Let's *Ex Parte*! The Limits and Disclosure Requirements of *Ex Parte* Contacts in the Public Hearing Context

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Notes:

Let's Ex Parte! The Limits and Disclosure Requirements of Ex Parte Communications in the Public Hearing Context

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This paper examines California law governing whether, when, and how city decisionmakers must refrain from or disclose *ex parte* communications.

INTRODUCTION

Ex parte is a Latin phrase that literally means "from one party."[1] Generally speaking, an *ex parte* communication is any material or substantive oral or written communication with a decisionmaker that is relevant to the merits of an adjudicatory proceeding, and which takes place outside of a noticed proceeding open to all parties to the matter.[2]

Ex parte communications to a judicial officer or quasi-judicial decisionmaker raise a number of serious legal concerns. As a result, *ex parte* communications are restricted, and even prohibited, in some circumstances.

The doctrinal foundation for restricting *ex* parte communications rests upon fundamental fairness concerns flowing from the Magna Carta,[3] English common law[4], American common law requiring "fair procedures,"[5] and the Fifth and Fourteenth Amendments which provide that no person shall be "deprived of life,

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[1] In the legal context, *ex parte* means "on one side only; by or for one party; done for, in behalf of, or on the application of one party only." (Black's Law Dict. (6th ed. 1990) p. 76, col. 1.)

[2] See, e.g., Gov. Code, § 11430.10 [California Administrative Procedures Act]; 12 C.F.R. § 263.9 [Federal Reserve Uniform Rules of Practice and Procedure].

[3] *Duncan v. State of La.* (1968) 391 U.S. 145, 169 (Conc. Opn. Of Black, J.) ["'The origin of the Due Process Clause is Chapter 39 of Magna Carta which declares that "No free man shall be taken, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land."'"

[4] ". . . in determining what due process of law is, under the Fifth or Fourteenth Amendment, the court must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, which were shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." *Tumey v. State of Ohio* (1927) 273 U.S. 510, 523.

[5] *Pinsker v. Pacific Coast Society of Orthodontists* (1974) 12 Cal.3d 541, 555

liberty, or property, without due process of law."[6] And, "A fair trial in a fair tribunal is a basic requirement of due process."[7] The law relating to *ex parte* communications has grown from concerns about fundamental fairness.

Two precepts underlie *ex parte* contact fairness and due process considerations: The need for judicial impartiality and the truth-seeking benefits of an adversarial system.

Judicial impartiality is a cornerstone of American justice. In *Tumey v. State of Ohio* (1927) 273 U.S. 510, the United States Supreme Court had no trouble finding a due process violation when an Ohio criminal statute authorized a mayor to hear certain cases in which he or she had a direct pecuniary interest due to a local ordinance that compensated the mayor with fees collected from convicted defendants. While there was no evidence of actual bias in *Tumey*, the Court concluded that any ". . . procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict . . ." denies due process because the judge's impartiality is put into question.[8] Certainly *ex parte* contacts present a "possible temptation" that might impugn a decisionmaker's impartiality.[9]

Adversarial systems work to ensure discovery of the truth. The United States Supreme Court points out that: "[t]he system assumes that adversarial testing will

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[6] U.S. Const., 5th and 14th Amends.; see also Cal. Const., art. I, § 7 [state clause's prescriptions as substantially overlapping those of the federal Constitution] *Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2013) 57 Cal.4th 197, 212; Code Civ. Proc., § 1094.5 [*Vollstedt v. City of Stockton* (1990) 220 Cal.App.3d 265, 273.

[7] *In re Murchison* (1955) 349 U.S. 133, 136; *Withrow v. Larkin* (1975) 421 U.S. 35, 46; *Howitt v. Superior Court* (1992) 3 Cal.App.4th 1575, 1581. In this context, we are referring to procedural due process. (See *Mathews v. Eldridge* (1976) 424 U.S. 319.

[8] *Id.*, at p. 532.

[9] See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2006) 40 Cal.4th 1, 5; "One fairness principle directs that in adjudicative matters, one adversary should not be permitted to bend the ear of the ultimate decision maker or the decision maker's advisors in private."

ultimately advance the public interest in truth and fairness."[10] Because *ex parte* communications are not recorded, they cannot be rebutted by the non-present party or given adequate appellate review.[11] The Third Circuit Court of Appeals applied this principle to conclude that:

> ". . . *ex parte* communications run contrary to our adversarial trial system. The adversary process plays an indispensable role in our system of justice because a debate between adversaries is often essential to the truth-seeking function of trials."[12]

In California, earlier cases echoed the adversarial truth-seeking interest behind controlling *ex parte* communications in administrative proceedings:

> "Administrative tribunals exercising quasi judicial powers which are required to make a determination after a hearing cannot act on their own information. Nothing may be treated as evidence which has not been introduced as such, inasmuch as a hearing requires that the party be apprised of the evidence against him in order that he may refute, test and explain it."[13]

The more modern California view does not compel a purely adversarial model for administrative decision making, and hence casts some doubt on the continuing value of the "truth-seeking" rationale for controlling *ex parte* communications:

> ". . . these decisions and numerous others stand for the proposition that the pure adversary model is not entitled to constitutionally enshrined exclusivity as the means for resolving disputes in '[t]he incredible variety of administrative mechanisms [utilized] in this country....' The mere fact that the decision-maker or its staff is a more active participant in the factfinding process—similar to the

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[10] *Polk County v. Dodson* (1981) 454 U.S. 312, 318.

[11] *In re Kensington Intern. Ltd.* (3d Cir. 2004) 368 F.3d 289, 310.

[12] *Ibid.*

[13] *La Prade v. Department of Water and Power of City of Los Angeles* (1945) 27 Cal.2d 47, 51–52.

> judge in European civil law systems—will not render an administrative procedure unconstitutional."[14]

Indeed, legislative bodies now have considerable constitutional leeway to craft alternative decisionmaking systems which may not be adversarial:

> """[l]egislatures and agencies have significant comparative advantages over courts in identifying and measuring the many costs and benefits of alternative decisionmaking procedures. Thus, while it is imperative that courts retain the power to compel agencies to use decisionmaking procedures that provide a constitutionally adequate level of protection ..., judges should be cautious in exercising that power. In the vast bulk of circumstances, the procedures chosen by the legislature or by the agency are likely to be based on application of a *Mathews*-type cost-benefit test by an institution positioned better than a court to identify and quantify social costs and benefits."""[15]

So, while some courts focus their *ex parte* due process concerns on the need for confrontation and rebuttal by the adverse parties, judicial impartiality is a more persistent rationale, particularly in non-adversarial systems.

Finally, the California Supreme Court recently summarized the basic requirements of due process in California administrative decisionmaking, again focusing upon the need for impartiality:

> "'The essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." 'The opportunity to be heard must be afforded 'at a meaningful time and in a meaningful manner.' To ensure that the opportunity is meaningful, the United States Supreme Court and this court have identified some aspects of due

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[14] *Howitt v. Superior Court* (1992) 3 Cal.App.4th 1575, 1581 [citing *Withrow v. Larkin* (1975) 421 U.S. 35].

[15] *Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2013) 57 Cal.4th 197, 230; quoting *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 288 and referring to the seminal procedural due process analysis in *Mathews v. Eldridge* (1976) 424 U.S. 319, 348.

> process as irreducible minimums. For example, whenever 'due process requires a hearing, the adjudicator must be impartial.'
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> Beyond these broad outlines, however, the precise dictates of due process are flexible and vary according to context."[16]

In sum, the simple human need for fairness, reflected in western jurisprudence since at least 1215 when it was pronounced in the *Magna Carta*, underlies the legal concerns about *ex parte* communications during administrative decisionmaking processes. Fairness certainly requires an impartial decisionmaker, and often the appearance of impartiality can become as important a factor in the legal review of fairness as actual impartiality. Fairness may also require the opportunity for adversarial examination of evidence in some, if not most, administrative decisionmaking systems.

CALIFORNIA LAW ON EX PARTE COMMUNICATIONS

In 1945, the California Supreme Court determined that due process does not allow using evidence gathered *ex parte* in an administrative hearing. In *La Prade v. Department of Water and Power of City of Los Angeles* (1945) 27 Cal.2d 47, the Court considered a civil service matter in which an employee was discharged upon the basis of an investigative report which was offered into evidence after the hearing. The divided 4-3 Court held:

> "Administrative tribunals exercising quasi judicial powers which are required to make a determination after a hearing cannot act on their own information. Nothing may be treated as evidence which has not been introduced as such, inasmuch as a hearing requires that the party be apprised of the evidence against him in order that he may refute, test and explain it. And the action of such a tribunal based upon the report of an investigator, assuming it is competent evidence, when forming the basis for the tribunal's determination, is a denial of a hearing, unless it is introduced into evidence and the accused is given an opportunity to cross-examine the maker thereof and refute it."[17] [18]

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[16] *Id., at p.* 212.

[17] *Id.*, at pp. 51–52; *La Prade* relied heavily upon *Morgan v. U.S.* (1936) 298 U.S. 468, 480 which discussed a federal livestock ratemaking statute: "That duty is

By 1950, a unanimous California Supreme Court squarely addressed the problem of individual *ex parte* contacts by decisionmakers. In *English v. City of Long Beach* (1950) 35 Cal.2d 155, the Court considered a Long Beach police officer who had been terminated due to a disability. Members of the civil service board:

> ". . . took evidence outside the hearing and outside the presence of English or his attorney. Some of them talked to one of the examining doctors, and one member questioned his personal physician concerning the relation of English's asserted disability to the performance of the duties of his position. The information thus received was imparted to other board members, and was considered and relied upon by them in arriving at their decision."[19]

The Court noted that: "[t]he principal question is whether English was deprived of a fair trial."[20] And:

> "The action of such an administrative board exercising adjudicatory functions when based upon information of which the parties were not apprised and which they had no opportunity to controvert amounts to a denial of a hearing." . . .
>
> A contrary conclusion would be tantamount to requiring a hearing in form but not in substance, for the right of a hearing before an administrative tribunal would be meaningless if the tribunal were permitted to base its termination upon information received without the knowledge of the parties. A hearing requires that the party be apprised of the evidence against him so that he may have an opportunity to refute, test, and explain it, and the requirement of a

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widely different from ordinary executive action. It is a duty which carries with it fundamental procedural requirements. There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. Nothing can be treated as evidence which is not introduced as such."

[18] Despite *Morgan* and its progeny, Congress did not restrict *ex parte* administrative communications in formal rulemaking and administrative adjudications until 1976. (*Due Process and Ex Parte Contacts in Informal Rulemaking* (1979) 89 Yale L.J. 194, 197.)

[19] *Id.*, at p. 157.

[20] *Id.*, at p. 158.

> hearing necessarily contemplates a decision in light of the evidence there introduced."[21]

Again, in a case involving a city manager's decision to demote a city employee based in part upon evidence received *ex parte*, the Court of Appeal emphasized that:

> "The fact that Personnel Director Fong may have presented the City Manager with substantial evidence supporting his decision not to follow the recommendations of the Commission did not cure the error caused by the Commission's failure to transmit a statement of facts to the City Manager. Rather it led to further abuse of appellant's right to a fair hearing. A decision maker such as the City Manager, who is required by city ordinance to make a determination after a requested hearing cannot act upon his own information, and nothing can be considered as evidence that was not introduced at a hearing of which petitioner had notice or at which he was present."[22]

On the other hand, it is also clear that some kinds of *ex parte* evidence do not raise due process concerns. In 1957, the Court of Appeal in *Flagstad v. City of San Mateo* (1957) 156 Cal.App.2d 138 held that *ex parte* evidence which is *disclosed* before a hearing does not violate due process:

> "Plaintiff complains that defendants rely upon information acquired by the council members other than at the hearing. . . . Here the mayor stated at the outset of the hearing that the councilmen had 'had a look' at the property. Members of the council asked questions and expressed views at the public hearing which quite fully revealed their investigation. There was no concealment. Those protesting the variance were free to challenge any views so expressed, and took frequent advantage of this opportunity."[23]

And, more recently, the Court of Appeal has held that *ex parte* information is evidentiary only if it is "considered by . . . [the decisionmaker] . . . for its bearing

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[21] *Id.*, at p. 158-59.

[22] *Vollstedt v. City of Stockton* (1990) 220 Cal.App.3d 265, 274–75.

[23] *Id.*, at p. 141.

on the issues resolved by the findings in his proposed decision."[24] So, non-substantive communications that do not bear on the ultimate decision are consistent with due process requirements.

Surprisingly, there is no California statutory law restricting *ex parte* communications with city decisionmakers. At the state level, the California Administrative Procedures Act expressly forbids *ex parte* communications.[25] Likewise, the California Coastal Act defines and requires disclosure of *ex parte* communications.[26] On the other hand, the Porter-Cologne Water Quality Control Act was amended in 2012 to exempt certain water board proceedings from the *ex parte* communication restrictions of the California Administrative Procedures Act.[27] Many other state agencies have specialized *ex parte* communication rules.[28] These state statutes provide some value in determining due process minima.

WHETHER, WHEN, AND HOW TO ADDRESS EX PARTE COMMUNICATIONS

Due to the absence of statutory guidance, we must synthesize the case law to determine whether, when, and how to address *ex parte* communications. Mindful that fundamental fairness is our guide, and that *Mathews v. Eldridge* (1976) 424 U.S. 319 remains vital in providing a procedural due process framework,[29] several relatively clear principles emerge.

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[24] *Mathew Zaheri Corp. v. New Motor Vehicle Bd.* (1997) 55 Cal.App.4th 1305, 1314.

[25] "While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication." (Gov. Code, § 11430.10(a); Gov. Code, § 11425.10.)

[26] Pub. Resources Code, §§ 30322 and 30324.

[27] Wat. Code, § 13287 (Stats. 2012, ch. 551.)

[28] See, e.g.,Pub. Resources Code, § 663.2 [State Mining and Geology Board]; Bus. & Prof. Code, § 19872 [Gambling Control Commission].

[29] " . . . identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be

1. Procedural Due Process Relates Only to Adjudicatory Proceedings.

Ex parte communications are a concern only in adjudicatory or quasi-judicial decisionmaking matters, as opposed to purely legislative proceedings. While many factors go into to determining whether a matter is quasi-judicial, the typical characteristics are three-fold: 1) Does the matter require advance notice and a hearing; 2) must the decision be predicated upon specific findings of fact; 3) does the decision apply existing law to specific facts to make an individualized determination of a specific person's rights or interests in life, liberty or property.[30] [31] It is a good practice to identify quasi-judicial matters on meeting agendas so that the public, parties and decisionmakers are aware of due process concerns that might limit *ex parte* communications.

2. *Ex Parte* Communication is Evidence-Gathering That Takes Place Outside the Formal Proceedings.

Ex parte communications include oral and written information, but can also include any other sensory communication, such as visual or auditory information obtained during a site visit.[32]

3. *Ex Parte* Communications Must Be Substantive and Relevant to the Matter in Order to Impact Due Process Rights.

Mere casual or non-substantive communications do not violate the due process rights of non-present parties to a quasi-judicial matter.[33] This limitation is

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affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge* (1976) 424 U.S. 319, 335.

[30] See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.

[31] See *Franchise Tax Bd. v. Superior Court in and for Sacramento County* (1950) 36 Cal.2d 538, 549 ["There is no constitutional requirement for any hearing in a quasi-legislative proceeding."]

[32] *Flagstad v. City of San Mateo* (1957) 156 Cal.App.2d 138.

[33] *Mathew Zaheri Corp. v. New Motor Vehicle Bd.* (1997) 55 Cal.App.4th 1305.

important to local elected officials because they are often expected to be available so that concerns or complaints may be expressed by their constituents. Thus, the mere expression of support or opposition to a particular decision does not raise due process concerns when it is not accompanied by substantial factual information that influences the decisionmaker's analyses or conclusions.

4. Substantive *Ex Parte* Communications Which are Disclosed Prior to a Quasi-Judicial Hearing Do Not Raise Due Process Concerns.

California case law is clear that pre-hearing disclosure of *ex parte* communications adequately protects the due process interests of the non-present parties to the matter.[34] The disclosure should be complete, detailed and as early in the process as is reasonable. Some agencies require written disclosure.[35]

5. *Ex Parte* Communications After a Quasi-Judicial Hearing Must Be Prohibited If the Decision is Not Final.

A corollary to the due process protection provided by pre-hearing disclosure of *ex parte* communications is that there must be no *ex parte* communications during the interstitial period between closure of a hearing and a final decision. This arises most often when a city decisionmaker closes a quasi-judicial hearing and directs the preparation of written findings by staff. "Lobbying" by parties to the matter or other persons must be rejected. Many cities have differing approaches to *ex parte* communications that arise as a result of public testimony rights under the Brown Act.[36] A simple admonition on the record advising the decisionmakers not to consider Brown Act-required public comment should be a sufficient balance between the due process and First Amendment interests at stake.

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[34] *Flagstad v. City of San Mateo* (1957) 156 Cal.App.2d 138.

[35] The California Coastal Commission, for example, requires use of "standard disclosure forms." (Pub. Resources Code, § 30324.)

[36] Gov. Code, 54954.3. See also, Gov. Code, § 54954.2(a)(2) ["No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3."]

EXAMPLES OF CITY COUNCIL EX PARTE CONTACT RULES

Santa Barbara City Council Procedures (2015)

4.14.4. Identification of Quasi-Judicial Matters on the Agenda. The City Administrator/City Clerk, in conjunction with the City Attorney, will identify agenda items involving quasi-judicial decisions on the Council agenda. This identification is intended to inform the Council, interested parties, and the public that this policy will apply to the item, but failure to identify an item shall not be cause for a continuance.

4.14.5. Policy to Avoid Ex Parte Contacts. Ex parte contacts are substantive oral or individual written communications concerning quasi-judicial matters that occur outside of noticed public hearings. City Councilmembers should avoid and discourage ex parte contacts if at all possible.

4.14.6. Disclosure of Ex Parte Contacts. If an ex parte contact does occur (which it might because the public has a hard time understanding that on quasi-judicial matters the Council's decision making is confined to the hearing), the Councilmember must disclose the contact and the substance of the information communicated on the record at the start of the public hearing. This disclosure allows people who may have a different point of view or contrary evidence to make their points during the hearing in response to the information you may have obtained through the ex parte contact. The disclosure might go something like this: "I was approached by the appellant last week and they told me that neighborhood traffic is much greater than the City's baseline assumptions."

4.14.7. Ex Parte Contacts After the Hearing. Ex parte contacts after a public hearing is closed and before a final decision is rendered are prohibited because there is no opportunity for rebuttal.

Berkeley Rules of Procedure and Order (2016)

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

Berkeley Land Use Resolution (2004)

3. Council members and Commissioners may receive information relevant to the land use decision by contacts with the parties, the public or staff and are not confined to reading the record or hearing presentations at public hearings.

4. Where information of a specific nature is gathered by a member of the City Council or a board or commission, through contacts outside the record, and the information is not already in the record, the member shall, to the extent feasible, keep contemporaneous notes of the substance of the contact and shall disclose the contact and its substance on the record prior to the commencement of the hearing to which such contact relates. Where the information is received during the pendency of a hearing the matter shall be disclosed prior to completion of the hearing and the parties and public shall have an opportunity to respond if the matter is substantially new information.

5. Where such contacts were made and information gathered prior to a pending decision by the Council or any decision making body whether or not to grant a hearing, the substance of the information shall be reported to the secretary of the relevant body as soon as it is made. The secretary shall maintain a file on such disclosed contacts for review by members of the public.

Palo Alto City Council Procedures and Protocols Handbook (2013)

2) Restrictions on Council Communications Outside of Quasi-Judicial and Planned Community Zone Hearings

It is the policy of the Council to discourage the gathering and submission of information by Council Members outside of any noticed public meeting, prior to final recommendations by the Architectural Review Board or Planning &

Transportation Commission. The following procedural guidelines are intended to implement this policy, but shall not be construed to create any remedy or right of action.

3) Identification of Quasi-Judicial/Planned Community Matters

The City Attorney, in conjunction with the City Clerk and City Manager, will identify agenda items involving quasi-judicial/planned community decisions on both the tentative and regular Council agendas. This identification is intended to inform the Council, interested parties, and the public that this policy will apply to the item.

4) Council to Track Contacts

Council Members will use their best efforts to track contacts pertaining to such identified quasi-judicial/planned community decision items. Contacts include conversations, meetings, site visits, mailings, or presentations during which substantial factual information about the item is gathered by or submitted to the Council Member.

5) Disclosure

When the item is presented to the Council for hearing, Council Members will disclose any contacts which have significantly influenced their preliminary views or opinions about the item. The disclosure may be oral or written, and should explain the substance of the contact so that other Council Members, interested parties, and the public will have an opportunity to become apprised of the factors influencing the Council's decision and to attempt to controvert or rebut any such factor during the hearing. Disclosure alone will not be deemed sufficient basis for a request to continue the item. A contact or the disclosure of a contact shall not be deemed grounds for disqualification of a Council Member from participation in a quasi-judicial/planned community decision unless the Council Member determines that the nature of the contact is such that it is not possible for the Council Member to reach an impartial decision on the item.

6) No Contacts after Hearings

Following closure of the hearing, and prior to a final decision, Council Members will refrain from any contacts pertaining to the item, other than clarifying questions directed to City staff.

Santa Monica Rules of Conduct for City Council Meetings

RULE 14. DISCLOSURE FOR QUASI JUDICIAL MATTERS.

On quasi-judicial matters, Councilmembers shall verbally disclose off the record contacts relating to the item, after the item is called and before Council consideration of the matter. Disclosure shall include the identity of an individual(s) with whom the Councilmember had contact, and the nature of the contact.

Mountain View City Council Code of Conduct (2015)

4.7 Quasi-Judicial Role/Ex Parte Contacts

The City Council has a number of roles. It legislates and makes administrative and executive decisions. The Council also acts in a quasi-judicial capacity or "like a judge" when it rules on various permits, licenses, and land use entitlements.

In this last capacity, quasi-judicial, the Council holds a hearing, takes evidence, determines what the evidence shows, and exercises its discretion in applying the facts to the law shown by the evidence. It is to these proceedings that the rule relative to ex parte contacts applies.

4.7.1 Ex Parte Contacts/Fair Hearings. The Council shall refrain from receiving information and evidence on any quasi-judicial matter while such matter is pending before the City Council or any agency, board, or commission thereof, except at the public hearing.

As an elected official, it is often impossible to avoid such contacts and exposure to information. Therefore, if any member is exposed to information or evidence about a pending matter outside of the public hearing, through contacts by constituents, the applicant or through site visits, the member shall disclose all such information and/or evidence acquired from such contacts, which is not otherwise included in the written or oral staff report, during the public hearing, and before the public comments period is opened.

Matters are "pending" when an application has been filed. Information and evidence gained by members via their attendance at noticed public hearings before subordinate boards and commissions are not subject to this rule.

Thousand Oaks Municipal Code (1984)

Sec. 1-10.08. Ex parte communications.

No official or employee shall encourage, make or accept any ex parte or other unilateral application or communication that excludes the interests of other parties in a matter under consideration when such application or communication is designed to influence the official decision or conduct of the official or other officials, employees or agencies in order to obtain a more favored treatment or special consideration to advance the personal or private interests of him/herself or others. The purpose of this provision is to guarantee that all interested parties to any matter shall have equal opportunity to express and represent their interests.

Any written ex parte communication received by an official or employee in matters where all interested parties should have an equal opportunity for a hearing shall be made a part of the record by the recipient.

Any oral ex parte communication received under such conditions should be written down in substance by the recipient and also be made a part of the record.

A communication concerning only the status of a pending matter shall not be regarded as an ex parte communication.

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