

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

League of California Cities Mayors and Council  
Members Academy

**Friday, January 24, 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

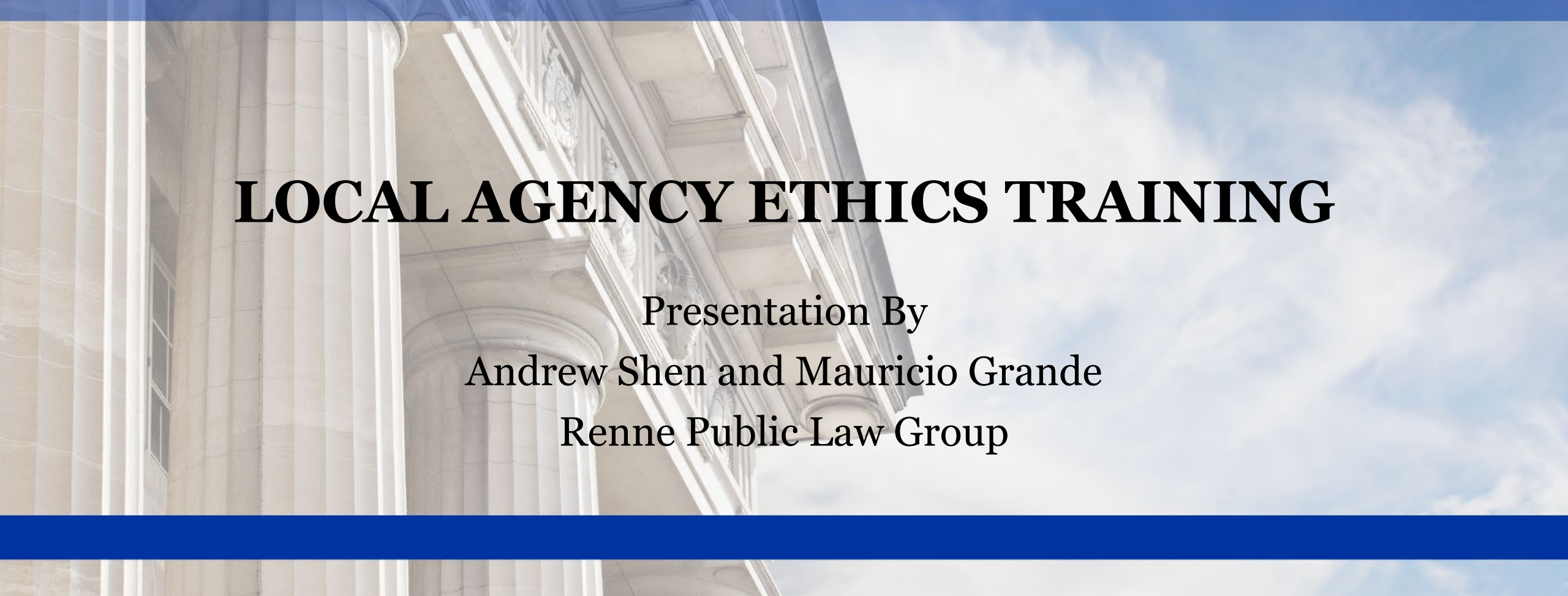


Our mission is to help local government leaders **navigate complexity**,  
**increase capacity & build trust** in their communities

The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, centered within a white rectangular box.

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# **LOCAL AGENCY ETHICS TRAINING**

Presentation By  
Andrew Shen and Mauricio Grande  
Renne Public Law Group

# INTRODUCTIONS

1. AB 1234 (Gov. Code Section 53235) Training Requirement
2. Fair Political Practices Commission (FPPC) Topics
3. Goals
4. Common sense!

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**CONFLICTS OF INTEREST**

# **FINANCIAL CONFLICTS OF INTEREST**

1. California Political Reform Act
2. Government Code Section 1090
3. Common Law Conflicts

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**POLITICAL REFORM ACT**

# Political Reform Act

A public official may not make, participate in making, or attempt to use your official position to influence a governmental decision in which you know or have reason to know you have a financial interest

# Political Reform Act

1

**Do you have a  
FINANCIAL INTEREST?**

2

**Are you involved in a  
GOVERNMENTAL  
DECISION?**

# Do you have a **FINANCIAL INTEREST**

- Real property
- Income
- Investments (stock, stock options and business ownership)
- Gifts
- Personal finances

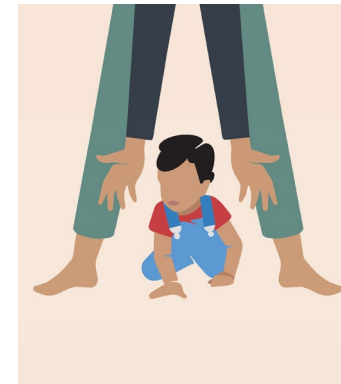
**1**

# Do you have a **FINANCIAL INTEREST**



**You**

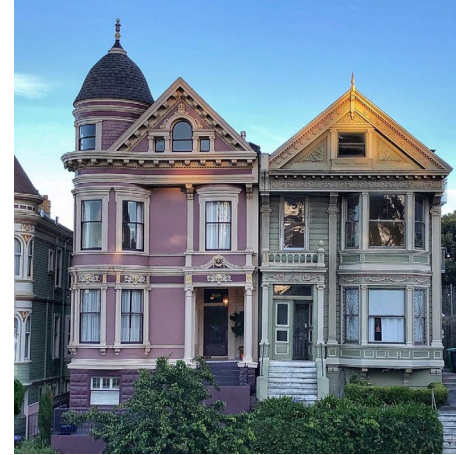
**Your Spouse,  
Registered  
Domestic Partner  
and Dependent  
Children**



**1**

# Do you have a **FINANCIAL INTEREST**

## Real property



- That you own or rent (more than month to month)
- Your interest is worth \$2,000 or more.

**1**

# Do you have a **FINANCIAL INTEREST**

## Real property



- **500-Foot Rule:** If the decision affects your property or other property within 500 feet, you should presume you have a conflict.

**1**

# Do you have a **FINANCIAL INTEREST**

## Sources of Income



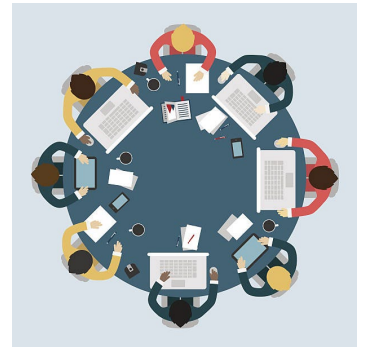
- Any source of income of **\$500** or more in the past **12 months**



# Do you have a **FINANCIAL INTEREST**

## Investments

- Any business entity “**doing business**” in **your jurisdiction**
- In which you have an investment worth \$2,000 or more
- Or are a director, officer, partner, manager, trustee or employee



**1**

# Do you have a **FINANCIAL INTEREST**

## Gifts

- Any source of gifts worth **\$630** or more in the past **12 months**.



**1**

# Do you have a **FINANCIAL INTEREST**

## Personal finances

- The decision will affect your immediate family's finances by \$500 or more in a 12-month period.



## **Common Scenarios!**

- Approval of a project within 500 feet of your home
- Entering into contract with entity that employs partner (even if a nonprofit organization)
- Government decision regarding an entity in which your family owns stock (check your Form 700)

## GOVERNMENTAL DECISION

**Making** a governmental decision includes:

- Voting
- Appointing a person
- Entering into a contract
- Committing your department to a course of action

## 2 GOVERNMENTAL DECISION

**Participating in a governmental decision includes:**

- Attending board or commission discussions
- Advising or making recommendations to a final decision-maker

## 2 GOVERNMENTAL DECISION

**Using your position to influence a governmental decision includes:**

- Communicating with members or your own department or board
- Purporting to act as a representative of your agency

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# FINANCIAL DISCLOSURES



2007/2008

## FORM 700 Statement of Economic Interests

Also available on the FPPC Web site:  
Form 700 Reference Pamphlet

a public document

**Fair Political Practices Commission**  
428 J Street, Suite 620 • Sacramento, CA 95814  
Toll-Free Advice Line: 866-ASKFPPC • (866) 275-3772  
Telephone: (916) 322-5660  
[www.fppc.ca.gov](http://www.fppc.ca.gov)

# Financial Disclosures – Form 700

## Why do you file?

- Allows the public to monitor their officials. Form 700s are public documents.
- Encourages officials to review their financial interests to avoid conflicts.

# Financial Disclosures – Form 700

## What must you disclose?

- Property ownership
- Sources of income
- Investments (stock and business ownership)
- Sources of gifts

# Financial Disclosures – Form 700

## What must you disclose?

- The jurisdiction's Conflict of Interest Code assigns each official or employee a disclosure category.
- Common exceptions: primary residence, investments in mutual funds, any government salary

# Financial Disclosures - SEI

## When do you file?

- **Assuming office statements:** within 30 days of taking office
- **Annual statements:** every year by April 1!
- **Leaving office statements:** within 30 days of leaving office

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# **SECTION 1090: Contractual Conflicts of Interest**

## Section 1090

Neither you, nor the board of which you are a member, may make a contract in which you have a financial interest.

# Section 1090

## What is a *financial interest*?

- Not defined, but the courts construe the term broadly.
- Examples of financial interests: your employer, your clients, your investments

# Section 1090

## What is *making a contract*?

- Approving a contract or RFP
- Planning
- Negotiations
- Preliminary discussions

# Section 1090

## Exceptions to Section 1090:

- **Remote interests:** Board and commission members must disclose and abstain, but can remain on the board or commission
- **Non-interests:** OK to participate

# Section 1090

## Consequences of Section 1090 conflict:

- **For board/commission members:** must give up the financial interest or resign from board or commission
- **For department heads and other employees:** must abstain from any participation in the decision

# Section 1090

## Consequences of Section 1090 violation:

- Criminal penalties (potential felony)
- Contract is void

# Section 1090

## Be careful:

- "Making of a contract" is broad and includes planning, preliminary discussion, compromising, drawing of plans and specifications, and solicitations of bids
- Can include agreements between government agencies

# Common Law Conflicts of Interest

- *May* apply to noneconomic interests (as opposed to the financial interests addressed by the Political Reform Act and Section 1090)
- Fact-specific determination
  - *Clark v. City of Hermosa Beach* (1996)  
48 Cal.App.4th 1152

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## GIFT LAWS



# Gift Rules

1. What is a gift?
2. \$50 reporting threshold
3. \$630 annual gift limit (as of January 1, 2025)
4. Gifts from travel companies
5. Honoraria (speaking fees)
6. Loans

# What is a gift?

A gift is **anything** of value for which you do not provide something of equal or greater value in return

## EXAMPLES:



# What is not a "gift"?

- (a) birthday present from a family member
- (b) birthday present from a co-worker
- (c) birthday present from fellow councilmember
- (d) birthday present from member of the public

# What is not a "gift"?

- Do not make assumptions about what falls into an exception.
- Gifts do not require a corrupt intent.

# What is a gift?

The gift rules do not apply if within **30 days** of receiving a gift you:

- Pay for it
- Donate it (without a tax deduction)
- Return it

# What is a gift?

“Gift” of travel exceptions (not subject to limits, but still subject to reporting):

- Travel for speech within U.S.
- Travel paid for by government agency or 501(c)(3 nonprofit

# Gift Disclosure

- Must report all gifts worth **\$50 or more** from sources in your disclosure category.
- Cumulative: disclosure threshold applies to series of gifts

# Gift Limit



- Do not accept more than \$630 of gifts from any one source in a calendar year
- Cumulative limit
- Applies only to gifts from sources in your Form 700 disclosure category

# Free Travel from Transportation Companies



Public officers may not accept free travel from transportation companies.

- Includes free airline upgrades
- Does not apply to redemption of frequent flyer miles under same terms as general public
- Severe consequences

# Honoraria

Form 700 filers may not accept honoraria (speaking fees) from anyone in their disclosure category.



# Honoraria

## Options:

- Return within 30 days
- Donate to agency (no tax deduction)
- Donate to nonprofit (no tax deduction)



# Loans

- Local elected officials may not receive a loan worth more than \$250 from other agency officials
- Loans to local elected officials of \$500 or more must be in writing (including interest rate and when payments are due)

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**ETHICS:  
CAMPAIGN CONTRIBUTIONS**

# Campaign Contributions

- **Cal. Government Code § 84308 (Levine Act)**
  - Applies to **appointed** officials (commissioners & department heads)
  - As of January 1, 2023, also applies to **local elected** officials
  - Recent amendments (SB 1243) effective January 1, 2025

# Campaign Contributions

- **Rule #1: Prohibition on soliciting or accepting contributions**
  - Cannot solicit or accept any contribution over \$500 from a party or participant in a proceeding (or a party's or participant's agent)
  - While the proceeding is pending, and for twelve months thereafter
  - Applies when solicitation is for another candidate

# Campaign Contributions

- **Rule #2: Disqualification requirement**
  - If a party or participant has made a contribution of more than \$500 to the official within previous 12 months, the official must recuse.

# Campaign Contributions

- What is a “proceeding”?
- When is a proceeding “pending”?
- What is a . . .
  - “party”?
  - “participant”?
  - “agent”?
- Aggregation of contributions

# What is a proceeding?

- **Section 84308 applies to license, permit, or other “entitlement for use” proceedings:**
  - “all contracts” – but not competitively bid, labor or personal employment contracts
  - all business, professional, trade, and land use licenses and permits

# What is a proceeding?

## ➤ Contracts:

- “competitively bid” = required to be “awarded pursuant to a competitive process”
- “labor contract” = agreement reached through collective bargaining
- “personal employment contract” = contract between agency and agency employee
- “personal employment contract” ≠ contract with consultant, independent contractor

# What is a proceeding?

- **NOT a contract:**
  - Contracts where neither party receives financial compensation
  - Contracts valued under \$50,000
  - Renewal of development agreements (unless there is a material modification or amendment)

# What is a proceeding?

## ➤ Licenses and permits:

- Professional license revocations
- Building and development permits
- Conditional use permits
- Special event permits
- Charter school petitions

# What is a proceeding?

## ➤ Entitlement for use:

- Vacation of public streets
- Development agreements
- Rezoning of specific parcels
- Subdivision and parcel maps
- Zoning variances

# What is NOT a proceeding?

- General policy decisions, such as an ordinance of general application
- Rulemaking, where the interests affected are many are diverse

# When is a proceeding “pending”?

- The decision is before you for your consideration, or before the body of which you are a member (e.g., subject of an agenda item on your meeting agenda) OR
- You know or have reason to know the proceeding is before the jurisdiction of your agency, and it is reasonably foreseeable the decision will come before you in your decision-making capacity

# What is a . . . ?

- “Party”: person who files an application for or is the subject of a proceeding
- “Participant”: supports or opposes a particular outcome of the proceeding AND has a “financial interest” in the decision
- “Agent”: represents a party or participant for compensation (e.g., lawyer, lobbyist, architect or engineer)

# Examples

- On January 2, 2025, a developer files an application with the planning department and meets with your staff on the same day to discuss. Soon thereafter, the developer contributes \$300 to your campaign committee. On July 2, 2025, the developer contributes another \$300.
- A local businessperson makes a \$600 campaign contribution on January 2, 2025. The businessperson later submits an application for a conditional use permit that comes before the City Council. The project application appears on an upcoming City Council meeting agenda.

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**ETHICS:**  
***THE BEST OF THE REST***

# Topics

1. Bribery
2. Nepotism
3. Common Law Duty of Loyalty
4. Use of Public Resources
5. Incompatible Offices
6. Post-Employment Restrictions
7. Behested Payments

# Bribery



- No gifts (or anything of value) intended to influence you in your official duties.
- Quid pro quo

# Nepotism

- Generally, a matter of policy (and respect for civil service system)
- Should not participate in or influence decisions regarding employment of a relative

# Common Law Duty of Loyalty

You owe an **undivided duty of loyalty** to the public. Where your private interests interfere with your duties to the public, you should abstain.



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**USE OF PUBLIC RESOURCES**

# Gifts of Public Funds

- Under California Constitution, public funds must be used for a “public purpose”
- Determining what constitutes a “public purpose” is usually within the public officials’ discretion

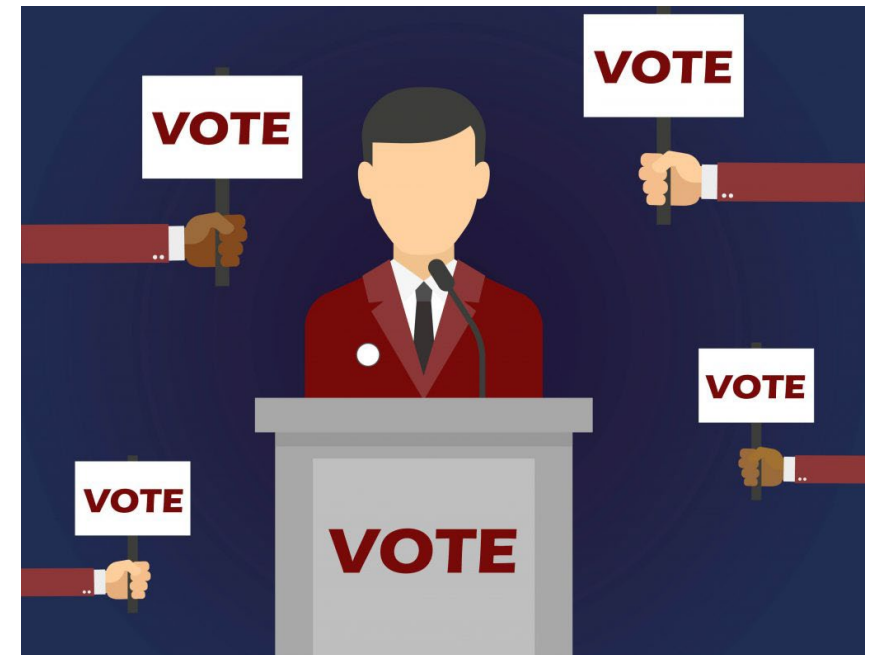
# Use of Public Resources for Personal Purposes

- Public employees and officers may not use public resources for **any** non-public purpose
- Includes computers, email system, phones, letterhead, staff time

# Use of Public Resources for Political Activity

No campaign activities while using public resources.

- Broadly construed.
- Be careful with respect to local ballot measures!



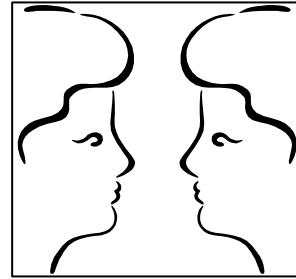
# Mass Mailings

Mass mailings are prohibited if:

1. Tangible item (not email);
2. Features an elected official;
3. Paid for with public funds; and
4. More than 200 pieces sent in a calendar month.



# Incompatible Offices



Cannot hold two offices if:

- The offices are incompatible because of overlapping responsibilities or jurisdiction (Gov. Code Section 1099)
- Separate rules for incompatible *activities* (Gov. Code Section 1126)

# Post-Employment Restrictions

## 1. Negotiating Future Employment

- Do not participate in or influence decisions relating to a prospective employer while you are negotiating future employment
- Applies to all public officials

# Post-Employment Restrictions

## 2. Lobbying Your Former Agency

- Do not lobby your former agency on behalf of others for **one year** after leaving
- Applies to:
  - Local elected officials
  - City managers and county chief administrators

# Post-Employment Restrictions

## 2. Lobbying Your Former Agency

- Applies to:
  - Administrative decisions
  - Legislative actions
  - Permit, license, grant or contract
  - Sale or purchase of property or goods

# Post-Employment Restrictions

- The other ethics rules still apply!
  - Political Reform Act
  - Section 1090
  - Use of public resources

# Behested Payments

- Solicitation of charitable contributions
  - Potential reporting obligation if \$5,000 or more from a single source in a calendar year (FPPC Form 803)
  - Disclosure of connections between nonprofit payees and official and official's family

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**FAIR PROCEDURES:  
ADJUDICATORY PROCEEDINGS AND  
COMPETITIVE BIDDING**

# Due Process

- A board or commission may act like a legislature or a court.
- If adjudicative, must protect the parties' due process rights

# Due Process - Examples

## ➤ **Adjudicative:**



- Revoking or suspending permits or licenses
- Terminating employees
- Property tax appeals



## ➤ **Legislative:**

- Adopting an ordinance, regulation or policy

# Due Process



- If adjudicative, private party has the right to:
  - A fair hearing
  - An unbiased decision maker

# Due Process



- Officials must act like judges:
  - Listen to evidence
  - Base decision solely on evidence
  - Follow procedural rules

# Competitive Bidding

- With limited exceptions, must use a competitive process
- Once a process is established, the agency must follow it
- Officials may not interfere with the competitive process

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**PUBLIC MEETINGS**

# Overview

1. What is a Meeting?
2. Notice of Meetings
3. Public Participation
4. Closed Sessions

# What is a Meeting?

- A majority of the policy body
- Are together
  - at the same time and place, or
  - via communications (phone call, emails or group texts)
- To hear, deliberate, decide, take action on any item within its jurisdiction

# Meetings (or not)

- Formal meetings
- Retreats
- Tours of facilities
- Conferences?
- Community meetings?
- Ceremonial events?

# (Illegal) Meetings

- “Pre-meetings”
- “Post-meetings”
- Teleconferences and group texts
- “Seriatim” (or serial) meetings

# Types of Seriatim Meetings

- A to B, B to C, C to D
- A to B, A to C, A to D
- Some combination of above

# How Seriatim Meetings Occur

- In person
- Use of technology
  - E-mail
  - Text message
  - Phone call
- Human intermediaries (staff)

# Non-Meetings of a Majority

- Non-member of body communicates with a majority, if
  - one-on-one communications
  - not discuss views of other members
- Attendance of majority at
  - Conference, community meeting or ceremonial event

If (1) open to the public, (2) no collective discussion of business

# Remote Meetings

## ➤ “Old” rules

- All teleconference locations are identified in the notice and agenda
- An agenda is posted at each teleconference location
- The public is entitled to attend at each teleconference location
- All votes are taken by roll call
- At least a quorum of the members participating are within the geographic jurisdiction of the public agency

# Remote Meetings

- “New” rules: limited options
  - Quorum must still meet in person
  - “Just cause” (up to 2 per year)
    - Childcare, contagious illness, travel on official business
  - “Emergency circumstance”
  - Overall limit based on frequency of meeting schedule (ex. five times a year, if meetings are held twice a month)

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**NOTICE OF MEETINGS**

# Posting the Agenda

- When: At least 72 hours before the meeting (regular)
- Where: location “freely accessible to members of the public”
  - Website
  - City Hall
  - Outside meeting room

# Meeting the 72-Hour Deadline

- Recommendation: Don't wait to the last minute
- Amending an agenda item
  - Before the deadline
  - After the deadline
- Special meetings (24-hour notice)

# Describing an Agenda Item

- Sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected of reason to attend the meeting or seek more information on the item
- No bright-line test
- Safe-harbor language (for closed sessions)

# Why does this matter?

**A POLICY BODY CANNOT  
DISCUSS OR ACT ON ITEMS NOT  
ON THE AGENDA.**

# Examples

- Agenda item: “Walmart Initiative Measure”
  - Packet with resolutions (approving initiative to build Walmart in Town) and initiative itself.
  - No information that Town will accept gift from Walmart to pay for election.
- Town cannot approve agenda item (approve initiative and place on ballot).

*(Hernandez v. Town of Apple Valley (2017) 7 Cal.App.5th 194, 207–209.)*

# Limited Exceptions

- Announcements
- Request to agendize items
- Direction to staff
- Limited follow-up to general public comment

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**PUBLIC PARTICIPATION**

# Ability To Attend

- Nondiscriminatory admission
- Disability access
- No preconditions
- No fee
- No sign-in sheet (ok if says it is optional)

# Public Comment

- General Public Comment
  - any time in meeting
- Agenda Item Comment
  - before action taken on item
  - for discussion item, before consideration of item ends

# Public Comment

- Equal speaking time for members of the public
  - Other speakers can go longer
  - Calculating speaker time
  - Considering translator time
- Free to criticize policy body, members, department staff

# Public Disruptions

- Allow for removal when:
  - Failure to comply with body's regulations (but must provide warning)
  - Use of force or threat of force

# Types of Closed Sessions

- Performance evaluation
- Pending or anticipated litigation
- Labor negotiations
- Real estate negotiations
- Security
- Miscellaneous others

# Requirements Before Closed Sessions

- Special agenda format
  - Safe harbor formats (Gov Code Section 54954.5)
- Public comment before going into closed session

# Requirements During Closed Sessions

- Stay on topic
- Limit attendance
  - Commissioners
  - Staff/employees to aid the body
  - Necessary participants in the session

# Requirements After Closed Sessions

- Required reporting of certain final actions
- Maintain confidentiality of closed session

# Consequences for Brown Act Violation

- Willful action – potential criminal liability
- Voiding of action
- Injunction or declaratory relief to stop or prevent violations of Act
- Attorneys' fees and costs

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## **PUBLIC RECORDS**

# Overview

1. Definition of “Public Record”
2. Process for Handling Requests
3. Exemptions

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# **DEFINITION OF “PUBLIC RECORD”**

# What is a Public Record?

- Writing, regardless of physical form or characteristics
- With information relating to the conduct of the public's business
- Prepared, owned, used, or retained
- By any state or local agency

# Use of Personal Devices

- A public record, if the message meets the definition – the medium doesn't matter
- Consider substance of message, purpose, context, sender, recipient
- Responsibility for search lies with employee/official
- Request doesn't have to specifically ask
- Texting/emailing during meeting - beware

# What is a Public Record?

- (a) Meeting agendas
- (b) Meeting minutes
- (c) Public comment cards re:  
agenda items
- (d) Communications re: agenda  
item

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**PROCESS FOR HANDLING REQUESTS**

# The Request

- Must specify record/category of records – not a strict requirement
- May be oral – written is better
- Magic words like “public records request”/“sunshine” not required
- No justification required

# Time for Response

- Standard – 10 calendar days
- Time extension – 14 calendar days
  - Other storage facilities
  - Voluminous
  - Involves other agencies

# Duty to Conduct Reasonable Search

- A matter of degree; not have to seek “needle in haystack”
- Consult relevant people/files
- Keep records in orderly files to facilitate search
- Method of searching personal electronic device

## No Duty:

- To respond to written questions (may or may not be good practice)
- To create record that doesn't exist (but different for compiling existing electronic data)
- To create privilege log

# Nature of Response

- If withhold a record (in full or part), state legal justification
- Explain process for requester to inspect and/or copy records
- State copying fees, if any

# May Not Charge For ...

- Search for/collection of records
- Redacting records
- Overseeing inspection of records
- Time to copy records
- Preparing response

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**EXEMPTIONS**

# Exemptions

- Attorney-client communications
- Attorney work product
- Law enforcement investigative and security records
- Confidentiality and privacy
- Personnel records

# Exemption Pointers

- No “embarrassment exemption”
- Large number of exemptions
  - some obscure
- Mandatory vs. discretionary exemptions

# Consequences for Public Records Act Violation

- Declaratory and injunctive relief ordering disclosure of record
- Attorneys' fees and costs

A low-angle photograph of a classical building facade featuring large, fluted columns and ornate carvings. The sky is blue with scattered white clouds. The text is overlaid on the right side of the image.

# **Questions? Concerns? Discussion**