

# **Understanding Public Service Ethics Laws & Principles: AB 1234 Training**

League of California Cities Mayors and Council  
Members Academy

**Friday, January 31, 2025**



# HOUSEKEEPING

You **MUST** be signed  
in

You must be present  
for the full two-hour  
training

You will receive your  
certificate at the end  
of the training

We also have  
certificates for  
attorneys for MCLE  
credit

Contact Melissa  
Kuehne  
([mkuehne@ca-ilg.org](mailto:mkuehne@ca-ilg.org)) with questions  
or concerns

# ILG IS NONPROFIT, NONPARTISAN & HERE TO HELP

- ILG is the nonprofit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



# OUR PROGRAMS AND SERVICES



Our mission is to help local government leaders **navigate complexity**,  
**increase capacity & build trust** in their communities



# BBK

BEST BEST & KRIEGER <sup>LLP</sup>  
ATTORNEYS AT LAW

# Ethics Training (AB 1234)

Cal Cities 2025 SoCal Mayors and Council Members Academy

# Presenter



## HongDao Nguyen

PARTNER

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(949) 263-2614

HongDao Nguyen is a partner in the Municipal Law practice group of Best Best & Krieger LLP and assists public clients in transactional and litigation matters concerning municipal government. Recognizing that every city has its own political and cultural landscape, she helps municipalities navigate through a variety of legal issues that typically arise in the course of running a public agency, such as the Brown Act and the California Public Records Act. HongDao serves as city attorney to the cities of Artesia and Stanton, and assistant city attorney to the cities of Aliso Viejo, Lake Forest and Signal Hill.

# About Us



12

OFFICES

250

ATTORNEYS

130+

YEARS OF SERVICE

Best Best & Krieger serves as a trusted partner and strategist to public and private sector clients across the nation. With offices spanning from coast to coast, the firm's attorneys provide innovative legal solutions and cost-effective representation, working to protect and advance clients' interests at every turn. BB&K is recognized for decades of groundbreaking successes, loyal service, and a culture of inclusion and respect.

# Finding Your Way In Public Service



- **General ethics laws and principles**
- **Areas of ethics laws**
  1. Conflicts of interest
  2. Transparency Laws
  3. Fair Process
- **Hypotheticals**
- **Conclusion and Questions**

# California Ethics Laws



## Where?

- Statutes and Regulations
- National and State Constitutions
- City Policy

## What?

- *Minimum* Legal Standards

## Why?

- Power of Government
- Stewards of Tax Dollars
- Public Trust

# Personal Financial Interests



## 1. Political Reform Act

- Disclosure
- Disqualification
- Campaigns

## 2. Contracts

- Gov. Code § 1090

## 3. Revolving Door

## 4. Decisions re Prospective Employer

## 5. Misuse of Public Funds

## 6. Bribery/Mail Fraud

# Personal Financial Interests Political Reform Act of 1974

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## General Rule

Public officials shall not:

- **make**,
- **participate** in making, or
- attempt to **influence** a governmental decision in which they have a financial interest.

# Personal Financial Interests Political Reform Act of 1974

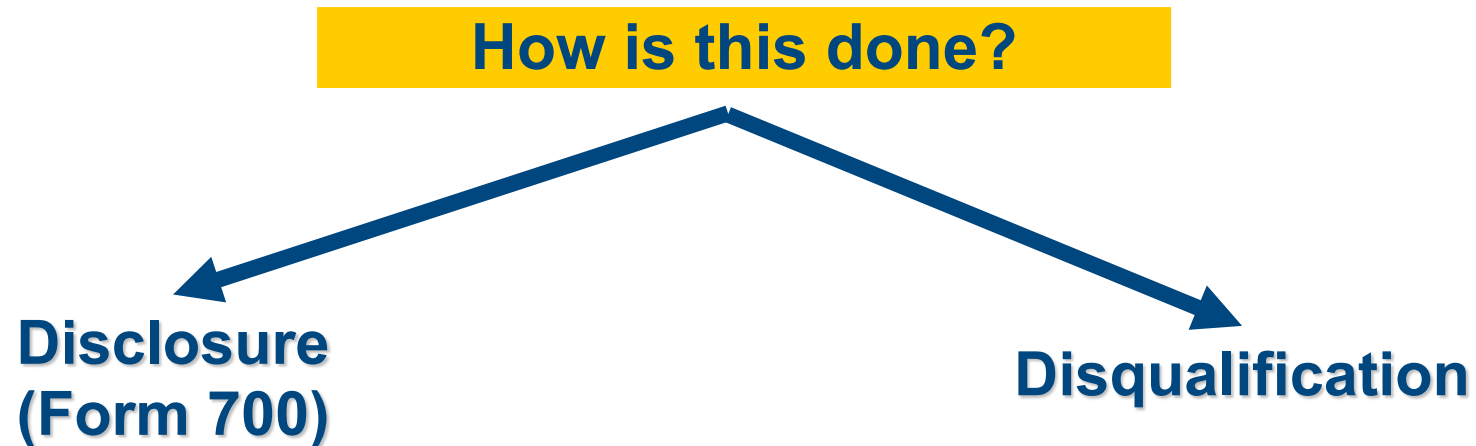
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- WHO IS A PUBLIC OFFICIAL?
- A Public Official is every:
  - Member
  - Officer
  - Designated Employee
  - and certain Consultants of a State or Local Agency. (Gov. Code. sec. 82048)

# Personal Financial Interests Political Reform Act of 1974

Officials should perform duties solely in the public's interest, not for their own financial interests.



**CALIFORNIA FORM 700**  
FAIR POLITICAL PRACTICES COMMISSION  
A PUBLIC DOCUMENT

**STATEMENT OF ECONOMIC INTERESTS**  
**COVER PAGE**

Date Received \_\_\_\_\_  
 Official Use Only

Please type or print in ink.

|               |        |         |          |
|---------------|--------|---------|----------|
| NAME OF FILER | (LAST) | (FIRST) | (MIDDLE) |
|---------------|--------|---------|----------|

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**1. Office, Agency, or Court**

Agency Name \_\_\_\_\_

Division, Board, Department, District, if applicable \_\_\_\_\_ Your Position \_\_\_\_\_

► If filing for multiple positions, list below or on an attachment.

Agency: \_\_\_\_\_ Position: \_\_\_\_\_

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**2. Jurisdiction of Office (Check at least one box)**

|                                             |                                                                               |
|---------------------------------------------|-------------------------------------------------------------------------------|
| <input type="checkbox"/> State              | <input type="checkbox"/> Judge or Court Commissioner (Statewide Jurisdiction) |
| <input type="checkbox"/> Multi-County _____ | <input type="checkbox"/> County of _____                                      |
| <input type="checkbox"/> City of _____      | <input type="checkbox"/> Other _____                                          |

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**3. Type of Statement (Check at least one box)**

☒ **Annual:** The period covered is January 1, 2012, through December 31, 2012.  
 -or-  
 The period covered is \_\_\_\_/\_\_\_\_/\_\_\_\_ through \_\_\_\_/\_\_\_\_/\_\_\_\_ December 31, 2012.

☒ **Leaving Office:** Date Left \_\_\_\_/\_\_\_\_/\_\_\_\_ (Check one)  
☐ The period covered is January 1, 2012, through the date of leaving office.  
☐ The period covered is \_\_\_\_/\_\_\_\_/\_\_\_\_ through the date of leaving office.

☒ **Assuming Office:** Date assumed \_\_\_\_/\_\_\_\_/\_\_\_\_

☐ **Candidate:** Election year \_\_\_\_\_ and office sought, if different than Part 1: \_\_\_\_\_

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**4. Schedule Summary**

Check applicable schedules or "None." ► Total number of pages including this cover page: \_\_\_\_\_

|                                                                                |                                                                                                          |
|--------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> <b>Schedule A-1 - Investments</b> – schedule attached | <input type="checkbox"/> <b>Schedule C - Income, Loans, &amp; Business Positions</b> – schedule attached |
| <input type="checkbox"/> <b>Schedule A-2 - Investments</b> – schedule attached | <input type="checkbox"/> <b>Schedule D - Income – Gifts</b> – schedule attached                          |
| <input type="checkbox"/> <b>Schedule B - Real Property</b> – schedule attached | <input type="checkbox"/> <b>Schedule E - Income – Gifts – Travel Payments</b> – schedule attached        |

-or-  
☐ **None** - No reportable interests on any schedule

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**5. Verification**

MAILING ADDRESS: \_\_\_\_\_ STREET \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_  
 (Business or Agency Address Recommended - Public Document)

DAYTIME TELEPHONE NUMBER: \_\_\_\_\_ E-MAIL ADDRESS (OPTIONAL): \_\_\_\_\_  
 ( ) \_\_\_\_\_

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed \_\_\_\_\_  
(month, day, year)

Signature \_\_\_\_\_  
(File the originally signed statement with your filing official)

Clear Page

Print Form

FPPC Form 700 (2012/2013)  
 FPPC Advice Email: advice@fppc.ca.gov  
 FPPC Toll-Free Helpline: 866/275-3772 www.fppc.ca.gov

# Personal Financial Interests Disclosure

## Who?

### •87200 Filer:

Elected Officials, Finance Directors,  
City Manager, City Attorney

### •Code Filer:

Assistant CM, Department Heads,  
Consultants

## How?

- Use Form 700

## When?

✓ Assuming Office

✓ Leaving Office

✓ Annually, by April 1st

Signed Under Penalty of Perjury

# Personal Financial Interests Political Reform Act of 1974

## Types of Economic Interests:

- ✓ Business Investment
- ✓ Source of Income
- ✓ Business Position or Employment
- ✓ Real Property
- ✓ Gifts
- ✓ Personal Finances



# Personal Financial Interests Political Reform Act of 1974



- Four questions to ask:
  1. Are you participating in a decision?
  2. Will the decision affect your economic interest?
  3. Is the effect on your economic interest “material?”
  4. Will it affect your economic interest differently than the “public generally?”

# Personal Financial Interests Political Reform Act of 1974

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## Real Property Interests:

- 500 feet or less
- 500-999 feet
- 1000 feet or more

# Real Property Interests



- **500 feet or less:** financial effect is **presumed material** unless there is clear/convincing evidence of **no** measurable impact on property as determined by the official with advice from the General Counsel and/or FPPC
- **500-999 feet:** financial effect is **material if** decision would change:
  - Development potential
  - Income producing potential
  - Highest and best use
  - Character (by altering traffic, intensity of use, parking, etc.)
  - Or market value
- **1000 feet or more:** financial effect is **presumed not** material unless there is clear/convincing evidence of a substantial impact on the officials property

# Real Property Hypothetical



- **Hypo 1:** A Councilmember owns vacant commercial property within 430 feet of a proposed park improvement. The Councilmember typically rents out the property. The park improvements include changing the flooring under the playground equipment, adding new shade and shelters, replanting trees, remodeling the bathroom, adding a new drinking fountain and six picnic tables. May the Councilmember participate in the decision on park improvements?

# Real Property Hypothetical



- **Hypo 2:** A project applicant wishes to install fiber optic cable on several City streets. Three Councilmembers (of the five) own residential property within 500 feet of the installation. None of the parcels are located on the street where the line will be installed, and each parcel is separated from the installation area by at least one parcel. There are 1,000 residential parcels that are within 500 feet of the project, or 30 percent of all the residential parcels within the City. Should the Councilmembers recuse themselves from the project vote?

# Levine Act *Government Code* section 84308



In an “entitlement for use proceeding,” Officers are prohibited from accepting, soliciting, or directing a contribution of more than \$500 from any party or a party’s agent, or from any participant or a participant’s agent if the Officer knows or has reason to know that the participant has a financial interest in the proceeding:

- While the proceeding is *pending*; and
- 12 months following the date of the final decision in the proceeding.

# Levine Act *Government Code* section 84308



## Examples of Entitlement for Use Proceedings

- Building and development permits
- Charter school petitions
- Conditional use permits
- Contracts generally, including small purchase order agreements, unless an exception applies
- Public street abandonments
- Private development plans
- Professional license revocations
- Rezoning of specific real estate parcels
- Event permits
- Rulemaking procedures affecting a particular industry where only a small number of businesses are affected
- Special district formation proceedings involving the creation of a special use or benefit to the persons in the district
- Tentative subdivision and parcel maps
- Zoning variances

FPPC Website

# Levine Act *Government Code section 84308*



Officer who exceeds the limits is prohibited from **making**, **participating** in making, or in any way attempting to **influence** the decision in the proceeding.

If Officer has received a contribution of more than \$500 from a **party, participant, or agent** within the 12 months before the **proceeding**, the Officer is required to disclose the contribution orally or in writing in the manner required by the Levine Act and implementing regulations. They can also return the contribution within 30 days and participate.

# Levine Act Hypothetical



The City Council is set to review and potentially renew an annual contract with the County for law enforcement services. May an individual Councilmember accept, solicit, or direct contributions of more than \$500 from:

- The recognized bargaining unit for the Sheriff's Department employees?
- Sheriff's Department employees?
- The County's non-law enforcement employees?

# Levine Act Hypothetical



The City Council approved a \$1000 sponsorship to a local nonprofit public television station. The City's local policy requires that any sponsorship be accompanied by a contract between the City and the organization.

- After the contract is adopted, can a Councilmember accept more than \$500 from the organization?
- From the compensated executive director?
- From the executive director's *spouse*?

# Financial Interest in Public Contracts

## Government Code § 1090

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**If:**

- **A Public Official**
- **Has a Financial Interest in a Contract**
- **Approved by their Agency**

**Then:**

- **Contract is VOID**
- **Penalties Apply**

# Financial Interest in Public Contracts

## Contract Defined

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- Use general contract principles
- Examples:
  - Construction contracts
  - Purchases
  - Development agreements
  - Civil service appointments
  - Grants and donations
  - Commissions

# Financial Interest in Public Contracts

## “Making” the Contract

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“Making” includes,  
official with a part in:

- Negotiations,
- Discussions,
- Reasoning,
- Planning, and
- The “give and take which goes beforehand in the making of the decision to commit oneself ....”

# Financial Interest in Public Contracts

## Types of Financial Interests

- **Financial Interest**
  - Direct (contracting party)
  - Indirect (related to contracting party)
- **Effect**
  - Positive or negative
- **Certainty not required**
- **All contracts are City contracts**



# Financial Interest in Public Contracts

## Remote Interest Exceptions - § 1090(b)



- **Requirements:**

- Public disclosure noted on records
- No attempt to influence
- Council acts in good faith

- **16 Exceptions**, including:

- Employees, in certain cases
- Suppliers, in certain cases

**WARNING!**

**THESE ARE FACT-SPECIFIC**  
**CHECK WITH YOUR ATTORNEY**

# Personal Financial Interests Interest in Public Contracts



## Ramifications

- Criminal
  - Willful Violation = Felony
- Civil
  - Contract = Void and unenforceable
  - Disgorgement of all money
- Lifetime bar to public office

# Personal Financial Interests “Revolving Door”



## **AFTER LEAVING OFFICE:**

### **Elected Official and Agency Head/CEO**

- One Year Ban
- Prohibited from appearing before, or communicating with, agency on behalf any other person for compensation

# Personal Financial Interests Decisions re Prospective Employer

## Influencing Prospective Employment:

No Public Official shall participate in decision making process when it relates to any prospective employer.



# Personal Financial Interests

## Bribery

***Bribery:*** The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties.



# Personal Advantages and Perks



- Gifts
- Honoraria
- Travel/Transportation/Lodging Expenses
- Loans
- Reimbursements
- Mass Mailings
- Misuse of Public Funds
- Nepotism
- Charity Fundraising Disclosures

- **Gift:** Anything of value that provides a personal benefit for which adequate consideration was not provided.

**Disclose**  
**\$50+**

**Disqualify**  
**\$630/12mos.**

**Refuse**  
**\$630+**

- Calendar Year vs. Rolling 12 months
- If Gift Exceeds \$630: Return, Pay or Donate

# Personal Advantages and Perks

## Common Exceptions

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- Gifts to public agency
- Gifts returned unused or donor reimbursed within 30 days
- Gifts from family members
- Gifts of hospitality
- Equal-value gifts on holidays, birthdays or similar occasions (other than lobbyist)

# Personal Advantages and Perks

## Tickets and Passes



- Regulation 18944.1 provides that tickets/passes distributed to, or at the behest of, an official of the agency are not considered a gift if:
  - The public official claims them as income for federal income tax purposes
  - Tickets are distributed to employees/officials (other than elected) to promote morale/employee retention
  - Tickets are distributed pursuant to the agency's adopted ticket policy

# Personal Advantages and Perks

## Agency Disclosures: Forms 801 & 802

**Gift to Agency Report** A Public Document

**1. Agency Name**

Division, Department, or Region (if applicable)

Street Address

Area Code/Phone Number E-mail

Agency Contact (name and title)

Date Stamp

**California Form 801**

For Official Use Only

Amendment (explain in comment section)

Date of Original Filing (Month, Day, Year)

**2. Donor Name and Address**

☐ Individual ☐ Other

Last Name First Name

Address City

If "Other" is marked, describe the entity's business activity (if business) or its nature and interests.

If applicable, identify the name of each source and the amount(s) solicited or received by the donor.

Name \$ Amount Name

**3. Payment Information**

Date and Amount of Payment (other than travel) (month, day, year) \$ (Round to nearest dollar)

Travel Payment Information (Round to whole dollars) Location of Travel

District of Travel Transportation Expenses Lodging Expenses Meal Expenses

Provide a specific description of the nature and use of the payment for the payment.

Identify the officials for whom the payment was used:

Last Name First Name Title

Last Name First Name Title

**4. Verification**

I have determined that it is in the interests of the agency to accept this gift and use it for the official's official duties.

Signature of Agency Head or Designee Print Name

Comment: (Use this space or an attachment for any additional information.)

**Agency Report of: Ceremonial Role Events and Ticket/Pass Distributions** A Public Document

**1. Agency Name**

Division, Department, or Region (if applicable)

Designated Agency Contact (Name, Title)

Area Code/Phone Number E-mail

Date Stamp

**California Form 802**

For Official Use Only

Amendment (Must provide explanation in Part 3.)

Date of Original Filing (Month, Day, Year)

**2. Function or Event Information**

Does the agency have a ticket policy? Yes ☐ No ☐ Face Value of Each Ticket/Pass \$

Event Description Provide Title/Explanation Date(s) / /

Ticket(s)/Pass(es) provided by agency? Yes ☐ No ☐ If no: Name of Source

Was ticket distribution made at the behest of agency official? No ☐ Yes ☐ If yes: Official's Name (Last, First)

**3. Recipients**

• Use Section A to identify the agency's department or unit. • Use Section B to identify an individual. • Use Section C to identify an outside organization.

**A. Name of Agency, Department or Unit** Number of Ticket(s)/Pass(es) Describe the public purpose made pursuant to the agency's policy

**B. Name of Individual (Last, First)** Number of Ticket(s)/Pass(es) Identify one of the following:

Ceremonial Role ☐ Other ☐ Income ☐

If checking "Ceremonial Role" or "Other" describe below

Ceremonial Role ☐ Other ☐ Income ☐

If checking "Ceremonial Role" or "Other" describe below

**C. Name of Outside Organization (include address and description)** Number of Ticket(s)/Pass(es) Describe the public purpose made pursuant to the agency's policy

**4. Verification**

I have read and understand FPFC Regulations 18944.1 and 18942. I have verified that the distribution set forth above, is in accordance with the requirements.

Signature of Agency Head or Designee Print Name Title (Month, Day, Year)

Comment:

FPFC Form 802 (4/12)  
FPFC Toll-Free Helpline: 866/ASK-FPFC (866/275-7772)

### Gift to Agencies: Form 801

- **Know the rules:** Exceptions on gifts of travel do not apply to elected officials and officials specified in Gov. Code § 87200.

### Tickets: Form 802

- Applies to tickets for entertainment, recreational or similar purpose.
- List of Public Purposes.
- New Definition of Ceremonial Use
- Written Ticket Policy Required

# Personal Advantages and Perks

## *Behested Payments: Form 803*

| Behested Payment Report                                                                                                                                                 |                   | A Public Document                                             |  | Behested Payment Report                             |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------------------------------------------------|--|-----------------------------------------------------|--|
| 1. Elected Officer or CPUC Member (Last name, First name)                                                                                                               |                   | Date Stamp                                                    |  | <b>California Form 803</b><br>For Official Use Only |  |
| Agency Name                                                                                                                                                             |                   |                                                               |  |                                                     |  |
| Agency Street Address                                                                                                                                                   |                   |                                                               |  |                                                     |  |
| Designated Contact Person (Name and title, if different)                                                                                                                |                   | <input type="checkbox"/> Amendment (See Part 5)               |  |                                                     |  |
| Area Code/Phone Number                                                                                                                                                  | E-mail (Optional) | Date of Original Filing: (month, day, year)                   |  |                                                     |  |
| 2. Payor Information (For additional payors, include an attachment with the names and addresses.)                                                                       |                   |                                                               |  |                                                     |  |
| Name                                                                                                                                                                    |                   |                                                               |  |                                                     |  |
| Address City State Zip Code                                                                                                                                             |                   |                                                               |  |                                                     |  |
| 3. Payee Information (For additional payees, include an attachment with the names and addresses.)                                                                       |                   |                                                               |  |                                                     |  |
| Name                                                                                                                                                                    |                   |                                                               |  |                                                     |  |
| Address City State Zip Code                                                                                                                                             |                   |                                                               |  |                                                     |  |
| 4. Payment Information (Complete all information.)                                                                                                                      |                   |                                                               |  |                                                     |  |
| Date of Payment: (month, day, year)                                                                                                                                     |                   | Amount of Payment: (In-Kind PMU) \$ (Round to whole dollars.) |  |                                                     |  |
| Payment Type: <input type="checkbox"/> Monetary Donation or <input type="checkbox"/> In-Kind Goods or Services (Provide description below.)                             |                   |                                                               |  |                                                     |  |
| Brief Description of In-Kind Payment:                                                                                                                                   |                   |                                                               |  |                                                     |  |
| Purpose: (Check one and provide description below.) <input type="checkbox"/> Legislative <input type="checkbox"/> Governmental <input type="checkbox"/> Charitable      |                   |                                                               |  |                                                     |  |
| Describe the legislative, governmental, charitable purpose, or event:                                                                                                   |                   |                                                               |  |                                                     |  |
| 5. Amendment Description or Comments                                                                                                                                    |                   |                                                               |  |                                                     |  |
| 6. Verification                                                                                                                                                         |                   |                                                               |  |                                                     |  |
| I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete. |                   |                                                               |  |                                                     |  |
| Executed on DATE                                                                                                                                                        |                   | By SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER                |  |                                                     |  |
|                                                                                                                                                                         |                   |                                                               |  |                                                     |  |
| <a href="#">Clear Form</a>                                                                                                                                              |                   | <a href="#">Print Form</a>                                    |  |                                                     |  |
| FPPC Form 803 (December/09)<br>FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)                                                                                     |                   |                                                               |  |                                                     |  |

## FOR ELECTED OFFICIALS ONLY

- Contributions of **\$5000 or more**
- made by a single source
- in cooperation with elected official
- **Must be reported to official's agency within 30 days.**

# Personal Advantages and Perks Gifts Limit Ramifications

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- FPPC civil action
- Penalty: 3 times the amount of the gift
- \$5,000 fine
- 6 months jail
- Bribery/Extortion – Felony – Prison

# Personal Advantages and Perks Loans / Reimbursements / Nepotism



- Personal Loans
- Reimbursement Policy
- Mass Mailings (special rules)
- Nepotism

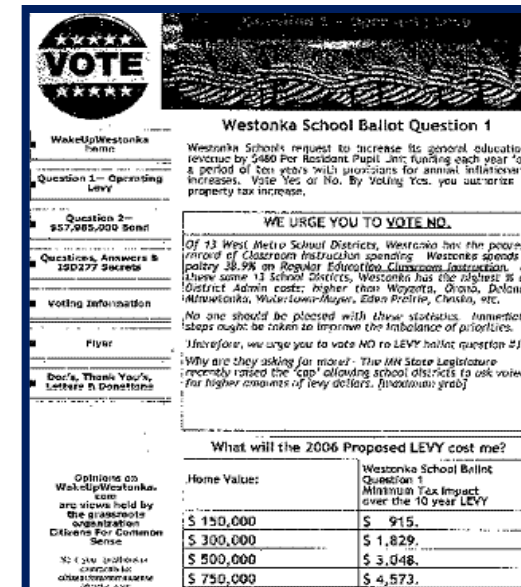
# Personal Advantages and Perks Misuse of Public Funds



Ballot Measures



Endorsements &  
Legislative Activities



Informational  
Materials

# Misuse of Public Funds



- Misappropriation of funds, supplies, or other assets;
- Impropriety in the handling or reporting of money or financial transactions;
- Profiteering as a result of insider knowledge of City activities; Disclosing confidential and proprietary information to outside parties;
- Accepting or seeking anything of material value from contractors, vendors, or persons providing services/materials to the City that does not comply with the City policy;
- Destruction, removal, or inappropriate use of records, furniture, fixtures, and equipment and/or any similar or related irregularity

# Prohibited Mass Mailing



- An **physical** publicly **mailed** item:
  - Features an elected officer affiliated with the agency that produces or sends the mailing.
  - Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency that produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.
- More than 200 substantially similar items are sent in a single calendar month
- “Mass mailing” is not an item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms, etc.

# Misuse of Public Funds

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- Violation of City Policies, i.e. Code of Conduct, Operating Policy, Ethics/Conflict of Interest Policy, Purchasing Policy and Travel/Expense Reimbursement Policy.

# Transparency Laws, The Ralph M. Brown Act & The California Public Records Act



## Applies to:

- Local agencies
- Legislative bodies
- Meetings
- Persons elected to legislative bodies, even prior to assuming office
- Certain private organizations

# Transparency Laws, The Ralph M. Brown Act & The California Public Records Act

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- What's a "meeting"?
- No discussion or action, except on agenda
- Closed sessions
- Remedies and penalties

# Transparency Laws, The Ralph M. Brown Act & The California Public Records Act



What's a “meeting”?

- When a quorum:
  - Hears
  - Discusses
  - Deliberates
  - Takes action on something within the City's subject matter

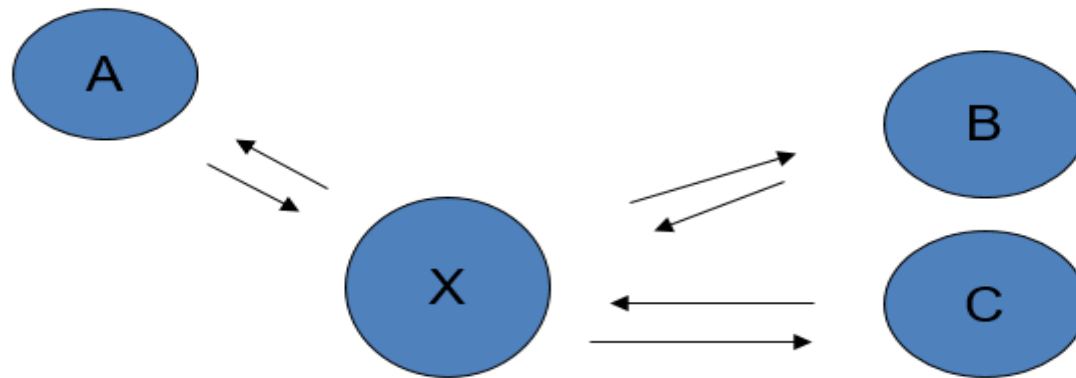
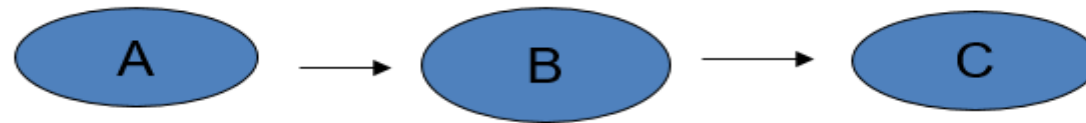
# Transparency Laws - *The Ralph M. Brown Act*



- What's a “meeting”?
- No discussion or action, except on agenda
- Closed sessions
- Remedies and penalties

# Transparency Laws - *The Ralph M. Brown Act*

## Serial Meetings Chain - Spoke



# Transparency Laws - *The Ralph M. Brown Act*



## E-Mail, Text, or Phone

- Potential for serial meetings:
  - Chain
  - Spoke
- Best practices:
  - City Manager briefings
  - Lobby in a public meeting

## Exclusion

- Separate conversations with an employee . . . to answer questions or provide information “if that person does not communicate to the members of the legislative body the comments or positions of any other member or members of the legislative body.”

## **Social Media or Other Public Lobbying**

- Issue of comments, replies, tweeting, and “likes” on social media and other mainstream media sites
- AB 992 – effective January 1, 2021
- Permits public officials to answer questions, provide information to the public, or to solicit information from the public regarding agency business on social media

## **AB 992 – effective January 1, 2021**

- Prohibits a majority of members of a legislative body from discussing agency business on social media
- Prohibits one member of a legislative body from “directly responding” to another member on social media about agency business
- Even a “thumbs up” could be a Brown Act violation

# Transparency Laws - *The Ralph M. Brown Act*



## Agenda

- Set by CM or full Council
- Must include public forum
- A member of the public has the right to speak
  - At a regular meeting: on each and every agenda items and generally on item of public interest including consent calendar and closed session items
  - At a special meeting: on each agenda item only
  - Before or during the Council's consideration
- No discussion or action, except on agenda
  - Late-breaking exception
    - Came to City's attention after posting and
    - Can't wait till next meeting

# Transparency Laws - *The Ralph M. Brown Act*



## Agenda

- Salaries and fringe benefits must be approved by the Council off-consent in a regular public meeting.
- Compensation of senior executives must be off-consent.

## Responses to Public Comment

- ***Briefly*** respond to public statements or questions
- Provide reference to staff or other resources for factual information (confirm it's underway.)
- Request staff to report back at a subsequent meeting
- Take action to direct staff to place a matter on future agenda

# Transparency Laws

## The Ralph M. Brown Act

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### Recent Legislation

- Teleconferencing
  - AB 361 (2021)
  - AB 2449 (2022)
- Disruption of Meetings
  - SB 1100 (2022)
- Distribution of Writings
  - AB 2647 (2022)

# Transparency Laws - *The Ralph M. Brown Act*



## Closed Session

- Pending litigation
  - Threat or exposure (documented)
  - Actual case
  - Initiation
- Public employee performance evaluation
- Labor negotiations
- Real estate negotiations (price and terms of payment for the purchase, sale, exchange, or lease)

## **Closed Session Disclosures**

- OK to disclose (1) votes and (2) your position.
- Not OK to disclosure (1) attorney-client communications or (2) Council comments, positions, thought process, or deliberations

## Examples of Closed Session Disclosures

- “I want the press to know that I voted in closed session against filing the eminent domain action,” said Councilmember Chang (after action was filed and became public)
- “Don’t settle too soon,” reveals Councilmember Watson to the property owner, over coffee. “The City’s offer coming your way is not our bottom line.”

## Real Estate Negotiations

- Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?
- A. No. However, there are differing opinions over the scope of the phrase “price and terms of payment” in connection with real estate closed sessions. Many agency attorneys believe that any term that directly affects the economic value of the transaction falls within the ambit of “price and terms of payment.” Others take a narrower, more literal view of the phrase.

# Transparency Laws - *The Ralph M. Brown Act*



## Remedies

- Closed session leaks
  - Abrogate attorney-client privilege
  - Probably prosecutable criminally
- Violations of Act
  - Writ to set aside action
  - Injunction to bar future violations
  - City pays all attorney's fees

# Transparency Laws – Hypothetical



A Councilmember operates a personal Facebook page. Its title is, “Official Page of Councilmember Doe,” with a disclaimer that provides: “These are my views, only, and is not an official City social media page.”

Recently, the Council posted on the page: “The Council will be considering renewing a contract with the animal shelter. Unfortunately, this shelter has a high euthanasia rate, and you should come to the meeting to voice your opinion.”

- A Councilmember bumps into Councilmember Doe at a coffee shop, and says, “I saw your post, and I’m also worried about this project.” Is there a Brown Act issue?
- Another Councilmember responds to the Facebook post with a “sad face” emoji? Is that OK?

# Transparency Laws

## California Public Records Act (CPRA)

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- Every person has a right to inspect public records of any state or local agency.
- What is a public record?

# Transparency Laws

## California Public Records Act



### Handling Requests

- Public records must be available during office hours.
- Agencies must make copies of disclosable records “promptly available”...“upon request.”
- Agency shall:
  - Within 10 days: determine disclosable records
  - Within 14 days: request time extension for “unusual circumstances”

# Transparency Laws

## California Public Records Act

When is a public record exempt from disclosure?

- Preliminary drafts, notes or memos not kept in ordinary course of business
- Real estate appraisals
- Personnel, medical, similar files
- Records about pending litigation
- Records pertaining to an investigation
- Deliberative process
- Catch-all exemption



### **Emails, Social Media and Other Communications on Private Devices and Accounts**

“Here, we hold that when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act.” *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608

# Transparency Laws

## California Public Records Act

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### **Best Practices**

- Always respond to requests
- Adopt regulations
- Adopt a policy
- Develop standardized fees
- Use City email account

# Transparency Laws

## Social Media as a Public Forum?

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- *Lindke v. Freed* (2024) 601 U.S. 187

If a governmental official posts about job-related topics on social media, their site is “attributable to the State only if the official (1) possessed actual authority to speak on the State’s behalf, and (2) purported to exercise that authority when he spoke on social media.”

# Transparency Laws

## Social Media as a Public Forum?

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- Best practice is for public officials and public employees to have a disclaimer on their personal social media accounts that they are posting in their personal capacity.
- But there are still other issues PRA and Brown Act issues.

# Transparency Laws – Hypothetical



A Councilmember operates a personal Facebook page. Its title is, “Official Page of Councilmember Doe,” with a disclaimer that provides: “These are my views, only, and is not an official City social media page.”

Recently, the Council posted on the page: “The Council will be considering renewing a contract with the animal shelter. Unfortunately, this shelter has a high euthanasia rate, and you should come to the meeting to voice your opinion.”

- If a member of the public requests the post, would the City have to disclose it?
- If yes, how would the City be able to obtain the post?

# Transparency Laws – Hypothetical



A Councilmember operates a personal Facebook page. Its title is, “Official Page of Councilmember Doe,” with a disclaimer that provides: “These are my views, only, and is not an official City social media page.”

Recently, the Council posted on the page: “The Council will be considering renewing a contract with the animal shelter. Unfortunately, this shelter has a high euthanasia rate, and you should come to the meeting to voice your opinion.”

- Someone comments, “You don’t care about the animals! We all know you want to shut them down to let Amazon build a mega warehouse that will ruin this town!”
- May the Councilmember delete the post?
- Block the commenter?

# Fair Process

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- Due Process
- Bias
- Common Law Bias
- Competitive Bidding
- Incompatible Offices
- Incompatible Activities

# Fair Process, Due Process

- What does Due Process mean?

- Notice
- Opportunity to be heard
- Fair and impartial decision-maker

- Due Process Clause

“No state shall deprive any person of life, liberty or property without due process at law”

- U.S. Constitution Amend XIV, sec 1

# Fair Process, Due Process Hypothetical



A Councilmember published an article in the local paper about a project pending review before the Council. It was entitled, “Housing Project—a Threat to Wildlife Corridor,” and included the following points:

- A proposed project of five homes was winding its way through City review.
- The main street that would serve the homes is “absolutely a crucial habitat corridor.”

Any fair process or due process issues?

# Fair Process, Competitive Bidding



- Purposes
- General Rule
  - Only when required by statute or ordinance
  - Lowest, responsive, responsible bidder
  - Thresholds for Public Works
- Exceptions

# Fair Process, Incompatible Offices Doctrine

## Elements:

- Official holding two public offices simultaneously
- Conflicting or overlapping functions

## Ramifications



# Fair Process, Incompatible Activities



- Applies to officers and employees
- Agency may prohibit activities involving:
  - Private gain or advantage
  - Receiving consideration for performing duties
  - Acts outside scope of employment
  - Impairment of efficiency

# Fair Process Best Practices for Decision-Makers

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- If you can't be fair, don't participate
- Avoid statements before the close of a hearing
- Make decisions based on administrative record
- Avoid the appearance of bias
- Pay attention
- Above all, you will be judged by your fairness and integrity



# Questions?

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