



ELECTED OFFICIALS

**TOOLS FOR NAVIGATING ELECTED OFFICIALS WHO WON'T
FOLLOW THE RULES**

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ELECTED CITY POSITIONS

- Councilmember
- Mayor
- City Clerk
- City Treasurer
- City Attorney

ARE ELECTED OFFICIALS “EMPLOYEES”?

Sometimes

ELECTED OFFICIALS ARE EMPLOYEES UNDER THE FOLLOWING SITUATIONS

- Tax Withholdings (26 U.S.C. section 3401(c))
- Worker's Compensation Benefits (*Gonzalez v. Workers' Compensation Appeal Boards* (1996) 54 Cal.Rpt.2d 308).
- Workplace Violence Safety Act (Code of Civil Procedure section 527.8(b)(3))

ELECTED OFFICIALS ARE NOT EMPLOYEES UNDER THE FOLLOWING SITUATIONS

- Brown Act
- Civil Service Requirements
- Employee Benefits (but can elect to give themselves coverage). (Government Code section 53201)
- Fair Labor Standard Act (29 CFR § 553.12)

MUST ELECTED OFFICIALS FOLLOW PERSONNEL
RULES?

Sometimes

WHEN YES. . .

- Harassment/Bullying
- Ethics
- Nepotism
- Retaliations
- Brown Act/Public Records

MAKE IT CLEAR IN POLICY . . .

Some jurisdictions have separate policies for Board members, such as governance manual:

“This code of ethics expresses the standards of ethical conduct expected for members of the agency governing board. Members themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of its government.”

FIRST THINGS FIRST. . . TRY TO COOL THINGS OFF.

- Stop the Meeting
- Take Breaks
- Mediation
- Strategic Planning
- Closed Session?

WHAT CAN BE DONE LEGALLY?

- **Quo Warrant:** The Attorney General, acting in the name of the people of the State, can bring an action against any person who unlawfully usurped, intruded into, held or exercised any public office or franchise. (*People v. Dashaway Association* (1890) 84 Cal. 114, 118).
- **Recall:** Article II, section 19 requires the legislature to “provide for recall of local officers,” but expressly exempts “cities and counties whose charters provide for recall.”

- **The Fair Political Practices Commission (FPPC):** Regulates and enforces the Political Reform Act. The mission of the Act is to serve as the legal bedrock of governmental ethics in California. It regulates:

- Campaign Finance
- Financial Conflicts of Interest by Public Officials
- Lobbyist Registration and Reporting
- Post-Governmental Employment
- Political Mass Mailings at Public Expense
- Gifts and Honoraria given to Public Officials and Candidates

Grand Jury: The grand jury has the power to remove public officers for willful or corrupt misconduct in office. (Penal Code § 922)

Criminal: Brown Act, Government Code 1090, Harassing and finance violations all have criminal implications.

WHAT CAN BE DONE BY THE CITY?

- Trainings – Not just ethics and sexual harassment (mandatory).
- Limit their committee assignments/staff interaction
- Removal from meetings (Penal Code section 403 and California Government Code section 36813)

WHAT CAN BE DONE BY THE CITY?

- Control over budget
- Censure: “Any violation of this Ethics Policy by a member of the City Council shall constitute official misconduct if determined by an affirmative vote of three members of the Board of Supervisors in an open and public meeting. In addition to any criminal or civil penalties provided by Federal, State or local law, any violation of this Ethics Policy shall constitute a cause for censure by City Council adoption of a Resolution of Censure.”



REAL LIFE SITUATION #1:

Council Member keeps showing up to meetings high (or drunk).

What do I do?

PLAN OF ATTACK . . .

- Provide information on the EAP Program.
- Remind them that: Intoxicated while in discharge of the duties of his/her office is a misdemeanor, and, if convicted, shall result in forfeiture of office. Gov't Code § 3001.
- Ask your DA/Police Chief to have a talk with the elected officials.
- Recess or end all meetings that they show up under the influence.

REAL LIFE SITUATION #2:

Elected Treasurer is physically touching female staff in a manner that makes them uncomfortable. One of the staff has filed a complaint claiming she was denied a promotion because she asked him to stop.

What do I do?

PLAN OF ATTACK . . .

- Provide interim protection to employee.
- Follow the sexual harassment policy, which should include an impartial investigation.
- CAN YOU TALK ABOUT FINDINGS IN CLOSED SESSION?
- Reach out to the Attorney General.
- Provide long term protections for employee.
- Request that the Treasurer will attend Sexual Harassment training.
- Work with the Council Board to Censure the Treasurer.

REAL LIFE SITUATION #3

Councilmember comes out of closed session and reveals to a newspaper that the City Manager was terminated and details the reasons why.

What do I do?

PLAN OF ATTACK . . .

- Talk to Elected Official about keeping items confidential/personal liability.
- A court injunction (violation of which would be punishable as contempt of court) to prevent disclosure of confidential closed session information.
- Referral to the grand jury for an examination of whether the official should be removed from office for willful and corrupt misconduct.
- Refer to the District Attorney for prosecution?
- Exclude the Election Official from Closed Session?



REAL LIFE SITUATION #4

Elected Department Head continually bullies employees and will not conduct himself professionally when dealing with the city council. The Department Head uses foul and degrading language which creates a toxic work environment.

PLAN OF ATTACK

- Address the situation with the DH and let them know, in writing, how they are detrimentally impacting the agency and what individual liability might attach to this behavior.
- If no change, a Grand Jury report should be made requesting removal.