
Ethics and Public Service

Laws and Principles (AB 1234)

City of Carson



Presented by Chris F. Neumeyer

Assistant City Attorney

May 4, 2017

Session Objectives

1. To familiarize you with laws that govern your service *and* when to ask questions



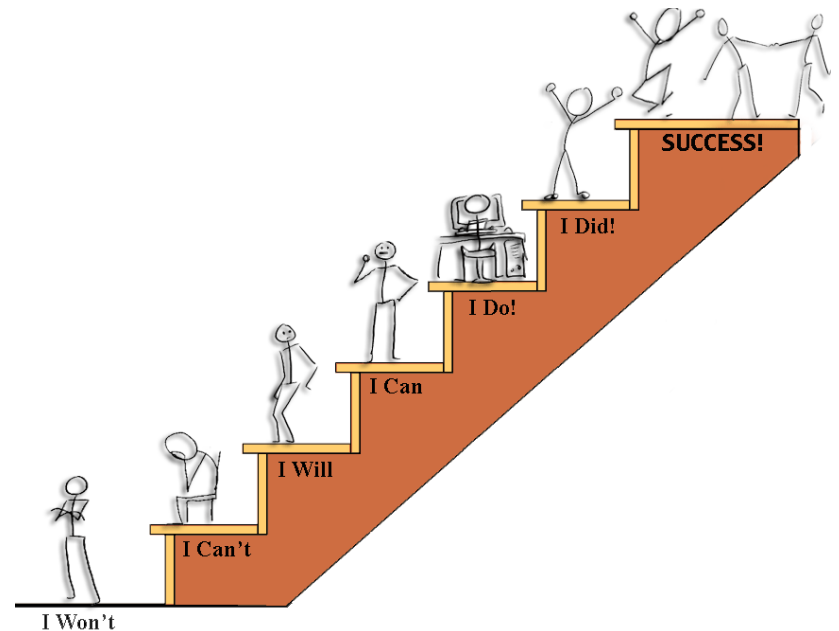
1. To encourage you to *think beyond legal restrictions* and provide tools for doing so



2. Help you comply with AB 1234 requirements

Session Logistics

- **2 hour session**
 - Specified content
 - Breadth versus depth
- **Questions**
- **Proof of participation**
 - Sign in
 - Certificates



“Ethics Laws” versus “Ethics”

- Law is often starting point for ethical analysis in public services
- *Law is what we must do*



- Just because it's legal, doesn't mean it is ethical (or the public will perceive it to be so)
- *Ethics are what we should do*

AB 1234 Ethical Values

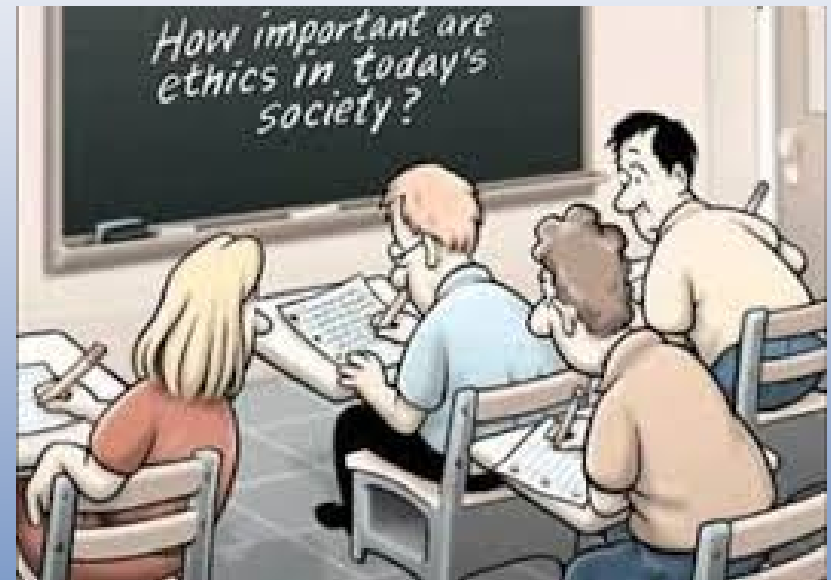
- ✓ Trustworthiness
 - Integrity, honesty, loyalty
- ✓ Respect
 - Courtesy, autonomy, tolerance
- ✓ Responsibility
 - Accountability, conscientiousness, self-restraint
- ✓ Fairness
 - Impartiality, open-mindedness, equity



***These values promote public trust
in government, as does avoiding even
an appearance of impropriety***

Rate Yourself

- ✓ I am always ethical
- ✓ I am mostly ethical
- ✓ I am somewhat ethical
- ✓ I am seldom ethical
- ✓ I am never ethical



Now How Would Others Rate You?

- ✓ That person is always ethical
- ✓ That person is mostly ethical
- ✓ That person is somewhat ethical
- ✓ That person is seldom ethical
- ✓ That person is never ethical



Rationalizations for Unethical Conduct

- ✓ It was necessary; the ends justify the means.
- ✓ It was legal.
- ✓ It won't hurt anyone. (Who's going to know?)
- ✓ It can't be wrong, everyone is doing it.
- ✓ It's OK, I didn't gain personally.
- ✓ I deserve it.
- ✓ I'm only fighting fire with fire.



Public Service Ethics is Different

- Purpose of ethics laws = to protect the public's trust in the institutions and individuals that serve them
- In public services ethics, remember:
 - ✓ Perception as important as reality
 - ✓ Gut is not a reliable guide
 - ✓ Better to err on the side of caution
 - ✓ "If in doubt, send it out"



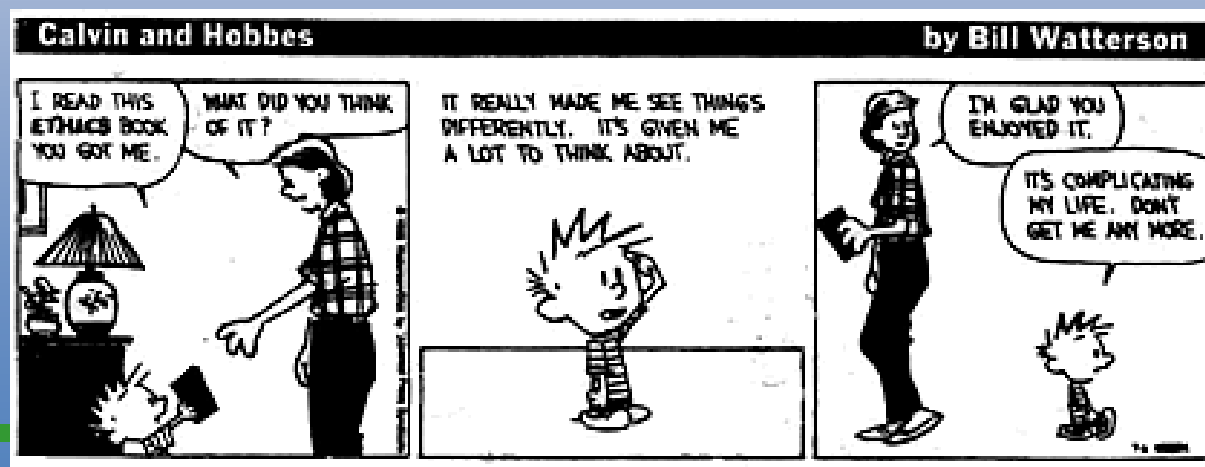
AB 1234 Ethical Values & The Laws That Promote Them

- ✓ **Trustworthiness**
 - Bribery, Conflicts of Interest, Contractual Conflicts, Campaign Contributions
- ✓ **Respect**
 - Political Reform Act disclosures, Brown Act, Public Records Act
- ✓ **Responsibility**
 - Gift restrictions, misuse of public funds, gifts of public funds, mass mailing restrictions
- ✓ **Fairness**
 - Protections against bias, due process, incompatible offices, competitive bidding, anti-nepotism



Understanding Ethics Laws

- What They Cover
- When You Need to Ask Questions
- Resources for Further Reference



“Nearly all men can stand adversity, but if you want to test a man’s character, give him power.”



— Abraham Lincoln

Four Groups of Ethics Laws

1. Personal financial gain
2. Personal advantages and perks
3. Governmental transparency
4. Fair processes



Group 1:

Personal Financial Gain Issues

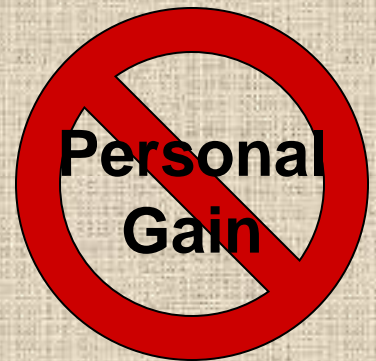
- **Principle:** Public servants should not benefit financially from their positions



Examples of Laws



- Bribery and related crimes
- Financial interest disqualification requirements
- Revolving door restrictions





Bribery

- **What is bribery?** Conferring a benefit on a public official to influence a person's vote, opinion, action or in-action.
- Penalties: Loss of office, prison time, fines, restitution, attorneys fees and public embarrassment
 - *Mandatory fines of \$2,000-\$10,000 **whether or not the bribe was actually received***



Case Study: Shrimpgate

- Convictions for conspiracy to commit bribery and mail fraud in federal sting *Shrimpgate* (1990, 1993)



- BOE Member Paul Carpenter eventually sentenced to 7 years in federal prison.
- Convictions for State Senator Joseph B. Montoya, and Assemblymen Pat Nolan and Frank Hill.

2014 Case Study: Moreno Valley

- In January 2014, former Moreno Valley Councilmember Marcelo Co pled guilty to accepting a **\$2.36 million** bribe from an undercover FBI agent in exchange for promise to re-zone land to make its value skyrocket.



- Sentenced June, 2015 to five years in prison



2017 Case Study: Palm Springs

- Former mayor of Palm Springs allegedly accepted \$375,000 in bribes from two developers



- Result?
 - 21 felony counts for the former mayor
 - Facing up to 19 years in State prison





Bribery: Similar Crimes



- Extortion
- Receiving rewards for appointing someone to public office
- Embezzlement—converting public funds or property to your own



Disqualification Based on Financial Interests

- Rule: You may not participate in a decision if financial interests are affected by a decision (Gov. Code § 87100, *et seq.*)
- A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family. (FPPC Regulation 18700)
- Effect can be positive or negative



Disqualification versus Abstention

- Mere existence of a conflict does not imply wrongdoing *unless you don't disqualify yourself when you should*
- Abstention vs. Disqualification
 - Abstention = voluntary
 - Disqualification = legally required





What Kinds of Interests?

General Rule: “Reasonably Foreseeable” AND “Material Effect”

Under the Political Reform Act you have a conflict if it is “**reasonably foreseeable**” the matter could have a **material financial effect** on you, on your immediate family, or on a source of income to you. Certainty that there will be such an economic effect is not required.



FPPC FOUR PART TEST for CONFLICT of INTEREST



Step One: Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?

Step Two: Will the reasonably foreseeable financial effect be material?

Step Three: Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?

Step Four: If after applying the three step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision. If the public official will be called upon to make, participate in the making, or use his or her official position to influence a governmental decision in which he/she has a financial interest as determined under Steps One through Three, he/she will have a prohibited conflict of interest.

What Kinds of Interests?

INCOME



“\$500 Rule” - Sources of direct income of \$500 or more in prior 12 months

- Your own income
- Promised income
- Partner’s/child’s income
- Loans/guarantors



What Kinds of Interests?

VALUE OF BUSINESS OR REAL PROPERTY

“\$2000 Rule” - Investment in business entity
or interest in real property





What Kinds of Interests?

REAL PROPERTY

- (1) **“500 Feet Rule”** - decision affecting real property value located within 500 feet of the property; and
- (2) **“Reasonable”** - if a reasonably prudent person would believe that the decision will influence the market value of the official’s property.



What Kinds of Interests?

GIFTS: \$50/\$470 Rule



- Giving or receiving gifts can create an economic interest
- Complicated rules





“Public Generally” Exception

A reasonably foreseeable material effect on a financial interest **does not** create a conflict under the Act if the effect on the official’s interest is indistinguishable from its effect on the public generally.

The effect is indistinguishable from the effect on the public generally if the official establishes:

1. significant segment of the public (at least 25%) is affected; and
2. the effect on his or her financial interest is not unique.



Other Ethics Resources:



FPPC – free advice line
(866) ASK-FPPC

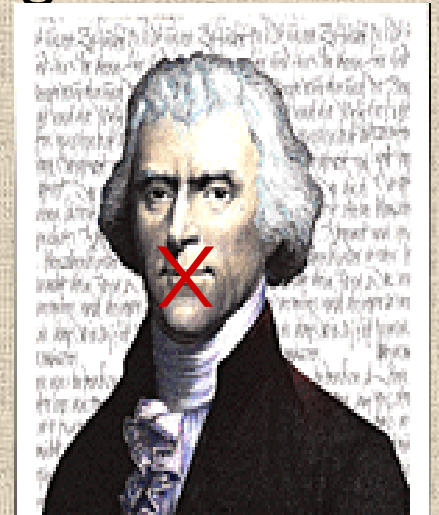
legaladvice@fppc.ca.gov

Institute for Local Government

City Attorney

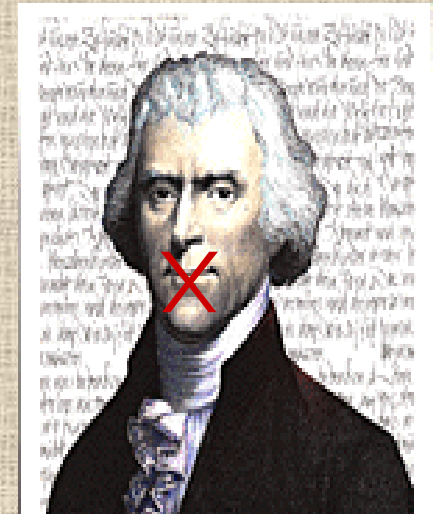
If You Are Disqualified

- Don't discuss or influence (staff or colleagues)
- Identify nature of conflict at meeting
- Leave room (unless on consent)
- No voting *or discussing* the matter
- NOTE: You do not count towards a quorum!!



“Leave the Room” Rule

- Reflects broader FPPC restriction prohibiting voting *or discussing* the matter
- Limited exceptions
 - Owned property
 - Owned/controlled business



“Few men have the virtue to withstand the highest bidder.”
- *George Washington*

PENALTIES



- Invalidate decision
- Loss of office (+ disqualification for future)
- Misdemeanor (jail time and penalties)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys fees
- Embarrassment (personal and political)

Warning!



Special Rules for Contracts

(Government Code § 1090)



- Disqualification may not be enough
 - Direct or indirect interest
 - Limited exceptions
- May have to refund money paid
- Felony: \$1,000 fine, imprisonment & loss of office



Case Study: *Thomson v. Call*

California Supreme Court 1985

- Developer purchased land from city councilman, then sold to city for park (high rise project approval)
- Purchase price (\$258,000) was fair market
- Call abstained from some votes, only voted when city attorney told him it was legal
- Court ruled unlawful contract - City kept the land, and Call had to pay city \$258,000!

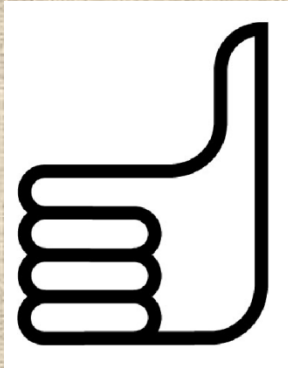


Future Employment Issues

- Revolving door prohibition
 - Elected officials and top managers
 - Cannot represent people for pay for a year after leaving their agency
 - Gov. Code § 87406.3

- No participation in decisions involving future employers





Best Practices

- Avoid temptation to look at public service as an opportunity for financial gain
- Look at every decision and ask yourself whether it involves some kind of financial interest for you

Group 2: Perks

Key Principle:

Public servants should not receive special benefits by virtue of their positions



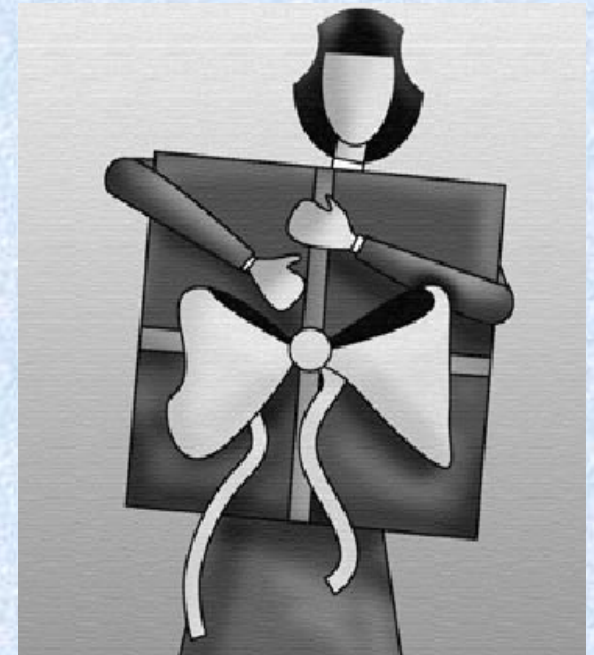
Two Kinds of Perk Rules

1. Perks that others offer you
2. Perks that you give yourself/use-of-public-resources issues



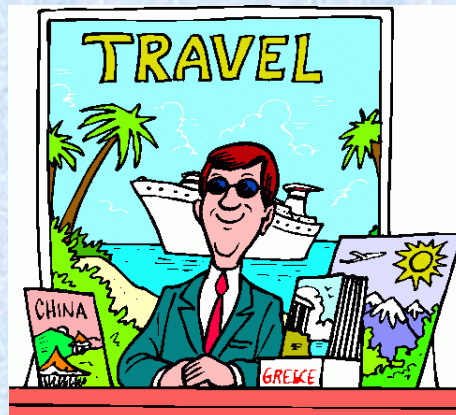
Perks Others Offer

- Report \$50 and up (over a year)
- Limit \$470/year (thru Dec. 31, 2018)
- Exceptions for some kinds of travel, informational materials
- May also be a disqualifying interest (over \$470 in prior 12 months)



Gifts Don't Always Have Bows

- Meals, food and drink (including receptions)
- Entertainment (concerts & sporting events)
- Certain kinds of travel and lodging



Gifts: Tickets

- Tickets or passes defined by FPPC as “admission to a facility, event, show, or performance for an entertainment, amusement, recreational or similar purpose.”
- “Free” tickets from City (usually donated to City) generally are gifts subject to gift limits, prohibitions, and normally applicable Form 700 reporting requirements.
- However, “free” tickets from City often NOT a gift if reported on FPPC Form 802 and either:
 1. Report as income on taxes; or
 2. Ceremonial role (present award, cut ribbon); or
 3. Return, pay or donate to government agency or 501(c)(3) without taking tax deduction; or
 4. Meet strict requirements of an adopted gift ticket policy when tickets from outside source



Gifts: Family Fun

New “gift” definition (2010)

- Expands “gift” to official to presumptively include gifts to his/her family
- Closes “free tuition” loophole (but not scholarships)



Raffles & Gift Exchanges

- Raffle item from private donor = income
- Report it! It's a gift and must be treated as such if you are a Form 700 filer



Other Perks Others Offer

- No free transportation from transportation carriers



- No honoraria (fees) for writing or speaking



2014 Case Study: Stone & Youngberg Scandal



- California regulators cracked down on hundreds of public officials who accepted meals, baseball tickets, brownies & other gifts from a bond finance company and failed to disclose them
- Stone and Youngberg – underwriter that has issued millions of dollars in bonds across California – gave unreported gifts to Poway school officials
- FPPC launched a statewide investigation

2013 Case Study: San Diego County and De La Rosa & Co. Scandal

- Nearly 200 public officials failed to report gifts from investment bankers.
- \$24,000 in fines against 97 officials and warning letters.
- The assistant finance director for the City of Chula Vista was fined \$200 for not reporting two meals worth \$149 combined.
- The planning director for the San Dieguito Union High School District received a warning letter. According to the state, Addleman received a ticket to a Padres game and a meal at Petco Park worth \$40 and a \$20 meal at Cardiff by the Sea two months later.





2016 Case Study: Modesto

- A Council Member's friend enters a \$20 raffle, wins a free ride in a B-29 Superfortress, then gives the ticket to the Council Member
- The value of the ride = \$1,495. This is a gift that must be reported
- The Council Member has the option to either pay \$1,495 or report it as a gift

Penalties for Political Reform Act Violations

- Up to \$5,000 per violation
- Own attorneys fees (\$3,000-\$30,000)
- Others' attorneys fees (for private actions to enforce law)



Use of Public Resources Issues

- Personal use of public resources (including staff time and agency equipment) prohibited
 - Limited exception for “incidental and minimal use”
- Political use of public resources also prohibited



Example:

Expense Reimbursement

- Familiarize yourself with your agency's policies/limits
 - What kinds of expenses
 - What rates for food, lodging and transportation
 - The importance of documentation
- Note: Spouse/partner expenses NOT reimbursable



Consequences of Violations

- Civil penalties: \$1,000/day fine + 3X value of resource used
- Criminal penalties: 2-4 year prison term + disqualification from office
- Can also have income tax implications



Case Study: *Sacramento Suburban Water District*

- Staff and directors misusing public resources
- Investigative report by *Sacramento Bee*
 - Use of agency credit card for personal purposes
 - Misreporting of income
 - Double-dipping on expense reimbursements
- Legislative response: AB 1234



Case Study: Phone Sex

- Colton Councilmember (and church minister) racked up \$5,500 in illicit charges on his city credit card and cell phone
- Included phone sex charges and stays at local hotels
- Blamed it first on nephew (whom he said stole and cloned his cell phone – three times)
- Note: Ran on platform of restoring the public's trust in city government. Likelihood of Success: Zero



New Era in Public Service Ethics: 2014 Example

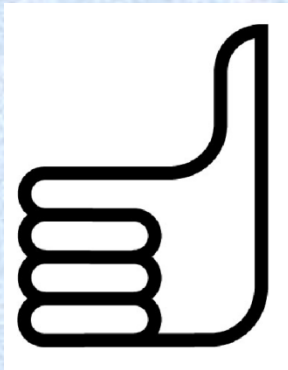


Oct. 14, 2014: LA Councilmember Richard Alarcon was sentenced to 120 days in prison and banned for life from holding public office for his conviction on charges of perjury and voter fraud.

Political Use of Public Resources

- By individuals or agency itself (support of ballot measures)
- Mass mailing restrictions
 - Goal: restrict incumbents' advantages
- Gifts of public funds





Best Practice

Avoid perks *and* the temptation to rationalize about them

- Legally risky
- Public relations headache



When to ask for help?

- Whenever you have doubts!
- Do NOT wait for the meeting



Group 3: Transparency Laws

Key Principles:

- It's the public's business.
- The public trusts a process it can see.



Transparency Rules

PUBLIC RECORDS ACT – Allows public inspection of records

BROWN ACT – Open meeting laws

- Conduct business in open and publicized meetings.
- Allow public to participate in meetings.

INSTITUTE for LOCAL GOVERNMENT
Celebrating 50 years of service to local officials
www.ilsg.org

The ABCs of Open Government Laws

The underlying philosophy of the open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government. Conducting government openly and transparently is an opportunity to include the public in decision-making processes and demonstrate that the agency has nothing to hide.

This concept of governmental transparency is so important to the public that some 83 percent of voters supported adding it to California's constitution.

CALIFORNIA'S TRANSPARENCY LAWS REQUIRE PUBLIC OFFICIALS TO:

A. Conduct the public's business in open and publicized meetings, except for the limited circumstances under which the law allows closed sessions.

B. Allow the public to participate in meetings.

C. Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.

This pamphlet summarizes these three requirements for local officials in broad terms. For information about how these requirements apply in any given situation or more information about this area of the law in general, local officials are encouraged to consult with their agency attorneys.

The law also requires certain local officials to be transparent about their personal financial interests and relationships. For more information about these requirements, please see the Institute's bookmark entitled "Key Ethics Law Principles for Local Officials" and *A Local Official's Reference on Ethics Laws*. Both are available at www.ilsg.org/trust.

Public Records

- Agendas and meeting materials
- Other writings prepared, owned, used or retained by agency (including electronic)
- Penalties: Adverse media attention + costs and fees if litigated



Public Records

- Generally, 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 CPRA. *City of San Jose v. Superior Court* (2017)
- To qualify as a public record, a writing must contain in some substantive way information relating to the conduct of the public's business because it is necessary or convenient to the discharge of an official's duty.

Financial Interest Disclosure

Transparency includes obligation for high level public servants to disclose financial interests

- Assuming office
- Annually while in office
- Upon leaving office
- SOS parallel campaign finance requirements



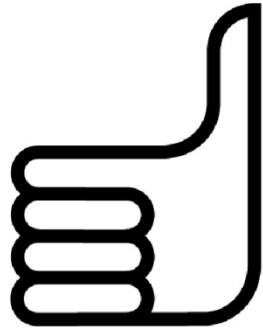
Charitable Fundraising



- Rule applies to elected officials
- Disclose \$5,000 or more from single source
- Charitable, legislative or governmental purpose

“A politician would do well to remember that he has to live with his conscience longer than he does with his constituent.”

—Melvin R. Laird, 20th Century American Secretary of Defense



Best Practices

- Assume all information is public or will become public
- Don't discuss agency business with fellow decision-makers outside meetings



THE BROWN ACT:

AKA: The Open Meeting Laws

“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.”

(Gov. Code § 54953)

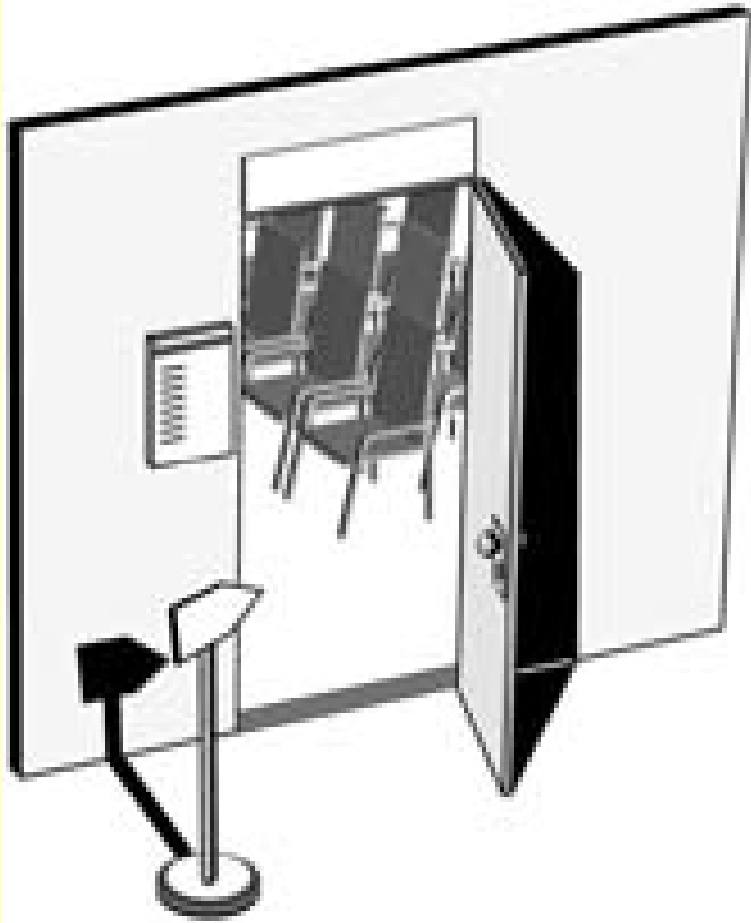


Conducting Business at Open Meetings

- A majority may not consult outside a properly noticed meeting open to public
- Key concept: what constitutes a meeting
 - Example: Serial communications
- Exceptions for certain kinds of events
 - As long as a majority does not consult among themselves



WHAT IS A MEETING?



Definition: "Meeting" includes any gathering of a *majority* of the members of a legislative body to *hear, discuss, or deliberate* upon any item which is within *its subject matter jurisdiction*.

WHAT IS A MEETING?

Means of Communication: A meeting includes *any use of direct communication, personal intermediaries, or technological devices* which are employed by a *majority* of the members of the legislative body *to develop a collective concurrence* on action to be taken by members of the legislative body.

(§ 54952.2)



WHAT IS A MEETING?



- ❖ Meetings take place if quorum receives information on, discusses, or deliberates on any item on which the body may legally act
- ❖ Must be within the boundaries of the agency
- ❖ Applies to “legislative” bodies and advisory
- ❖ Special Meetings called by Mayor or majority – 24hr notice
- ❖ Serial and rotating meetings or polling prohibited, but social gatherings are permitted

WHAT IS NOT A MEETING?

If a quorum does not receive information on, discuss, or deliberate on any item, on which the body may legally act, then the following generally are NOT meetings:

- Individual contact
- Public conferences
- Other local agency meetings
- Community meetings
- Social gatherings

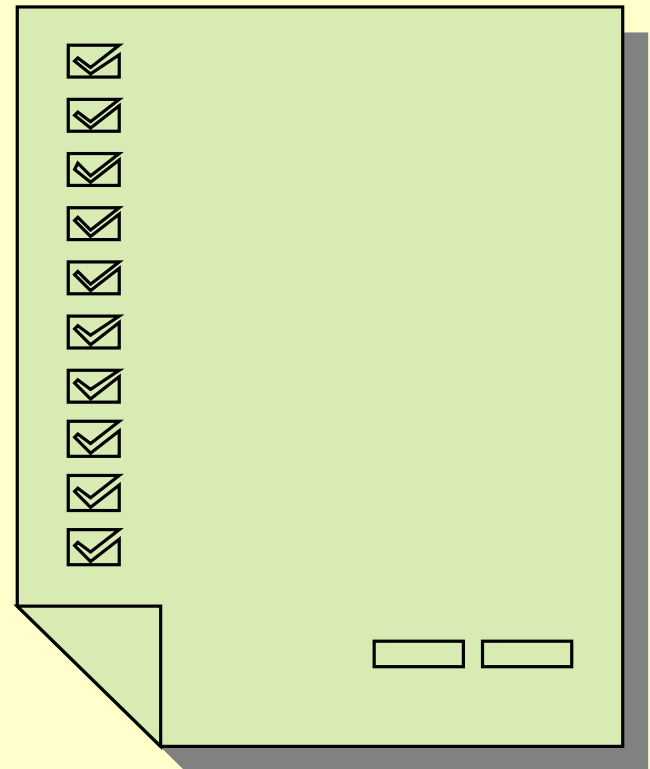
Agenda Requirements

- A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body.
- Action or discussion on any item not appearing on the posted agenda is generally prohibited

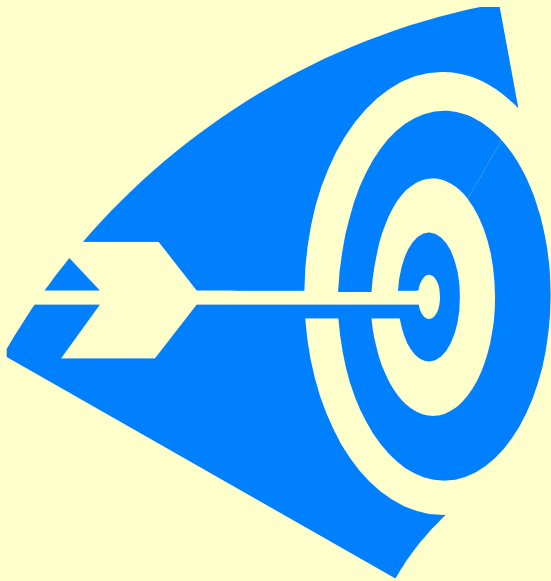


Agenda Requirements

- Posted within 72 hours
- Brief description sufficient to inform public of the nature of each item



Stay On Point!



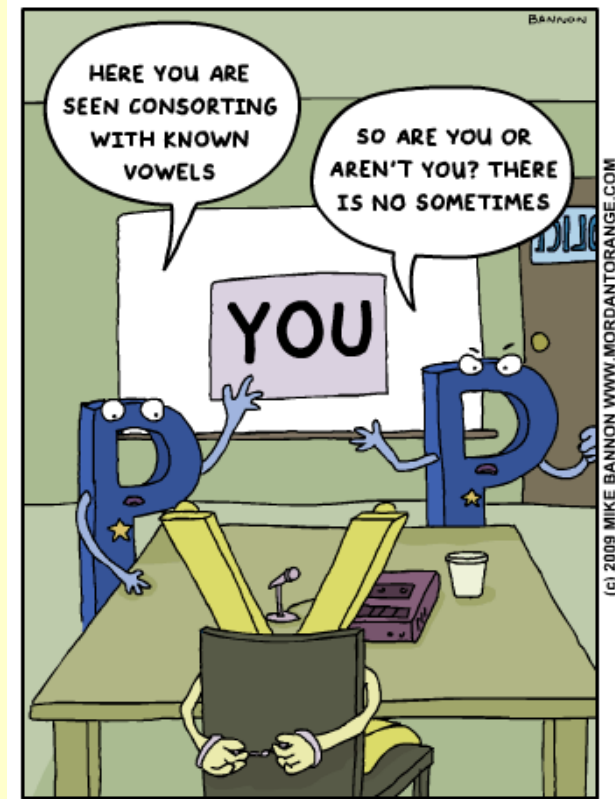
- All matters to be transacted or discussed.
- Must include reasonable period of time for public comment before or during consideration
- To add a new matter body must find: (1) City became aware of the need for action after agenda was posted, (2) immediate action is necessary, (3) there must be a 2/3 vote of membership—unanimous vote if less than 2/3 present!

Agenda Requirements: Exceptions

No discussion of any item not on agenda

... *Except:*

- ❖ Brief responses.
- ❖ Statements or questions.
- ❖ Questions for clarification.
- ❖ Reference to staff or other resources for factual information.
- ❖ Request staff to report at a subsequent meeting.



Public Participation in Meetings

- Anyone can attend open meetings
- Cannot require names, questionnaires, or conditions to attendance
- Public may record proceedings by video, film or audiotape
- If meeting willfully interrupted or order cannot be restored by removing only the disrupting individuals, body may order room cleared



CLOSED SESSIONS

FOUR GROUNDS FOR CLOSED SESSION:

- **Real Property Negotiations**
- **Pending/Anticipated Litigation**
- **Labor Negotiations**
- **Personnel Matters**
- ✓ **Must give employee 24 hr written notice of right to have charges heard in open session**



CLOSED SESSIONS

- ❖ Confidentiality applies!
- ❖ Cannot discuss funds, funding priorities, or budget, salaries, contract negotiations (unless labor negotiations). . .
- ❖ Must reconvene in open session and make any required disclosure



The Brown Act

PENALTIES: Failing to Comply

- ❖ Nullification of decision
- ❖ Criminal Misdemeanor – for intentional violations (up to 6 months in jail/\$1000 fine)
- ❖ Injunction, Mandamus & Declaratory Relief
- ❖ Challenger must demand corrective action within 90 days of action -- or 30 days if agenda issue
- ❖ 30 days to correct action before suit
- ❖ Intense adverse media attention



Group 4: Fair Process Laws

- **Principle:** As a decision-maker, the public expects you to be impartial and avoid favoritism



Fair Process Laws: Due Process

- Due process requirements and rules against bias
- Which hat? Legislative vs. Quasi-Judicial



Fair Process Laws: Public Hearing

- **Staff report** and Questions of Staff.
- **Open Public Hearing**
 - Applicant (or those in favor) and Questions of the Applicant
 - Opposition (or those against)
 - Applicant's Rebuttal
- **Close Public Hearing**
- **Discussion and Decision**



Due Process = Fair Process

- *City of Fairfield v. Superior Court* (1975)

“A councilman has a right to state his views on matters of community policy, and his vote may not be impeached because he does so.”
- *Clark v. City of Hermosa Beach* (1996)
- *Nasha v. City of Los Angeles* (2004)

Fair Process Laws: Incompatible Office Prohibitions

Offices incompatible if:

- Clash of duties/loyalties
- Dual office improper for public policy reasons
- One office supervises the other



Fair Process Laws: Competitive Bidding Requirements

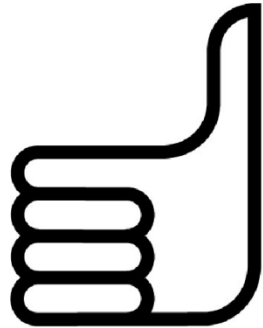
- Competitive bidding requirements
 - State law defines
 - Also local requirements
 - Principles:
 - Everyone has a right to compete for agency's business
 - That competition produces the best price for taxpayers



Fair Process Laws, continued

- Disqualification requirements if decision involves family members
- Campaign contribution restrictions (appointed bodies, not elected)
- Soliciting campaign contributions from employees

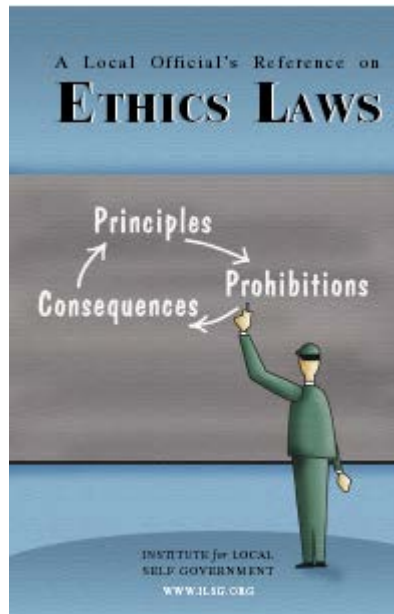




Best Practices

- Think fairness and merit-based decision-making in your decisions
- Keep politics separate from relationships with agency staff
- Avoid committing/commenting before the public hearing

Resource for Further Reading



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?



Key Lessons

- The law sets minimum standards for ethical behavior
 - Violations of ethics laws carry stiff penalties
 - When in doubt, ask and ask early
- It's your choice how high you want to set your sights above the minimum requirements of the law

AB 1234 Compliance

- Sign in
- Proof of participation certificate
- Provide to clerk as public record
- Consider going beyond the minimum in terms of education

Questions?

