



HOW TO BUILD AND MAINTAIN THE PUBLIC'S TRUST: PRACTICAL ETHICS AND THE LAW (1234)

3/06/19

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AB 1234 Training: Principles of Ethics and the Law in Public Service

- Principles of Ethics
- Eliminating Self-Interest
- Transparent Government
- Fairness and Due Process



Why Are We Here?

- AB 1234
- Enacted after investigative report by Sacramento Bee
 - Water District officials misusing public resources
 - Use of agency credit card for personal purposes
 - Misreporting of income
 - Double-dipping on expense reimbursements



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Scandal in the City of Bell



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AB 1234 Training: Principles in Ethics and the Law in Public Service



- AB 1234 Ethics training is not aimed at the few intentional lawbreakers but at the vast majority of public officials who want to do a good honest job

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Relationship Between Ethics, Transparency, and the Law

- The law is the starting point for most ethical analyses
- The law is the floor for ethical conduct, not the ceiling
- Just because it's legal, doesn't mean the public will see it as being right
- In politics, perception = reality

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Why Transparency and Accountability are Important

- **Information is vital to self-government**
 - Meaningful oversight
 - Informed participation by constituents
- **Transparency builds external confidence and trust in the organization**
- **Too many secrets can harm the internal stability of an organization**
 - But some information must be confidential to protect the entity or its employees

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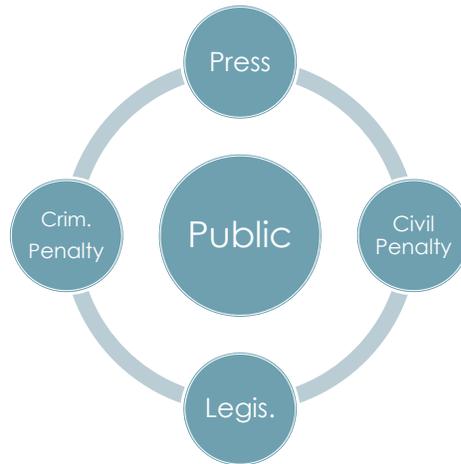
Why Transparency and Accountability are Important

- **Informed debate and better decision-making**
- **Predictability**
 - Businesses want to do business with predictable entities
 - Employees and stakeholders want predictability
 - Information gaps feed conspiracy theorists

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Why Should You Care?



Four Groups of Ethics Laws



- Personal Financial Interests
- Gifts, Perks & Misuse of Public Funds
- Governmental Transparency
- Fair Process Laws

Group 1: Personal Financial Interests

Personal Financial Interests

- **Political Reform Act**
 - Disclosure
 - Disqualification
- **Contracts**
 - Gov. Code § 1090



The Political Reform Act (PRA)

- Enacted in 1974
- Created the Fair Political Practices Commission (FPPC)



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Personal Financial Interests *Political Reform Act of 1974*

A Public Official is every:

- Member
- Officer
- Employee
- and *certain* Consultants of a State or Local Agency

(Gov. Code § 82048)



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Personal Financial Interests *Political Reform Act of 1974*

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



How is this done?

Disclosure
(Form 700)

Disqualification

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Disclosure of Economic Interests Form 700

- **Form 700 Statement of Economic Interests**
 - As a candidate for office, upon assuming office and annually
 - Purpose – helps prevent conflicts by letting the public know your interests
 - Disclose your economic interests –
 - Sources of income
 - Real property interests
 - Investments
 - Business entities that you own
 - Sources of gifts



Report Your Interests Accurately

- **Form 700 Statement of Economic Interests (SEI)**
 - Penalties for late filing / failure to file
 - Accurate reporting prevents conflicts & increases public confidence
 - Failure to report an interest will almost always make the FPPC, public and press more suspicious



Recusal (abstention) due to Conflict of Interest

"No public official . . . shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

- Political Reform Act, Government Code § 87100



Intent of Conflict of Interest Laws

- The law is aimed not just at actual misconduct, but at the perception of misconduct and temptation
- The PRA and the FPPC have had to draw lines as to what is and is not a conflict of interest
- Lines are not always intuitive or obvious
- Actions that seem “right” may still be illegal

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Is a Governmental Decision Involved?

- Is the public official making, participating in the making, or using or attempting to use his or her official position to influence a governmental decision?
- “Makes a decision”
 - Votes
 - Makes appointments
 - Commits agency to a course of action
 - Enters into a contract
 - Determines not to act

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Is a Governmental Decision Involved?

- **“Participates in making” a decision**
 - Acts within authority of his/her office or position and advises or makes recommendations to decision-maker
 - Negotiates with third party regarding governmental decision
- **“Attempts to use an official position to influence a decision”**
 - Contacts or appears before or otherwise attempts to influence any member, officer, employee or consultant of the agency, or
 - Advocates on behalf of his/her agency to another governmental agency

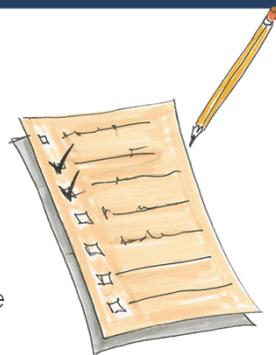
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Personal Financial Interests Political Reform Act of 1974

Questions to ask:

1. Is it reasonably foreseeable that the decision will have a financial effect on your economic interest?
2. Will the financial effect be material?
3. Is the financial effect indistinguishable from effect on the public generally?
4. If no, absent an exception, you may not make or participate in the decision.



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Tests Applied to Guide Conflict of Interest Determination

- Reasonably Foreseeable = “Realistic Possibility”
- Financial effect is not material if it is “nominal, inconsequential, or insignificant.”



More Tests and Standards

- **Public Generally Exception**
 - A significant segment of the public will be affected in the same manner
- **Legally Required Participation Exception – Rule of Necessity**
 - No other member of staff can legally make the decision
- **Take Special Care Whenever Confronted with a Decision that will Involve a Financial Interest Listed on your Form 700**



What are your Financial Interests?



- Real property interests (including leases)
- Sources of income of \$500 or more in the last 12 months
- Investments worth \$2,000 or more
- Business interests
- Gifts of \$500 from a single source over the last 12 months

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Real Property Interests



- Real property interests worth at least \$2,000
 - Owned by you
 - Owned by you and your spouse together
 - Owned by your spouse separately
 - Your dependent child's property
 - Your interest as a tenant in real property (except month-to-month)



Materiality Standards for Impacts on Real Property Interests: Ownership change

- Direct Decisions:
 - When your property is the subject of a general plan amendment, zoning/rezoning, or permit decision
 - Decision involves improvements to streets, water, sewer, storm drainage or similar facilities, and your property will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving those services



500 Foot Rule - 2019

New Rule:

- **500 feet or less:** Material effect if the decision involves property that is located 500 feet or less from the property line of your property unless there is clear and convincing evidence that the decision will not have any measurable impact on your property.
- **Between 500 and 1,000 feet:** No material effect unless decision would change the development potential, income producing potential, highest and best use, or substantially alter traffic, intensity of use, parking, view, privacy, noise levels or air quality, or market value of your property.



New 500 Foot Rule – 2019 (cont.)

- **New Rule (cont.)**
 - **More than 1,000 feet:** If the decision involves property 1,000 feet or more from the property line of your property, then that decision is presumed not to materially affect your property unless there is clear and convincing evidence the governmental decision would have a substantial effect on your property.

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Materiality Standards for Impacts on Real Property Interests: Leases

- **5 criteria apply when property is leased:
The decision will:**
 1. Change the termination date of the lease
 2. Increase or decrease the potential rental value of the property
 3. Increase or decrease the rental value of the property, and the official has a right to sublease the property
 4. Change the official's actual or legally allowable use of the property
 5. Impact the official's use and enjoyment of the property



Materiality Standards for Impacts on Real Property Interests: Exceptions

- **Exceptions:**
 - There is no material financial effect if a decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities
 - General plan policy decisions
 - Common areas in common interest developments are now excluded from the definition of “real property” for the purpose of conducting a conflict of interest analysis



Your Sources of Income

- **Sources of income of \$500 or more in the last 12 months**
 - Your own income such as salary from a private employer
 - Promised income
 - Child's income
 - Loans
 - Spouse / partner income
 - Commission income



Investments and Business Interests

- **Investments**
 - Investments worth \$2,000 or more
 - Mutual Fund exception
- **Business Interests**
 - Management or employment
 - "Related" business entities
 - Property interests of businesses



Materiality Standards for Impacts on Business Interests

- **A presumption of materiality if the business is directly involved in the decision**
 - For example, contracts between the City and the business entity
- **Otherwise**, "the financial effect is material if a **prudent person with sufficient information** would find it is reasonably foreseeable that the decision's financial effect would contribute to a **change** in the **price of the business entity's publicly traded stock**, or the **value** of a privately-held business entity



You have an economic interest in your "personal finances"

▪ Personal Finances

- Your personal expenses, assets or liabilities
- Will the decision cause you, your spouse or your dependent children to receive a measurable financial benefit or loss?
- Or those of your spouse or dependent children?



Personal Financial Interests Political Reform Act of 1974

HYPO:

The Mayor is going to vote to award a construction contract for a city library to a company who employs his sister's husband (brother-in-law) in a top executive position.

Can the Mayor vote on the decision to award the contract?



Personal Financial Interests Political Reform Act of 1974

Answer: *Yes.*

An official has an economic interest in his or her own finances and those of his or her immediate family (spouse and dependent children). But, a mere sibling relationship is not enough to create a conflict.

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Personal Financial Interests Political Reform Act of 1974

HYPO:

The City is considering constructing a hiking trail on City property on the opposite side of a creek which borders the backyard of the residence of a member of the Planning Commission.

Can the Planning Commissioner vote on the decision to develop the trail?

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Personal Financial Interests Political Reform Act of 1974

Answer: *Probably No*, assuming the property is within 500 feet of the trail

An official who has a financial interest of \$2,000 or more in real property may not vote on a matter affecting real property located within 500 feet of the property line of the official's property.

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Personal Financial Interests Political Reform Act of 1974

HYPO:

Commissioner's spouse is a partner in a firm that has leased space in the City's downtown since 1980 under a multi-year lease, which later converted into a month-to-month lease. Partners expect to enter into multi-year lease within a few months. City receives application for mixed use development that is located slightly more than 500 feet from firm, but that would significantly change the character of the area. Prior lease allowed partners to sublease space.

Can Commissioner participate in that decision?

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Personal Financial Interests Political Reform Act of 1974

Answer: *Probably No.*

Although new lease terms are unknown, the expansive scope of the project makes likely it that development decisions would effect the new lease, including the rental value of any sublease.

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If You Are Disqualified

- Don't discuss or influence (staff or colleagues)
- Identify nature of conflict at meeting
- Leave chambers after stating abstention (except for items on consent calendar)



Participation as a Member of the Public

- Recuse yourself from participating in your official capacity
- May only speak as a member of the public to represent your "Personal" interests
 - Owned property
 - Owned / controlled business



PRA Penalties



- Invalidation of decision
- Misdemeanor (could result in loss of office)
- Fines
- Attorney's fees (yours and others)
- Embarrassment (personal / political)



Government Code Section 1090

Government Code Section 1090

- A public official may not "make" a contract in which he or she is "financially interested"



Government Code Section 1090

- Officer or employee of covered local entity
- Financial interest in a contract
 - Direct contractual interest
 - Indirect benefit from the making of a contract
- Contract made by the official or body of which you are a member
 - Broadly interpreted to include negotiations, discussions, design, planning, etc.
- If ultimate decisionmaker is financially interest, City cannot enter into contract. If a Commissioner or staff member is financially interested they can abstain



Financial Interest in Public Contracts *"Making" the Contract*

- "Making" includes:
- Negotiations
 - Discussions
 - Reasoning
 - Planning, and
 - The "give and take which goes beforehand in the making of the decision to commit oneself...."



Government Code Section 1090

▪ Exceptions

- "Remote Interests" – Section 1091
 - Abstention and disclosure required
- "Non-interests" – Section 1091.5
 - No abstention required. Disclosure sometimes required

▪ Examples

- You are the landlord or tenant of the entity that is seeking a contract from your agency
- You are a supplier of goods or services to the entity that is seeking a contract from your agency, if you supplied goods and services for over 5 years
- Non-profit entities and public agency employment



1090 Case Study: *Thomson v. Call*



1090 Case Study: *Thomson v. Call*

- City required dedication of parkland as condition of development
- Developer paid \$600k for parkland acquisition; a portion of land was owned by Council Member
- On City Attorney's advice, Council Member abstained from decision relative to the \$600k plan, but voted on use permit and rezoning
- 1090 violation – the Calls had to refund \$256k, plus interest, and they lost the land



Personal Financial Interests *Interest in Public Contracts*



- Penalties Severe
 - Contracts are not just "voidable," but void
 - Contractor may have to refund money
 - Willful violation is a felony
 - Fines (up to \$10,000) or imprisonment
 - Prohibition against holding public office
 - Usual tool of the DA to prosecute for corruption



Section 1090 Penalties

- **Defenses that don't work**
 - Contract was fair, just and equitable to all parties
 - City Attorney said it was okay to participate
 - Abstention may not be enough to avoid 1090 violation and invalidation of the contract



Getting Help

- **Seek advice from the FPPC**
 - 1-866-ASK-FPPC
 - Request a formal advice letter, if time permits

“If in doubt, sit it out.”



**Group 2:
Gifts, Perks & Misuse of Public Funds**

Gifts & Perks

- **Principles:**
 - Don't use your office for personal gain
 - Be mindful of perks given because of your office or role
 - Perks can create appearance of bias

The Obvious: Do Not Take Bribes

- Do not solicit or accept contributions, things of value or payments in exchange for votes or other official action



What is a gift?

A gift is anything of value for which the recipient did not provide payment or services of equal or greater value to the donor



Gift Limit: Rules & Requirements

- **Report:**

- Any gift or gifts that aggregate **\$50** or more from any person/entity listed in your disclosure category
- Applies to several gifts from same source within same calendar year

- **Do not accept:**

- Gift or gifts from single source that aggregate more than **\$500** in same calendar year
- Gift limit raised every odd-numbered year based on inflation



Gift Limit: Rules & Requirements

- **Recuse:**

- Do not make, participate in or influence governmental decision:
 - involving donor of gift or gifts
 - aggregating \$500 or more
 - provided to, received by, or promised to you
 - within 12 months prior to date of decision



- ***TRACK donors, gifts and values***



Gifts Don't Always Have Bows

- Meals, food and drink (including receptions)
- Entertainment (concerts & sporting events)
- Raffles
- Travel and lodging
- Tickets



Gift Rules Apply to....

- Elected officers of a local government agency
- Mayor
- Members of the City Council
- City Manager
- Commissioners
- City Attorney
- City Treasurer
- Chief Administrative Officer or other public official who manages public investments
- Candidates for any of these offices at any election
- City employees or other officials who are designated in the City's conflict of interest code



Gifts from Outside the City's Jurisdiction



- Gifts received from a donor outside the City's jurisdiction may be subject to PRA
- No reporting of gifts from outside the agency's jurisdiction if the purpose of the disclosure of source has no connection with, or bearing upon, function or duties of position for which reporting is required.



Relationships and Gifts



- Existing personal or business relationships
- Long term relationships- BFF's
- Bona fide dating relationships



Family Exception to Gift Rules

- Spouse
- Child
- Parent
- Grandparent
- Grandchild
- Brother
- Sister
- Parents-in-law
- Brother-in-law
- Sister-in-law
- Nephew
- Niece
- Aunt
- Uncle
- First cousin
- Spouse of any of the above



Holiday Exception to Gift Rules



- Gifts **exchanged** between public official and another individual, other than a lobbyist, on holidays, birthdays, or similar occasions
- Gifts exchanged must not be **substantially disproportionate** in value



Other Exceptions to Gift Rules

- Bereavement offerings
- Prizes/Awards in Contests
- Awards or trophies
- Benefits of Attending Wedding
- Disaster Assistance
- Leave credits
- Home hospitality
- Acts of Neighborliness or Human Compassion
- Inheritances
- Informational materials at conferences, etc.
- Free admission to conferences
- Catch-All



Agency Disclosures Gift to Agencies: Forms 801 & 802

Gift to Agencies: Form 801

- **Know the rules:** Exceptions on gifts of travel 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





It's Party Time!



- Tickets and passes
- Nonprofits/Political fundraisers
- Invitation only events
- Wedding gifts
- Baby gifts



Watch Out!

- Watch out for gifts in disguise:
 - Gifts to your family that benefit you
 - Events honoring you
 - Official or ceremonial functions



SPECIAL RULES APPLY!



Returned or Donated Gifts

- Item is not deemed accepted or received if, within 30 days after receipt:
 - The gift is not used and is returned to donor; or
 - The donor is reimbursed; or
 - The gift is donated to charitable organization or federal, state or local government agency without claiming a tax deduction



Disclose, Disqualify and Refuse

Disclose

- \$50 or more
- Track
- FMV

Disqualify

- \$500 or more

Refuse

- More than \$500
- Refuse
- Return
- Donate



Prohibition Against Receipt of Honoraria

- **Honorarium** =
“payment made in consideration for any speech given, article published, or attendance” at a conference, meeting, social event, or like gathering
- **Exceptions**



Loans



- You cannot borrow more than \$250 from other city officials, employees, consultants or contractors
- Loans of \$500 or more from anyone else must be in writing
- Unpaid loans may become a gift



Loan Exceptions

- You usually don't have to worry about:
 - Your mortgage (and other loans obtained from banks or financial institutions)
 - Your credit cards
 - Loans from family members



No Free or Discounted Transportation

- No free travel from transportation companies
 - *Cal. Const. art. XII § 7*
- Only applies if you are an officer of City, not an employee



Do Not Use Public Resources for Political/Personal Purposes

No Mass Mailings

No Personal Use of Staff

No Personal Purposes

No Campaign Use



Mass Mailing Rule

- **No newsletter or other mass mailing shall be sent at public expense**
 - Political Reform Act, Government Code § 89001
 - A mass mailing is the delivery of a tangible item, that “features” an elected official, at public expense, in a quantity of 200 or more, in a calendar month
- **Don’t single out an elected official by photograph or signature**
- **Websites are NOT a mass mailing because they are not a “tangible item”**



Prohibition on Gifts of Public Funds

- Local agency may not give away public funds or anything of value for free
- There must be consideration (contracts, agreements)



OR

- The grant must serve a "public purpose"



Reimbursements



Adopt Reimbursement Policy

Use Expense Form

Require Documentation of Expense



Credit Cards



Risk of misuse is high

NEVER use card for personal expenses

Reimbursement not a defense



Penalties for the Misuse of Public Funds

- No reimbursement
- Restitution to the agency
- Up to \$5,000 per violation
- Own attorneys fees
- Others' attorneys fees (for private actions to enforce law)
- Up to four years in jail



**Group 3:
Governmental Transparency**

The Public Records Act

The Public Records Act



- Act affords any “person” the right to inspect and be provided a copy of any identifiable public record
- “Person” includes an individual or corporation and elected members of local agencies
- “Public record” definition is broad



What is a Public Record?



- “Public record” includes
 - any writing
 - containing information relating to the conduct of the public’s business
 - prepared, owned, used or retained by any state or local agency
 - regardless of physical form or characteristics



What is a Public Record?

- A “writing” is broadly defined and includes much more than written or printed documents—i.e., photos or recordings, drawings, plans, maps, films, discs, emails, text messages, chat (Cisco Jabber), etc.
- A “public record” does not include every piece of paper in the City's offices
- Exemptions



Electronic Records

- Emails and texts may be public records
- But which emails and texts?
- Emails and texts pertaining to City business on private devices may be public records and subject to disclosure
- Beware of e-mail chains



Requests for Public Records

- Requester not required to submit written request
- Follow-up oral request with confirming email or letter
- Requester not required to state reason for request
- Public agency required to “assist” individual
- If record is otherwise subject to disclosable, City may not limit access based upon purpose for which it’s being requested. (**Government Code § 6257.5**)
- Staff should immediately forward request to City Attorney’s office unless you are authorized to share with outside entities

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Handling Public Records Requests

- Public records must be available during office hours
- Must make copies of disclosable records “promptly available” ... “upon request”
- Agency shall within 10 days:
 - Determine disclosable records, or
 - Request time extension for “unusual circumstances” (up to 14 day extension).

Hours

Monday 8AM—5PM
Tuesday 8AM—5PM
Wednesday 8AM—5PM
Thursday 8AM—5PM
Friday 8AM—3PM



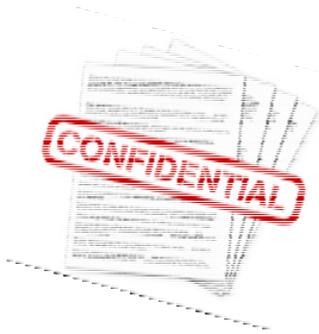
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Public Records Act: Exemptions

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



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Public Records Act: Consequences for Noncompliance

- Litigation to enforce right to access
- Prevailing petitioners entitled to costs and fees
- Public mistrust



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Best Practices

- **Always** respond to requests (don't ignore)
- **Confirm** request in writing
- **Comply** with time deadlines
- **Provide written response** (grant or deny)
 - Include applicable exemptions
- **Adopt** regulations or policy
- **Develop** standardized fees
- **Consequences** for non-compliance



The Ralph M. Brown Act

"Open and Public"

"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."

- Government Code § 54953(a)



Topics

- Who is subject to the Act?
- What is a meeting?
- What rules apply to meetings?
- What are the remedies for a violation?



The Brown Act Applies to “Legislative Bodies”

- **What is a “legislative body?”**
 - Governing body of the agency
 - Subordinate boards and commissions created by formal action of the governing body
 - Standing committees with regular meeting schedule and continuing subject matter jurisdiction
- **What is not a “legislative body?”**
 - Advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body



Meetings

- **Elements:**
 - Congregation of a majority
 - Same time and location (including teleconference location)
 - To hear, discuss, deliberate, or take action on any item
 - Subject matter jurisdiction



Serial Meetings Are Illegal

- What is an illegal serial meeting?
 - Direct or indirect communication
 - Employed by a majority
 - To discuss, deliberate, or take action on any item of business or potential business



2 Types of Serial Meetings

Chain



Hub and Spoke



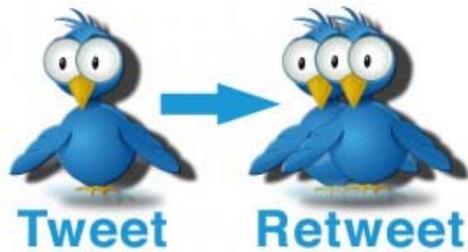
Serial Meetings Are Illegal



- Don't hit "Reply All"
- Remember the discussion must occur publicly on dais not via email or texts among members



Serial Meetings: Chain



But Individual Briefings Are Allowed

- Individual briefings are permitted
 - “Unidirectional”
 - Don't describe views of any other members
 - Don't ask member's views



Meeting Exceptions

- When is a meeting not a “meeting?”
 - Individual contacts
 - Conferences and seminars
 - Community meetings
 - Another body of the agency when it is an open and noticed meeting of that body



Meeting Exceptions



- When is a meeting not a “meeting?”
 - Social or ceremonial events
 - Ad hoc committee meetings
 - Observation of standing committee meetings



Regular Meeting



- Agenda must be posted 72 hours in advance
- Brief description of items of business
- Posted agenda must be freely accessible to public



Special Meeting

- Called by presiding officer or majority of council
 - Notice must be posted 24 hours in advance
 - Notice must be received by each member and press unless waived
 - Consider only items on the agenda



Other Agenda Requirements



- No discussion or decision on items not on the posted agenda
- Agendas must be publicly accessible and distributed in advance to those who request copies



Agenda Requirements – Exceptions

- Items added to the agenda
 - Came to the agency's attention after the agenda was posted
 - Need to take action before the next meeting
 - Two-thirds vote required

URGENT



Exceptions – Continued

- Brief response to comments / questions
- Clarification / reference to staff
- Brief announcements / report on activities
- Requests for future report
- Placement of items on future agenda



Public Comments at Meetings

- Public agencies may not prohibit public criticism of the agency or the legislative body
- Civil Code section 47 makes statements at a public meeting generally privileged



Public Participation



- Not required to "register"
- Rules of decorum permitted
- Time limits okay
- Recording permitted



Enforcement & Consequences

Three types of enforcement actions:

- Civil action to invalidate an decision or action
- Civil action for a determination of a past violation
- Criminal prosecution



Group 4: Fair Process Laws

- Due Process
- “Common Law” Conflicts of Interest
- Campaign Contributions
- Qualifications for Office
- Incompatible Offices
- Competitive Bidding



Fair Process: Due Process



- Due Process Clause

“ ...nor shall any State deprive any person of life, liberty or property without due process at law”

**14th Amendment
U.S. Constitution**



Due Process in Local Government

- The Due Process Clause is implicated whenever a local agency conducts a public hearing
 - Application of Ordinance to evidence
 - Discretion
 - Examples
 - Conditional use permits
 - License revocations
 - Termination or other disciplinary action of “for cause” employees



What does “Due Process” Mean?

- Reasonable notice
- A reasonable opportunity to be heard
- Before an impartial decisionmaker



An Impartial Decisionmaker

- Pre-existing views on the general policy issues related to a matter do not create disqualifying bias
- Due process does not require that the decisionmaker be an “intellectual eunuch” – someone with no views or opinions at all

Andrews v. Agricultural Labor Relations Board (1981)



An Impartial Decisionmaker

- **Disqualifying bias requires:**
 - Concrete proof of a specific prejudice against a person affected by the decision
 - Bias which is sufficient to impair the decisionmaker's ability to decide the matter on appropriate grounds



Bias: *Nasha v. City of Los Angeles*

- Planning commissioner wrote article in homeowners' association newsletter calling proposed project a "threat to a wildlife corridor"
- Court found "unacceptable probability of actual bias"
- Because three votes were required to sustain the appeal, the commissioner's tainted vote was decisive



Bias: *Fairfield v. Superior Court*

- Campaign statements do not disqualify a councilmember from voting on issue
- The courts expect local elected officials to express their views to their constituents on issues of policy and public controversy



Common Law Doctrine Against Conflicts of Interests

- Judicially-created Law
- Applies when public official is tempted by personal interests
- Even if those interest are not a “financial conflict” under Political Reform Act
- Infrequently applied but beware



Common Law Conflict Case Study: *Clark v. Hermosa Beach*



Lessons from the *Clark Case*

- **Why no violation of Political Reform Act?**
 - Month-to-month lease is not an interest in real property under PRA
- **Public officials should not participate in decisions that affect their personal interests**
- **Requirement for objective & unbiased decision makers**

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Tips for Decisionmakers



- **If you think you cannot be fair, don't participate**
- **Avoid statements before the close of a hearing that suggest your mind is made up**
- **Make decisions based on administrative record**
- **Behave judiciously; avoid the appearance of bias**



Tips for Decisionmakers



- If you make private site visits, don't make commitments to applicants or neighbors
- Disclose at the hearing any "off-the-record" information you have obtained
- City policy and fair hearing procedures prohibit receipt of information or comments via email or text during a meeting



**Campaign Contributions
and Lobbying**

Fair Process: Campaign Contributions

- **General Rule: Campaign disclosure forms are sufficient**
 - No Disqualification (e.g., campaign contribution from developer)
- **Special rules for appointed boards and commissions**
 - \$250 / 12 month / 3 month rule
 - Applies to planning commissioners
- **Disclosure**
- **Disqualification**



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Campaign Contributions

- **Prohibition on soliciting campaign contributions from other officers or employees of your agency**
- **Prohibition applies to direct or indirect solicitation of contributions**
- **Exception for mailed requests to significant segment of public**
- **Violation is misdemeanor subject to prosecution by DA**



Limitations on Lobbying – “Revolving Door” Limitations

- One-year ban on lobbying
- Applies to elected officials and city managers
- Applies to legislative and administrative decisions but not ministerial
- Cities and counties may have stricter ordinances
- Enforcement through Political Reform Act and the FPPC



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**Conditions to Holding Office, Employment
& Competitive Bidding**

Residence within Public Entity

- To hold office as a Council Member you must be an “elector” of the city
- To be an “elector” you must be U.S. citizen and a resident in your election precinct
- You must also be a registered voter in City at the time nomination papers are issued
- You must maintain your principal residence (your domicile) in City – intent plus conduct

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Fair Process: Incompatible Offices Doctrine



- Cannot hold two incompatible offices
- Conflicting or overlapping functions
- Office/employment contrasted
- Loss of first office upon acceptance of incompatible office



Fair Process: Conflicts in Decisions Affecting Prospective Employer

- You may not make, participate in, or use official position to influence, any governmental decision relating to an entity with whom you are negotiating prospective employment.

Government Code § 87407



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Fair Process: Conflicts in Decisions Affecting Prospective Employer

- This preclusion commences when either:
 - you have an interview with an entity for an employment position; or
 - before you are interviewed, you get an offer or employment from an entity

FPPC Regulation § 18747



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Fair Process: Conflicts in Decisions Affecting Prospective Employer

- Prohibition inapplicable if you are seeking employment with a local, state or federal governmental entity
FPPC Regulation § 18747



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Fair Process: Competitive Bidding

- Required by State Law or Charters
- Principles:
 - Everyone has right to compete for agency's business
 - Competition produces the best price for taxpayers
 - Prevents favoritism, extravagance, fraud



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Fair Process: Competitive Bidding

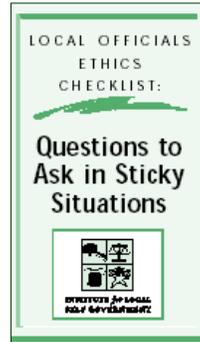


- Contract goes to lowest responsive, responsible bidder
- Exceptions
 - Emergencies
 - Small contracts
 - Professional services
 - Sole source



Questions to Ask

- What would make the public feel best / inspire public confidence?
- What would you want to read about on the front page?
- How do you want to be remembered?



Getting Help with Ethical Issues

- The Institute for Local Self Government
 - www.ilsg.org/trust
- Seek advice from the FPPC
 - 1-866-ASK-FPPC
 - Request a formal advice letter, if time permits



Thank you!