State.

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BROWN ACT REMINDERS: Who can be in Closed Session?

By Margaret Long, Partner

Recently, there have been many questions raised as to who can go into closed session, and luckily, the Attorney General (AG) has given us good direction.

In 2003, the AG opined that closed sessions should only include those members of the legislative body and support staff necessary to conduct business regarding the specific item (e.g., legal counsel, consultants, real estate or labor negotiators, etc.). Op.Cal.Atty.Gen. No. 03-604 (2003). This opinion, however, left questions as to which support staff are "necessary to conduct business."

On May 26, 2022, the AG issued Opinion No. 21-1102 (2022), providing more insight into who is allowed. The opinion stated:

> **Legislative support staff of an individual city councilmember generally may not attend closed sessions unless the staff member has an "official or essential role" to play.**

The AG opined that legislative support staff of individual city councilmembers generally do not have an "official or essential role" to play in closed session. In reaching this conclusion, the AG considered the following proposed roles for staff of individual councilmembers in closed session:

1) to administer the meeting
2) to take notes, or
3) to provide their councilmember with relevant information because staff may have unique knowledge or information about a particular matter.

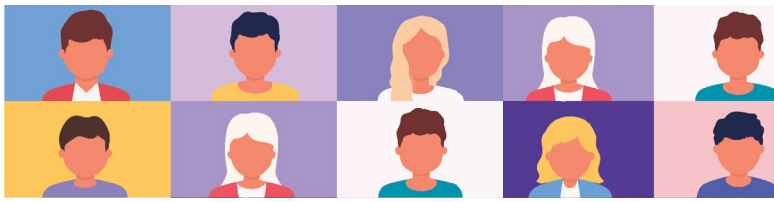
The AG concluded that closed session exceptions must be interpreted narrowly, and these roles are generally not "official" or "essential" and were thus not permitted.

Whether a particular individual may attend closed session will always depend on the specific context, and there may be a situation where a public entity's staff could be an have specialized knowledge relevant to a particular closed session matter. For example, a City Manager, General Manager, or County Administrative Officer will likely have an "official or essential role" in the closed session.

This AG opinion can serve as a reminder to reassess who attends your legislative body's closed sessions and make sure they are essential to being there.

REMOTE PARTICIPATION IN LOCAL LEGISLATIVE BODY MEETINGS: Is Your Agency in Compliance?

By Caitlin Smith, Associate



AB 2449

With all the adjustments that local governments have needed to make to continue operating during the COVID crisis, uncertainty has arisen regarding which changes are permanent as opposed to accommodations that are no longer available. While remote appearances became more common during the pandemic, it is important to stay abreast of the current rules applicable to local legislative bodies to avoid potential Brown Act violations. On September 13, 2022, Governor Newsom signed Assembly Bill 2449 into law, restricting the availability of remote appearances before local legislative bodies. Read on to learn more about the modified rules and when they will sunset.

AB 2449 temporarily supplants the traditional Brown Act and AB 361 teleconferencing rules to provide more flexibility as local governments have navigated the challenges of operating during the pandemic. Local legislative body members may participate remotely, with permission from the legislative body, a maximum of two times per calendar year for "just cause." Just cause means a childcare of caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, a contagious illness that prevents them participating in person, a need related to a physical or mental disability, and travel while on official business of the legislative body or another state or local agency. A member must notify the body at the earliest opportunity possible and provide a general description of the reason they need to appear remotely. This request may be made at the start of a regular meeting.

Members may also participate remotely due to emergency circumstances, defined as a physical or family medical emergency that prevents a member from attending in person. The legislative body must request a general description of the circumstances, which may not exceed 20 words, without requesting the disclosure of any medical diagnosis or disability or any personal medical information that is already exempt under the law. The member must request to participate remotely as soon as possible and make a separate request for each meeting in which they seek to appear remotely. The legislative body must act on the request at the earliest opportunity, including at the beginning of the meeting if needed. Members may appear remotely due to emergency circumstances for no more than three consecutive months, or 20 percent of the regular meetings within a calendar year, and no more than two meetings if the body regularly meets fewer than ten times per calendar year.

Unlike the traditional Brown Act rules, there is no requirement that a member's private location be provided to the public pursuant to these provisions if at least a quorum of the legislative body participates from a singular location that has been identified on the agenda. The location of the physical meeting needs to be identified on the agenda and must remain open to the public. The legislative body must also provide either a two-way audiovisual platform or a two-way telephonic service, as well as a live webcasting of the meeting to allow the public to remotely hear and visually observe and participate in the meeting.

In addition to these rules, under both the just cause and emergency provisions, the member must publicly disclose at the meeting before any action is taken whether any other individuals 18 years or older are present in the room at the remote location with the member, and the general nature of their relationship. The member must participate through both audio and visual technology. Finally, the legislative body must implement a procedure for swiftly resolving requests for reasonable accommodations for individuals with disabilities consistent with the ADA.

Keep in mind that AB 2449's rules regarding remote participation in local legislative body meetings will remain in effect only through 2025. Thereafter, the traditional Brown Act rules will once again apply, absent further legislation. Please contact our firm if you have any questions about these rules; we are happy to assist your agency to ensure compliance with the shifting landscape of remote appearances.

MORE NEWS

We continue to update our website, click *here* to see further news and updates from *Prentice*|LONG PC.