

**UNDERSTANDING THE BASICS OF**

# PUBLIC SERVICE ETHICS

**Transparency Laws**

The Institute is grateful to the following firms for their commitment to public service ethics:

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UNDERSTANDING THE BASICS OF PUBLIC SERVICE ETHICS: Transparency Laws

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# UNDERSTANDING THE BASICS OF PUBLIC SERVICE ETHICS

## **Transparency Laws**

<b>About This Guide</b> .....	1
What Is an “Ethics” Law? .....	1
Understanding Ethics Laws.....	2
<b>Economic Interest Disclosure</b> .....	3
Basic Rules .....	3
Penalties.....	5
Criminal Sanctions .....	5
Civil Sanctions.....	5
Administrative Fines.....	5
<b>Charitable Fundraising Disclosure</b> .....	7
Basic Rules .....	7
Penalties.....	10
Criminal Sanctions .....	10
Civil Sanctions.....	10
Administrative Fines.....	10
Penalties for Extortion under State and Federal Law.....	11
Honest Services Fraud.....	11
<b>Campaign Contribution Disclosure</b> .....	13
Basic Rules .....	13
Penalties.....	14
Criminal Sanctions .....	14
Civil Sanctions.....	14
Administrative Fines.....	14
<b>Conducting the Public’s Business in Public</b> .....	15
Basic Rules .....	15
Penalties.....	19
Nullification of Decision .....	19
Criminal Sanctions .....	19
Other Consequences .....	19

<b>The Public’s Right to Participate in Meetings</b> .....	21
Basic Rules .....	21
Posting and Following the Agenda.....	21
The Public’s Right to Material Not Included in the Agenda Packet.....	21
Penalties.....	22
Nullification of Decision .....	22
Criminal Sanctions .....	22
Other Measures .....	22
Potential Civil Rights Violations.....	22
Special Issues .....	23
Taping or Recording of Meetings Is Allowed .....	23
Sign-In Must Be Voluntary.....	23
The Public’s Right to be Heard .....	23
Reasonable Time Limits May Be Imposed.....	23
Handling Disruptions .....	23
 <b>The Public’s Right to Access Records</b> .....	25
Basic Rules .....	25
Penalties.....	26
 <b>Other Disclosure Requirements</b> .....	27
 <b>Endnotes</b> .....	28
 <b>Resources for Further Information</b> .....	31
General Websites.....	31
Publications .....	32
 <b>Index</b> .....	33

# About This Guide

## What Is an “Ethics” Law?

Defining the subgroup of laws that constitute “ethics” laws is an imprecise undertaking. For those involved in public service, “ethics laws” tend to be those laws whose central purpose is to protect the public’s *trust* in its public institutions and those who serve in them. Trustworthiness is a key ethical value.<sup>1</sup>

Many of these ethics laws are *prohibitions*: they forbid certain actions that would undermine the public’s trust that decisions are being made to benefit the public’s interests (as opposed to the personal or political interests of the decision-maker). Making decisions in the public’s interest is also a key *responsibility* of public service (responsibility is another key ethical value).<sup>2</sup> Prohibitions deter betrayals of the public’s trust by creating penalties for such betrayal.

Laws against misusing public resources are a form of prohibitory law, as are laws that prevent a decision-maker from being involved in a decision if the decision-maker has a real or perceived conflict of interest. Laws against bribery or other forms of “pay to play” are another important ethics law prohibition.

Other ethics laws simply require *transparency*: they provide the public and the media with information on how the public’s business is being conducted, who is receiving campaign contributions and gifts from whom, and what kinds of financial interests a public official has. With transparency laws, the public judges whether a public official or group of public officials is acting in a trustworthy fashion—typically as part of the elections process. Transparency laws also encourage trustworthy behavior by reminding public officials that their actions will likely be scrutinized and judged.

Other ethics laws require that public agency decision-making processes meet minimum standards of *fairness*. Fairness is another key ethical value.<sup>3</sup>

Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct. Even so, it is important to keep in mind that these standards are only *minimum* standards: it is simply not possible or practical to write laws that prevent all actions that might diminish the public’s trust. For this reason, the

laws should be viewed as a floor for conduct, not a ceiling. Just because a given course of conduct is legal does not mean that it is ethical (or the public will perceive it as such).

## Understanding Ethics Laws

California has a complex set of ethics laws to guide local officials in their service to their communities. How does the well-intentioned local official keep track of them all?

Keeping four core principles in mind helps:

- Public officials may not use their offices for **personal financial gain**.

- Holding public office does not entitle one to **personal advantages and perks**.
- **Transparency** is an important element of public service.
- Merit-based decision-making based on **fair processes** produces the best results for the public.

This guide focuses on laws relating to public officials and **transparency**. These laws are both complex and sometimes counter-intuitive. A key goal of this guide is to alert local officials to when to ask for legal advice on how these laws apply in a particular situation.

### A COMPLETE LIBRARY ON PUBLIC SERVICE ETHICS ISSUES

As part of its *Understanding the Basics of Public Service Ethics*, the Institute for Local Government offers California local officials a series of resources designed to help them meet both the law's and the public's expectations for public service:

- *Personal Financial Gain Laws*
- *Perk Issues, Including Compensation, Use of Public Resources and Gift Laws*
- *Transparency Laws*
- *Fair Process Laws and Merit-Based Decision-Making*
- *Promoting Personal and Organizational Ethics*

In addition, as part of its "Everyday Ethics" series, the Institute regularly analyzes situations local officials face from both a legal and ethical perspective.

To access these resources, visit [www.ca-ilg.org/trust](http://www.ca-ilg.org/trust).

# Economic Interest Disclosure

## Basic Rules

There is an adage about one's life being an open book. Nowhere is this truer than for public officials and their finances.

The bottom line is when people join the ranks of public servants, the public gets to learn a great deal about their financial lives. The voters created these disclosure requirements when they approved the Political Reform Act in 1974.<sup>4</sup> As a result, those entering public service sacrifice a degree of privacy that they would otherwise enjoy.

The disclosure requirements apply to nearly every local elected official and department head. Members of commissions, boards, committees and other local agency bodies with significant decision-making authority are also subject to the disclosure requirements. An agency may also require persons in staff positions to disclose their economic interests under the agency's local conflict of interest code. Such employees are known as "designated employees."<sup>5</sup>

This disclosure is made on forms called both "Statements of Economic Interests" and "Form 700's." Copies of these forms are generally provided by one's agency. Web-based versions of the forms are available from the Fair Political Practices Commission website: [www.fppc.ca.gov](http://www.fppc.ca.gov).

These forms are filed upon assuming office, on an annual basis while in office, and upon leaving office.<sup>6</sup> Local rules may impose more stringent requirements.

The following kinds of economic interests must be disclosed if they meet certain minimum thresholds:

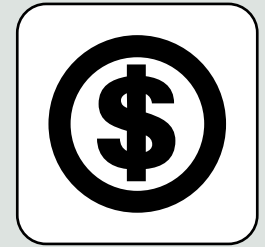
Sources of income;

- Interests in real property;
- Investments;
- Business positions; and
- Sources of gifts.

See table on next page.



## TYPES OF ECONOMIC INTERESTS THAT MUST BE DISCLOSED



- **Sources of Income.** Receiving \$500 or more in income from one source (including any income received from a business, nonprofit organization, government agency, or individual) within twelve months prior to the decision creates an economic interest. “Sources of income” includes a community property interest in a spouse or domestic partner’s<sup>7</sup> income, but not separate property income.<sup>8</sup> Additionally, if someone promises an official \$500 or more twelve months prior to the decision, that person or entity promising the money is a source of income.<sup>9</sup>
- **Personal Finances.** An official has an economic interest in the official’s expenses, income, assets or liabilities and those of the official’s immediate family (spouse or domestic partner<sup>10</sup> and dependent children).<sup>11</sup>
- **Real Property.** An interest in real property where the interest is worth \$2,000 or more in real property creates an economic interest. The interest may be held by the official, the official’s spouse or domestic partner<sup>12</sup> (even as separate property) and children or anyone acting on their behalf. Real property interests can also be created through leaseholds, options and security or mortgage interests in property.<sup>13</sup>
- **Investments.** An economic interest is created if the official, the official’s spouse or domestic partner<sup>14</sup> (even as separate property) or dependent children or anyone acting on their behalf has created an investment worth \$2,000 or more in a business entity, even if the official does not receive income from the business.<sup>15</sup>
- **Business Employment or Management.** If the official serves as a director, officer or partner, trustee, employee or otherwise serves in a management position in a company, an economic interest is created.<sup>16</sup> Note this does not apply to a member of the board of a nonprofit entity.
- **Related Businesses.** The official has an economic interest in a business that is the parent, subsidiary or is otherwise related to a business in which the official:
  - Has a direct or indirect investment worth \$2000 or more; or
  - Is a director, officer, partner, trustee, employee, or manager.<sup>17</sup>
- **Business-Owned Property.** A direct or indirect ownership interest in a business entity or trust that owns real property is another form of economic interest.<sup>18</sup>
- **Loans.** Another kind of potentially disqualifying economic interest is receiving a loan from someone (including someone who guarantees a loan), unless the loan is from a commercial institution issued on the same terms as available to anyone in the public.<sup>19</sup>
- **Gifts.** Receiving gifts totaling \$420 or more in a twelve-month period prior to the decision from any one person or organization creates an economic interest regardless of whether the gift-giver is in the agency’s jurisdiction.<sup>20</sup> Being promised a gift of \$420 or more within a twelve-month period prior to the decision can also create a disqualifying economic interest.<sup>21</sup> Note the \$420 limit is adjusted every few years to reflect changes in the cost of living. For more discussion of the gift issue, please see *Understanding the Basics of Public Service Ethics: Perk Issues, Including Compensation, Use of Public Resources and Gift Laws*, page 23.

## Penalties

These requirements are part of California's Political Reform Act. Violations of the Act are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>22</sup>

### POLITICAL REFORM ACT PENALTIES

#### Criminal Sanctions

A knowing or willful violation of these requirements is a misdemeanor.<sup>23</sup> A person convicted of a misdemeanor under the Political Reform Act may not be a candidate for elective office for four years following the conviction.<sup>24</sup> Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties<sup>25</sup> or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.<sup>26</sup> Jail time is also a possibility.<sup>27</sup>

#### Civil Sanctions

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.<sup>28</sup>

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney's fees.<sup>29</sup>

#### Administrative Fines

Violations may result in civil and criminal penalties. In addition, the Fair Political Practices Commission may impose administrative penalties. The administrative penalty for violation of the Political Reform Act is a fine of up to \$5,000 per violation.<sup>30</sup>

## ▶ IF I GET INTO TROUBLE, CAN THE AGENCY PAY MY DEFENSE?

Don't count on it. To provide a defense in a criminal action, for example, the agency must find that:

1. The criminal action or proceeding is brought on account of an act or omission in the official's service to the public entity;
2. Such defense would be in the best interests of the public entity; and
3. The individual's actions were in good faith, without actual malice and in the apparent interests of the public entity.<sup>31</sup>

If the issue is the failure to disclose financial interests, for example, it may be particularly difficult for the agency to make the last finding—that the failure was in the apparent interests of the public entity. Moreover, even if the agency could make these findings, it doesn't have to. There may be strong political pressures not to.

Similarly, an agency may refuse to provide a defense in a civil action if it finds the actions in question related to corruption or fraud.<sup>32</sup> Also, public agencies are not responsible for damage awards designed to punish or make an example of someone.<sup>33</sup>

Note that, in these situations, the agency's attorney is not an individual public official's attorney, with attendant protections for attorney-client confidences. The agency attorney's obligations are to the entity as a whole — not to any one official in that agency.<sup>34</sup>

# Charitable Fundraising Disclosure

## Basic Rules

The disclosure laws are not limited to an official's personal economic interests. There are extensive disclosure requirements relating to an official's campaign fundraising activities, of course.<sup>35</sup>

However, a sometimes overlooked disclosure obligation relates to an official's charitable fundraising activities. The theory is that the public has a right to know who is contributing to an elected official's favorite charities and other causes.

Why? The public perceives that donors may contribute to elected officials' favorite causes out of a desire to have a "connection" with them.

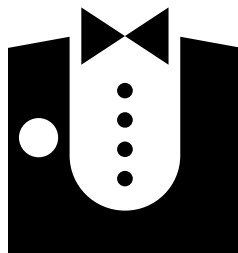
What if this "connection" means that the donor expects special preferences in his or her dealings with the official? Or the donor expects his or her calls to be returned more promptly. Perhaps this individual expects to get a meeting with the official when others cannot. What if the donor's expectation is that his support of the official's favorite cause

will make the official more favorably disposed toward his pending project, bid or franchise renewal? Worse, what if the donor fears that if he or she does not give, there will be negative consequences?

These are all issues to which a public official needs to be extraordinarily sensitive. The notion that one has to "pay to play" in government is very damaging to the public's faith in the fairness of the decision-making process. Such faith is vital to an agency's ability to address the issues of the day.

The disclosure requirement is triggered when:

- A person or business donates \$5,000 or more (in a calendar year);
- The donation will be used for a legislative, governmental or charitable purpose; and
- The donation will be made in "cooperation, consultation, coordination, or concert" with an elected official.



This transparency requirement is part of the Political Reform Act. Within 30 days of the donor reaching the \$5,000 threshold, the elected official must file a report with the official's agency (typically the filing officer). The Fair Political Practices Commission offers the form below for this report.<sup>36</sup>

REPORT OF PAYMENT FOR LEGISLATIVE, GOVERNMENTAL, OR CHARITABLE PURPOSES	
Pursuant to Government Code Section 82015, the following is a notice that a payment or payments aggregating \$5,000 or more has been made principally for legislative, governmental, or charitable purposes in coordination with or at the request of the official listed below.	
Name of Official	<u>Marshall Travers</u>
Agency Address	<u>City Hall 234 First Street, Oakmont, CA 95443</u>
Date(s) of Payment(s)	<u>June 24, 20XX</u>
Name of Payor	<u>Wildwood Insurance Company</u>
Address of Payor	<u>1253 Main Street, Oakmont, CA 95433</u>
Amount(s) of Payment(s)	<u>\$5,000</u>
Name of Payee	<u>Boys and Girls Club of California</u>
Address of Payee	<u>555 10th Street, Sacramento, CA 95814</u>
Description of Goods Or Services Provided	<u>Charitable Donation</u>
Specific Legislative, Governmental, or Charitable Purpose	<u>Charitable Fundraiser</u>
Date: <u>7/1/XX</u>	<u>[Signature Required]</u> Signature of Elected Official

The report contains the following information:

- The contributor's name and address;
- The amount of the contribution;
- The date or dates on which the payments were made;
- The name and address of the contribution recipient;
- If goods or services were contributed, a description of those goods and services; and
- A description of the purpose or event for which the contribution was used.<sup>37</sup>

The official must make this report once a single donor (whether an individual or an organization) has given more than the \$5,000 aggregate threshold for a

calendar year. Once the \$5,000 threshold has been met, all payments the donor has made for the calendar year must be disclosed within 30 days after: 1) the date the \$5,000 threshold was reached, or 2) the date the payment was made, whichever occurs later.<sup>38</sup>

What is a "legislative, governmental or charitable" purpose? The law does not say, but charitable causes typically involve 501(c)(3) organizations. A "governmental" cause might include such things as fund-raising for a new city hall roof. The reference to a "legislative" cause apparently has its roots in a 1996 Fair Political Practices Commission opinion addressing a situation in which a state senator asked a private party to pay for the airfare and expenses for a witness to come testify at a legislative hearing.<sup>39</sup>

Of course, conditioning one’s support for a matter on the payment of something of value is criminal extortion under state and federal law.<sup>40</sup> See discussion in next section.

**RESOURCES FOR FURTHER INFORMATION**

For more information, see the following Everyday Ethics for Local Officials columns at:

- “Raising Funds for Favorite Causes” (see [www.ca-ilg.org/fundraising](http://www.ca-ilg.org/fundraising))
- “Using Public Resources for Charitable Purposes” (see [www.ca-ilg.org/charity](http://www.ca-ilg.org/charity))

- “Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder” (see [www.ca-ilg.org/nonprofits](http://www.ca-ilg.org/nonprofits))

**Penalties**

These requirements are part of the Political Reform Act. Violations of the Act are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>41</sup>

**POLITICAL REFORM ACT PENALTIES**

**Criminal Sanctions**

A knowing or willful violation of these requirements is a misdemeanor.<sup>42</sup> A person convicted of a misdemeanor under the Political Reform Act may not be a candidate for elective office for four years following the conviction.<sup>43</sup> Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties<sup>44</sup> or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.<sup>45</sup> Jail time is also a possibility.<sup>46</sup>

**Civil Sanctions**

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.<sup>47</sup>

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney’s fees.<sup>48</sup>

**Administrative Fines**

Violations may result in civil and criminal penalties. In addition, the Fair Political Practices Commission may impose administrative penalties. The administrative penalty for violation of the Political Reform Act is a fine of up to \$5,000 per violation.<sup>49</sup>

## Penalties for Extortion under State and Federal Law

**State Law.** If an official demands that a contribution to a charitable organization be made as a condition of making a favorable decision, the demand could be prosecuted as extortion. Extortion is a misdemeanor under state law.<sup>50</sup> Misdemeanors are punishable by up to six months in county jail, a fine of up to \$1,000 or both.<sup>51</sup> Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings for official misconduct.<sup>52</sup>

**Federal Law.** If an agency receives more than \$10,000 in federal monies, an official could find him or herself subject to federal prosecution if the amount at stake (for example, a solicited contribution) exceeds \$5,000.<sup>53</sup> The penalty is a fine of up to three times the amount in question or \$250,000 (whichever is more), up to 10 years imprisonment, or both.<sup>54</sup>

## Honest Services Fraud

Under federal wire and mail fraud laws, the public has the right to the “honest services” of public officials.<sup>55</sup> The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary.<sup>56</sup> That duty is violated when a public official makes a decision that is not motivated by his or her constituents’ interests but instead by his or her personal interests.<sup>57</sup>

In one instance, federal authorities prosecuted a city treasurer whose decisions to award contracts were motivated in part by whether the firm contributed to political and charitable causes favored by the treasurer.<sup>58</sup>

The maximum penalty for being guilty of wire and/or mail fraud includes a jail term of up to 20 years and a \$250,000 fine.<sup>59</sup>



# Campaign Contribution Disclosure

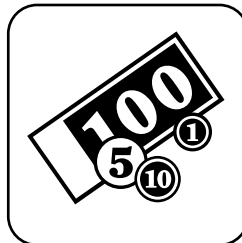
## Basic Rules

California has an extensive framework for transparency with respect to campaign contributions.<sup>60</sup> The basic theory is that the public has a right to know who gives money and other forms of support to candidates for public office; another is that the prospect of public disclosure will discourage improper influences.<sup>61</sup>

These transparency requirements apply not only to candidates, but also to groups which organize to participate in the election process (known as “committees” under the Political Reform Act).<sup>62</sup> Transparency requirements also apply to those who make large contributions to influence elections.<sup>63</sup> Those who participate in campaigns to pass or defeat ballot measures are also subject to these requirements.<sup>64</sup>

In addition, certain kinds of local officials face state law restrictions on campaign contributions from people with business pending before the agency. These restrictions are discussed in *Understanding the Basics of Public Service Ethics: Fair Process Laws and Merit-Based Decision-Making* at pages 15–19.

Restrictions on how campaign funds may be spent (only for political, governmental and charitable purposes) are discussed in *Understanding the Basics of Public Service Ethics: Perk Issues, Including Compensation, Use of Public Resources and Gift Laws* at page 35.



## Penalties

These requirements are part of the Political Reform Act. Violations of the Act are punishable by a variety of sanctions, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>65</sup>

### RESOURCES FOR MORE INFORMATION

The Fair Political Practices Commission has extensive information to guide candidates and ballot measure committees on these requirements. Visit the FPPC website at [www.fppc.ca.gov](http://www.fppc.ca.gov) or call the FPPC's Toll-Free Number: 1-866-ASK-FPPC (1-866-275-3772).

The Political Reform Division of California Secretary of State issues identification numbers to campaigns and committees and provides technical assistance to filers, and maintains disclosure reports for public access. Visit the Secretary of State's website at <http://www.ss.ca.gov/prd/prd.htm> or call (916) 653-6224.

For federal elections (Presidential, U.S. Senate, House of Representatives), consult the Federal Election Commission at 1-800-424-9530 or on the web at [www.fec.gov](http://www.fec.gov).

## POLITICAL REFORM ACT PENALTIES

### Criminal Sanctions

A knowing or willful violation of these requirements is a misdemeanor.<sup>66</sup> A person convicted of a misdemeanor under the Political Reform Act may not be a candidate for elective office for four years following the conviction.<sup>67</sup> Such a conviction may also create an immediate loss of office under the theory the official violated his or her official duties<sup>68</sup> or create a basis for a grand jury to initiate proceedings for removal on the theory failure to disclose constitutes willful or corrupt misconduct in office.<sup>69</sup> Jail time is also a possibility.<sup>70</sup>

### Civil Sanctions

District attorneys, some city attorneys, the Fair Political Practices Commission or a member of the public can bring an action to prevent the official from violating the law.<sup>71</sup>

If the action is brought by a member of the public, the violator may have to reimburse the costs of the litigation, including reasonable attorney's fees.<sup>72</sup>

### Administrative Fines

Violations may result in civil and criminal penalties. In addition, the Fair Political Practices Commission may impose administrative penalties. The administrative penalty for violation of the Political Reform Act is a fine of up to \$5,000 per violation.<sup>73</sup>

# Conducting the Public's Business in Public

## Basic Rules

California's open meeting laws<sup>74</sup> provide legal minimums for local governmental transparency in decision-making.

Although community college boards are subject to less detailed requirements than are other local agencies, the following are some general guidelines. Check the endnotes for specific references to community college district law.<sup>75</sup>

Decision-making bodies—which include many advisory committees—must conduct their business in an open and public meeting to assure the local decision-making process is transparent to the public.<sup>76</sup> Note that the issue of what kinds of bodies are subject to open meeting requirements can involve careful legal analysis. For purposes of clarity, this guide uses the term “decision-making body” and “decision-makers,” but the reader should be aware that this term is imprecise.

A “meeting” is any situation involving the congregation of a majority of a decision-making body to “hear, discuss, or deliberate or take action” on any item that is within their subject matter jurisdiction. In other words, a majority

of a decision-making body cannot hear a presentation or talk privately about an issue that is before the body no matter how the conversation occurs, whether by telephone or e-mail or at a local coffee shop.<sup>77</sup>

The following are some key things to keep in mind:

- **Meetings.** A “meeting” is any situation involving the congregation of a majority of a decision-making body in which information is presented and/or business is transacted or discussed.<sup>78</sup>
- **Committees and Advisory Bodies.** Advisory groups or committees formally created by a governing body are subject to the open meeting laws. Standing committees are subject to the open meeting laws if they have a continuing subject-matter jurisdiction or have a meeting schedule fixed by formal action of the governing body.<sup>79</sup>



- **Serial Meetings.** One thing to watch for is unintentionally creating a “serial” meeting—a series of communications that result in a majority of decision-makers having conferred on an issue. For example, if two members of a five-member decision-making body consult outside of a public meeting (which is not in and of itself a violation) and then one of those individuals consults with a third member on the same issue, a majority of the body has consulted on the same issue. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member polling decision-makers members in a way that reveals the members’ positions to one another.<sup>80</sup>

However, separate communications with decision-makers to answer questions or provide information are generally okay, as long as those communications do not communicate information about other decision-makers’ comments or position.<sup>81</sup> The key thing to avoid is all conversations that would result in the development of a collective concurrence on what to do among decision-makers outside a public meeting.<sup>82</sup>

## GOOD ETHICS IS GOOD POLITICS

The media is highly vigilant in monitoring compliance with open government requirements—and quick to report on perceived violations.

- **Posting and Following the Agenda.**

In general, public officials may only discuss and act on items included on the posted agenda.<sup>83</sup> However, decision-makers or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items.

Officials can also make requests to staff to place a matter on the agenda for a subsequent meeting.

- **Permissible Gatherings.**

Not every gathering of a decision-making body’s members outside a formal meeting amounts to a violation. For example, an open meeting violation would not occur if a majority of a decision-making body attended the same educational conference or attended a meeting not organized by the local agency as long as certain requirements are met.<sup>84</sup> Nor is attendance at a social or ceremonial event in and of itself a violation.<sup>85</sup>

The basic rule to keep in mind is a majority of decision-making body members cannot meet and discuss

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*The open meeting laws provide legal minimums for local governmental transparency in decision-making.*

agency business (including at conferences or social events)—such discussions must occur at open and publicized meetings.

- **Closed Sessions.** The open meeting laws include provisions for closed discussions under very limited circumstances.<sup>86</sup> For example, a governing body may generally meet in a closed session to receive advice from its legal counsel regarding pending or reasonably anticipated

litigation. However, the reasons for holding the closed session must be noted in the agenda and different disclosure requirements apply to different types of closed sessions.<sup>87</sup> See table on next page for a list of kinds of permissible closed sessions.

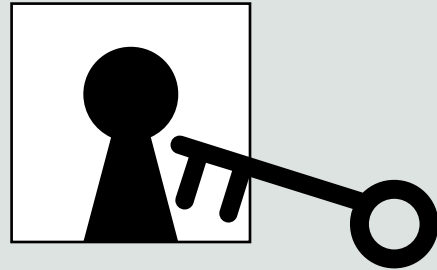
Because of the complexity of the open meeting laws, close consultation with an agency's legal advisor is necessary to ensure that requirements are observed.

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*The basic rule to keep in mind is a majority of a decision-making body cannot meet and discuss agency business except at an open and fully noticed meeting.*

## TYPICAL CLOSED SESSION ISSUES

Local agency open meetings laws vary in terms of what kinds of closed sessions are allowed. The following list is illustrative. Consult with agency counsel concerning 1) whether a particular type of closed session is available and 2) under what circumstances.



**Personnel.** To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints against an employee.<sup>88</sup>

**Pending Litigation.** To confer with or receive advice from an agency's legal counsel with respect to existing, threatened or potential litigation.<sup>89</sup>

**Real Estate Negotiations.** To provide direction to the agency's negotiator on the price and terms under which the agency will purchase, sell, exchange or lease real property.<sup>90</sup>

**Labor Negotiations.** To meet with the agency's labor negotiator regarding salaries and benefits and other matters within the scope of labor negotiations.<sup>91</sup>

**Student Disciplinary Issues (for school districts and community college districts).** To consider discipline of a student if a public hearing would result in disclosure of prohibited information, after notifying the student (or parents in the case of minor students) and they do not request a public hearing.<sup>92</sup>

**Grand Jury Proceedings.** To allow testimony in private before a grand jury (either individually or collectively).<sup>93</sup>

**License Applicants with Criminal Records.** To allow an agency to determine whether a would-be licensee with a criminal record is sufficiently rehabilitated to obtain the license.<sup>94</sup>

**Public Security.** To confer with designated law enforcement officials regarding threats to public facilities and services or the public's right to access those services and facilities.<sup>95</sup>

**Multi-jurisdictional Law Enforcement Agency.** To discuss ongoing criminal investigations.<sup>96</sup>

**Hospital Peer Review and Trade Secrets.** To discuss issues related to medical quality assurance or trade secrets.<sup>97</sup>

Just because a topic *may* be discussed in closed session does not mean that they always *must* be discussed in closed session. Sometimes there are independent legal reasons (for example privacy interests of employees) for discussing a matter during closed session. Other times such discussions are in the best interests of the public (for example, in determining negotiating positions for the agency). But other times, a majority of the decision-making body may decide that the public's interests are best served by *not* discussing a matter in closed session. A key thing to keep in mind is the decision on whether to discuss and disclose such information is a collective one, not an individual one.

## Penalties

### Nullification of Decision

As a general matter, decisions that are not made according to the open meeting laws are voidable.<sup>98</sup> After asking the agency to cure the violation, either the district attorney or any interested person may sue to have the action declared invalid.<sup>99</sup> Costs and attorney's fees may be awarded to those who successfully challenge open meeting law violations.<sup>100</sup>

### Criminal Sanctions

Additionally, governing body members who intentionally violate the open meeting laws may be guilty of a misdemeanor.<sup>101</sup> The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.<sup>102</sup>

### Other Consequences

Either the district attorney or any interested person may sue to remedy past and prevent future open meeting law violations.<sup>103</sup> Another remedy, under certain circumstances, is for a court to order all closed sessions be tape-recorded.<sup>104</sup> Costs and attorney's fees may be awarded.<sup>105</sup>

## RESOURCES FOR FURTHER INFORMATION

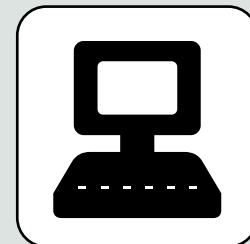
California's open meetings laws are complex and extensive. Consult the following resources for more information.

- *Open and Public IV: A Guide to the Ralph M. Brown Act, 2007*. Available on the League of California Cities website at [www.cacities.org/openand-public](http://www.cacities.org/openand-public)) or in hardcopy form by visiting [www.cacities.org/publications](http://www.cacities.org/publications) or by calling (916) 658-8257.
- *The Brown Act: Open Meetings for Local Legislative Bodies, 2003*. Available on the California Attorney General's website at <http://ag.ca.gov/> (select "Programs A-Z," click on "Publications," then click on "Open Meetings") or by going to <http://ag.ca.gov/publications/brownAct2003.pdf>.

For specific questions, contact agency counsel.

## A NOTE ABOUT BLOGGING AND SOCIAL NETWORKING SITES

Decision-makers who are covered by open meeting laws must avoid situations in which the majority of a legislative body uses the Internet to communicate with each other about a matter of agency business. For this reason, decision-makers must take care when responding to each other's blogs, posts on social networking sites (such as Facebook) or e-mails.



The so-called "Web 2.0" creates opportunities for people to present information on websites in the form of a journal. These sites also allow visitors to make comments or ask questions (called "posts" or "postings") in response to the others' comments.

For many decision-makers, blogging offers an effective way to share information with and communicate with constituents. For example, rather than having to field 10 e-mails asking the same question, an official can post a response on his or her blog and refer folks to the answer. Blogging can also a good way to keep the public informed, especially as fewer people turn to newspapers for information.

The open meeting laws do not stop one-way communications from members of legislative bodies to others. An example would be a "frequently asked questions" piece on an official's website that does not involve two-way communications among legislative body members. But a majority of decision-makers participating in a blog or other web-based conversation could constitute a "meeting" within the meaning of the open meeting laws. This means that the meeting must be held in accordance with all open meeting requirements, in an appropriate (ADA accessible) location, with prior notice and an agenda.

What is the theory underlying these restrictions? One is that the general public has a right to know that decision-making on a particular issue may occur. There is also an underlying concept of decision-makers facing their constituents as they deliberate on issues, as well as the obligation to hear the thoughts of the full range of constituents (not just those on the Internet) should constituents choose to offer them.

For more information, see the Everyday Ethics for Local Officials column "Taking the Bite Out of Blogs: Ethics in Cyberspace" (see [www.ca-ilg.org/blogs](http://www.ca-ilg.org/blogs)).

# The Public's Right to Participate in Meetings

## Basic Rules

Another element of open meeting laws is the public's right to address the governing body at any open meeting.

An elected official's role is to both hear and evaluate these concerns. There are a number of basic rules that govern this right. Again, check the endnotes for specific references to requirements for community college boards.<sup>106</sup>

## Posting and Following the Agenda

The open meeting laws require the public be informed of the time of and the issues to be addressed at each meeting.<sup>107</sup> The agenda must be posted at least 72 hours in advance of a meeting and written in a way that informs people of what business will be discussed.<sup>108</sup>

Members of the public may request a copy of the agenda packet be mailed to them at the time the agenda is posted or upon distribution to the governing body.<sup>109</sup> Many local agencies also post these materials on their websites.

There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances.<sup>110</sup> These exceptions may allow an agency to add

an item to the agenda.<sup>111</sup> The agency may also hold special meetings on 24-hour notice<sup>112</sup> or on less than 24-hours notice if a true emergency exists.<sup>113</sup>

## The Public's Right to Material Not Included in the Agenda Packet

Any documents or other materials relating to an agenda item for an open session of a regular meeting of a governing body distributed less than 72 hours before the meeting must be made available to the public. This must occur when the materials are distributed to the members of the governing body at a public office or location that the agency designates for this purpose. Local agencies must list the address of this office or location on the agendas for all meetings of their governing body. Materials distributed after the agenda packet is prepared may be posted on an agency website.<sup>114</sup>

Any documents distributed during a public meeting must also be made available to the public. This must occur at the meeting if the document is prepared by the agency, or after the meeting if the document is prepared by others, like members of the public.<sup>115</sup>

## Penalties

### Nullification of Decision

As a general matter, decisions that are not made according to the open meeting laws are voidable.<sup>116</sup> After asking the agency to cure the violation, either the district attorney or any interested person may sue to have the action declared invalid.<sup>117</sup> Costs and attorney's fees may be awarded to those who successfully challenge open meeting law violations.<sup>118</sup>

### Criminal Sanctions

Additionally, governing body members who intentionally violate the open meeting laws may be guilty of a misdemeanor.<sup>119</sup> The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.<sup>120</sup>

## Other Measures

Either the district attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws.<sup>121</sup> Another remedy, under certain circumstances, is for a court to order that all closed sessions be tape-recorded.<sup>122</sup> Costs and attorney's fees may be awarded.<sup>123</sup>

## Potential Civil Rights Violations

Regulations of public participation beyond those allowed by applicable statutory and constitutional law can give rise to liability under the civil rights laws,<sup>124</sup> including liability for attorney's fees.<sup>125</sup>

### VOTERS SUPPORT OPEN GOVERNMENT

In 2004, California voters made the concept of public agency transparency a state constitutional requirement as well as a statutory one. In so doing, the voters observed that "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."<sup>126</sup>

## Special Issues

### Taping or Recording of Meetings Is Allowed

Anyone attending a meeting may record it with an audio or video recorder unless the governing body makes a finding the noise, illumination, or obstruction of view will disrupt the meeting.<sup>127</sup> Any tape or film made by the local agency becomes a public record that must be made available to the public for at least 30 days.<sup>128</sup>

### Sign-In Must Be Voluntary

Members of the public cannot be required to register their name or fulfill any other condition for attendance at a meeting. If an attendance list is used, it must clearly state signing the list is voluntary.<sup>129</sup>

### The Public's Right to be Heard

Generally, every agenda must provide an opportunity for the public to address the governing body on any item of interest to the public within the body's jurisdiction.<sup>130</sup> If the issue of concern is one pending before the governing body, the opportunity must be provided before or during the body's consideration of that issue.<sup>131</sup>

### *Reasonable Time Limits May Be Imposed*

Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.<sup>132</sup> When many people wish to comment on an issue, for example, an agency may give each speaker a time limit to ensure that everyone has a chance to speak and the agency can complete its business. However, every effort should be made to avoid artificially short time limits, so as to give the public a reasonable chance to share their views and demonstrate the agency's commitment to openness.

### *Handling Disruptions*

If a group willfully interrupts a meeting and order cannot be restored, the room may be cleared.<sup>133</sup> Members of the media must be allowed to remain and only matters on the agenda can be discussed.<sup>134</sup> While the chair can encourage everyone to be civil and mutually respectful, the chair cannot stop speakers from expressing their opinions or their criticism of the governing body.<sup>135</sup>

Finally, note other state laws may provide additional, subject-specific notice requirements.

## **RESOURCES FOR FURTHER INFORMATION**

For more information, see the Everyday Ethics for Local Officials column “Promoting Civility at Public Meetings” (see [www.ca-ilg.org/civility](http://www.ca-ilg.org/civility)).

See also resources on open meetings listed at page 19.

### **GOOD ETHICS IS GOOD POLITICS**

Community relations—and the public’s views of an official’s responsiveness—are seriously undermined when it appears an official is not listening to the input being provided by the public. Even more damage occurs to the public’s perception if an official expresses disagreement with a position being advocated in a hostile or disrespectful way.

Even if one disagrees with the views being offered, the statesperson-like approach is to treat all speakers with the same respect one would like to be treated with if the roles were reversed. This is an application of the ethical value of respect.

# The Public's Right to Access Records

## Basic Rules

The public has the right to see any materials that are created as part of the conduct of the people's business.<sup>136</sup>

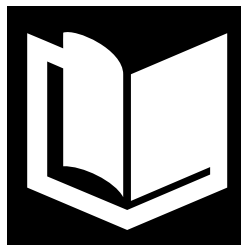
These materials include any writing that was prepared, owned, used, or retained by a public agency.<sup>137</sup> They include documents, computer data, e-mails, facsimiles, and photographs.<sup>138</sup>

A document is presumed to be a public record unless a specific exception applies.<sup>139</sup> Two exceptions worth noting are:

- The “pending litigation” exception, which exempts documents that are prepared in support of ongoing litigation (otherwise opposing counsel could obtain all documents containing the agency's legal strategy just by asking for them).<sup>140</sup>

- The “deliberative process” exception, which exempts preliminary drafts, notes, or other information relating to deliberative processes not ordinarily retained in the agency's course of business. The public agency also must be able to demonstrate the public's interest in nondisclosure outweighs the public's interest in disclosure.<sup>141</sup>

Despite these exceptions, the safe assumption is virtually all materials involved in one's public service—including e-mails—are public records subject to disclosure.



## Penalties

Anyone can sue the agency to enforce his or her right to access public records subject to disclosure.<sup>142</sup> If the agency loses, it must pay costs and attorney's fees.<sup>143</sup>

*A safe assumption is virtually all materials involved in one's public service are public records subject to public disclosure.*

## RESOURCES FOR FURTHER INFORMATION

For more information, see

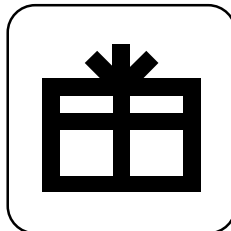
- *The People's Business: A Guide to the California Public Records Act*, 2007. Available at the League of California Cities website at [www.cacities.org/PRAGuide](http://www.cacities.org/PRAGuide) or in hardcopy form from [www.cacities.org/publications](http://www.cacities.org/publications) or by calling (916) 658-8257.
- *The People's Business: A Chart of Frequently Requested Information and Records*, 2008. Available at the League of California Cities website at [www.cacities.org](http://www.cacities.org) or in hardcopy form from [www.cacities.org/publications](http://www.cacities.org/publications) or by calling (916) 658-8257.
- *Summary of the California Public Records Act*, 2004. Available on the California Attorney General's website at <http://ag.ca.gov/> (select "Programs A-Z," click on "Publications," then click on "Public Records") or go to [http://ag.ca.gov/publications/summary\\_public\\_records\\_act.pdf](http://ag.ca.gov/publications/summary_public_records_act.pdf).

# Other Disclosure Requirements

The Public Records Act is the overarching disclosure requirement in California. In addition, there are specific disclosure requirements that are useful to note and are discussed in more detail in other parts of *Understanding the Basics of Public Service Ethics*:

- Gifts totaling \$50 or more from a single source must be disclosed on one's Statement of Economic Interests, see pages 23–33 of *Perk Issues, Including Compensation, Use of Public Resources and Gifts*.
- General gifts to public agencies must be disclosed on a special FPPC form as discussed on page 31 of *Perk Issues, Including Compensation, Use of Public Resources and Gifts*.
- Gifts of tickets to public agencies must be disclosed on the agency's website as discussed on pages 31–32 of *Perk Issues, Including Compensation, Use of Public Resources and Gifts*.
- Campaign contributions over \$250 during the previous 12 months from any party or participant in a pending permit or license application as discussed on pages 15–19 of *Fair Process Laws and Merit-Based Decision-Making*.

There are of course other specific disclosure/notice requirements; these are just ones that tend to relate directly to public confidence/ethics issues.



# Endnotes

- <sup>1</sup> Rushworth M. Kidder, *How Good People Make Tough Choices* (Simon and Schuster, 1995).
- <sup>2</sup> *Id.*
- <sup>3</sup> *Id.*
- <sup>4</sup> This is a requirement of the Political Reform Act. See generally Cal. Gov't Code §§ 87200 and following.
- <sup>5</sup> Cal. Gov't Code § 82019.
- <sup>6</sup> Cal. Gov't Code §§ 87202 – 87204, and 87302; See also 2 Cal. Code Regs. § 18722.
- <sup>7</sup> 2 Cal. Code Regs. § 18229.
- <sup>8</sup> Cal. Gov't Code §§ 82030, 87103(c); 2 Cal. Code Regs. § 18703.3.
- <sup>9</sup> Cal. Gov't Code § 87103(c). See also *Larsen Advice Letter*, No. A-82-192.
- <sup>10</sup> 2 Cal. Code Regs. § 18229.
- <sup>11</sup> 2 Cal. Code Regs. § 18703.5.
- <sup>12</sup> 2 Cal. Code Regs. § 18229.
- <sup>13</sup> See Cal. Gov't Code §§ 82033, 87103(b).
- <sup>14</sup> 2 Cal. Code Regs. § 18229.
- <sup>15</sup> Cal. Gov't Code §§ 82034, 87103(a); 2 Cal. Code Regs. § 18703.1.
- <sup>16</sup> Cal. Gov't Code § 87103(d); 2 Cal. Code Regs. § 18703.1(b).
- <sup>17</sup> 2 Cal. Code Regs. § 18703.1(c).
- <sup>18</sup> Cal. Gov't Code § 82033 (pro rata interest, if own 10 percent interest or greater).
- <sup>19</sup> Cal. Gov't Code § 82030(b)(8), (10).
- <sup>20</sup> Cal. Gov't Code § 82028, 87103(e), 2 Cal. Code Regs. § 18703.4. The amount is adjusted biennially pursuant to Government Code section 89503(f).
- <sup>21</sup> Cal. Gov't Code § 87103(e); 2 Cal. Code Regs. § 18703.4.
- <sup>22</sup> See generally Cal. Gov't Code §§ 91000 and following.
- <sup>23</sup> See Cal. Gov't Code § 91000(a).
- <sup>24</sup> See Cal. Gov't Code § 91002.
- <sup>25</sup> See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- <sup>26</sup> Cal. Gov't Code §§ 3060-3074 (providing for proceedings to be brought by the grand jury for removal from office).
- <sup>27</sup> See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$2,000, or both).
- <sup>28</sup> Cal. Gov't Code §§ 83116, 91001(b), 91001.5, 91004, 91005.
- <sup>29</sup> Cal. Gov't Code § 91012.
- <sup>30</sup> Cal. Gov't Code § 83116.
- <sup>31</sup> See Cal. Gov't Code § 995.8. See also *Los Angeles Police Protective League v. City of Los Angeles*, 27 Cal. App. 4th 168, 32 Cal. Rptr. 2d 574 (1994) (finding city was not required to provide the defense of police officers accused of vandalism and conspiracy to commit vandalism).
- <sup>32</sup> See Cal. Gov't Code § 995.2 (public agency may refuse defense of civil action if, among other reasons, the agency finds the official acted because of “actual fraud, corruption or actual malice.”) See also Cal. Gov't Code § 822.2 (immunity from liability for misrepresentation does not apply in instances of corruption).
- <sup>33</sup> See Cal. Gov't Code § 818.
- <sup>34</sup> California Rules of Professional Conduct for Lawyers, Rule 3-600(A); *Ward v. Superior Court*, 70 Cal. App. 3d 23, 138 Cal. Rptr. 532 (1977) (county counsel's client is county, not assessor in his individual capacity).
- <sup>35</sup> See, for example, *Campaign Disclosure Manual 2 – Information for Local Candidates* (May 2007) at [www.fppc.ca.gov/manuals/manual2local.pdf](http://www.fppc.ca.gov/manuals/manual2local.pdf).
- <sup>36</sup> See *id.* at page 8-2 for sample form.
- <sup>37</sup> See Cal. Gov't Code § 82015(b)(2)(B)(iii).
- <sup>38</sup> *Id.* See Fair Political Practices Commission webpage: “Where to File Campaign Reports” at [www.fppc.ca.gov/index.html?id=19](http://www.fppc.ca.gov/index.html?id=19).
- <sup>39</sup> See Fair Political Practices Commission Advice Letter A-96-098 (March 26, 1996).
- <sup>40</sup> Cal. Penal Code § 518; *In re Shepard*, 161 Cal. 171 (1911). See also 18 U.S.C. § 666(a)(1) (B) (referring to “corruptly solicits or demands for the benefit of any person, intending to be influenced . . .”).
- <sup>41</sup> See generally Cal. Gov't Code §§ 91000 and following.

- <sup>42</sup> See Cal. Gov't Code § 91000(a).
- <sup>43</sup> See Cal. Gov't Code § 91002.
- <sup>44</sup> See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- <sup>45</sup> Cal. Gov't Code §§ 3060-3074 (providing for proceedings to be brought by the grand jury for removal from office).
- <sup>46</sup> See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$2,000, or both).
- <sup>47</sup> Cal. Gov't Code §§ 83116, 91001(b), 91001.5, 91004, 91005.
- <sup>48</sup> Cal. Gov't Code § 91012.
- <sup>49</sup> Cal. Gov't Code § 83116.
- <sup>50</sup> Cal. Penal Code § 521.
- <sup>51</sup> Cal. Penal Code § 19.
- <sup>52</sup> Cal. Gov't Code §§ 3060-3074.
- <sup>53</sup> 18 U.S.C. § 666.
- <sup>54</sup> See 18 U.S.C. §§ 666 (specifying maximum 10 year prison term and fine "under this title"), 3571 (general fine for violating federal criminal laws).
- <sup>55</sup> 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).
- <sup>56</sup> *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).
- <sup>57</sup> *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).
- <sup>58</sup> *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005).
- <sup>59</sup> 18 U.S.C. § 1341 ("... shall be fined under this title or imprisoned not more than 20 years, or both.").
- <sup>60</sup> See generally Cal. Gov't Code § 84100 and following.
- <sup>61</sup> See Cal. Gov't Code § 81002(a).
- <sup>62</sup> See, e.g., Cal. Gov't Code § 82013 and 84101.
- <sup>63</sup> See Cal. Gov't Code § 82013(c).
- <sup>64</sup> See Cal. Gov't Code § 84202.3.
- <sup>65</sup> See generally Cal. Gov't Code §§ 91000 and following.
- <sup>66</sup> See Cal. Gov't Code § 91000(a).
- <sup>67</sup> See Cal. Gov't Code § 91002.
- <sup>68</sup> See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- <sup>69</sup> Cal. Gov't Code §§ 3060-3074 (providing for proceedings to be brought by the grand jury for removal from office).
- <sup>70</sup> See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$2,000, or both).
- <sup>71</sup> Cal. Gov't Code §§ 83116, 91001(b), 91001.5, 91004, 91005.
- <sup>72</sup> Cal. Gov't Code § 91012.
- <sup>73</sup> Cal. Gov't Code § 83116.
- <sup>74</sup> See generally Cal. Gov't Code §§ 54950 and following (for cities, counties, special districts and school districts).
- <sup>75</sup> Cal. Educ. Code §§ 72121 and following (for community college district governing boards).
- <sup>76</sup> See Cal. Gov't Code § 54952.2(a); Cal. Gov't Code § 54954.2(a).
- <sup>77</sup> Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.
- <sup>78</sup> Cal. Gov't Code § 54952.2(a).
- <sup>79</sup> Cal. Gov't Code § 54952(b).
- <sup>80</sup> Cal. Gov't Code § 54952.2.
- <sup>81</sup> Cal. Gov't Code § 54952.2(b)(2).
- <sup>82</sup> *Wolfe v. City of Fremont*, 144 Cal. App. 4th 533, 50 Cal. Rptr. 3d 524 (2006).
- <sup>83</sup> Cal. Gov't Code § 54954.2; Cal. Educ. Code § 72121.5.
- <sup>84</sup> Cal. Gov't Code § 54952.2(c)(2).
- <sup>85</sup> Cal. Gov't Code § 54952.2(c)(5).
- <sup>86</sup> Cal. Educ. Code § 72122.
- <sup>87</sup> Cal. Gov't Code § 54956.9.
- <sup>88</sup> Cal. Gov't Code § 54957(b).
- <sup>89</sup> Cal. Gov't Code § 54956.9.
- <sup>90</sup> Cal. Gov't Code § 54956.8.
- <sup>91</sup> Cal. Gov't Code §§ 3549.1 (school and community college districts), 54957.6 (other local agencies).
- <sup>92</sup> Cal. Educ. Code §§ 35146, 72122.
- <sup>93</sup> Cal. Gov't Code § 54953.1.
- <sup>94</sup> Cal. Gov't Code § 54956.7.
- <sup>95</sup> Cal. Gov't Code § 54957.
- <sup>96</sup> Cal. Gov't Code § 54957.8.
- <sup>97</sup> Cal. Gov't Code §§ 37606, 37624.3; Cal. Health & Safety Code §§ 1461, 1462, 32106, 32155.
- <sup>98</sup> Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).

- <sup>99</sup> *Id.*
- <sup>100</sup> Cal. Gov't Code § 54960.5.
- <sup>101</sup> Cal. Gov't Code § 54959.
- <sup>102</sup> *See* Cal. Penal Code § 19.
- <sup>103</sup> Cal. Gov't Code § 54960.
- <sup>104</sup> *Id.*
- <sup>105</sup> Cal. Gov't Code § 54960.5.
- <sup>106</sup> Cal. Educ. Code §§ 72121 and following (for community college district governing boards).
- <sup>107</sup> Cal. Gov't Code § 54954.2(a); Cal. Educ. Code § 72121.
- <sup>108</sup> *Id.*
- <sup>109</sup> Cal. Gov't Code § 54954.1.
- <sup>110</sup> Cal. Gov't Code § 54954.2(b).
- <sup>111</sup> Cal. Gov't Code § 54954.2(b)(2).
- <sup>112</sup> Cal. Gov't Code § 54956.
- <sup>113</sup> Cal. Gov't Code § 54956.5.
- <sup>114</sup> Cal. Gov't Code § 54957.5.
- <sup>115</sup> Cal. Gov't Code § 54957.5(c).
- <sup>116</sup> Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).
- <sup>117</sup> *Id.*
- <sup>118</sup> Cal. Gov't Code § 54960.5.
- <sup>119</sup> Cal. Gov't Code § 54959.
- <sup>120</sup> *See* Cal. Penal Code § 19.
- <sup>121</sup> Cal. Gov't Code § 54960.
- <sup>122</sup> *Id.*
- <sup>123</sup> Cal. Gov't Code § 54960.5.
- <sup>124</sup> *See* 42 U.S.C. § 1983.
- <sup>125</sup> *See* 42 U.S.C. § 1988.
- <sup>126</sup> Cal. Const. art. I, § 3(b)(1).
- <sup>127</sup> Cal. Gov't Code § 54953.5(a).
- <sup>128</sup> Cal. Gov't Code § 54953.5(b).
- <sup>129</sup> Cal. Gov't Code § 54953.3.
- <sup>130</sup> Cal. Gov't Code § 54954.3(a); Cal. Educ. Code § 72121.5.
- <sup>131</sup> Cal. Gov't Code § 54954.3(a).
- <sup>132</sup> Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).
- <sup>133</sup> Cal. Gov't Code § 54957.9.
- <sup>134</sup> *Id.*
- <sup>135</sup> Cal. Gov't Code §§ 54954.3(c), 54957.9; *Perry Educational Association v. Perry Local Educators' Association*, 460 U.S. 37, 46 (1983).
- <sup>136</sup> *See generally* Cal. Gov't Code §§ 6250 and following. *See also* Cal. Const. art. I, § 3(b)(1).
- <sup>137</sup> Cal. Gov't Code § 6252(d).
- <sup>138</sup> Cal. Gov't Code § 6252(e).
- <sup>139</sup> *State ex rel. Division of Industrial Safety v. Superior Court*, 43 Cal. App. 3d 778, 117 Cal. Rptr. 726 (1974); *Cook v. Craig*, 55 Cal. App. 3d 773, 127 Cal. Rptr. 712 (1976).
- <sup>140</sup> Cal. Gov't Code § 6254(b).
- <sup>141</sup> *See* Cal. Gov't Code § 6254(a). *See also California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 78 Cal. Rptr. 2d 847 (1998).
- <sup>142</sup> Cal. Gov't Code § 6258.
- <sup>143</sup> Cal. Gov't Code § 6259(d).

# References for Further Information

## General Websites

### **Fair Political Practices Commission**

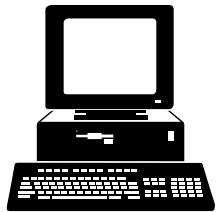
[www.fppc.ca.gov/](http://www.fppc.ca.gov/)

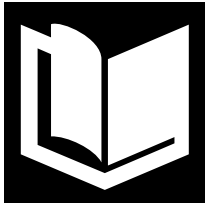
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### **Office of the Attorney General**

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## Publications

### Open Government

#### **League of California Cities**

*Open and Public IV: A Guide to the Ralph M. Brown Act* (2007)  
([www.cacities.org/openandpublic](http://www.cacities.org/openandpublic)).

*The People's Business: A Guide to the California Public Records Act* (2008)  
([www.cacities.org/PRAGuide](http://www.cacities.org/PRAGuide))

#### **Office of the Attorney General**

*The Brown Act: Open Meetings for Local Legislative Bodies*, 2003.  
Available on the California Attorney General's website at <http://ag.ca.gov/>  
(select "Programs A-Z," click on "Publications," then click on "Open Meetings") or by going to <http://ag.ca.gov/publications/brownAct2003.pdf>.

*Summary of the California Public Records Act*, 2004. Available on the California Attorney General's website at <http://ag.ca.gov/> (select "Programs A-Z," click on "Publications," then click on "Public Records") or go to [http://ag.ca.gov/publications/summary\\_public\\_records\\_act.pdf](http://ag.ca.gov/publications/summary_public_records_act.pdf).

### General

#### **Institute for Local Government**

*Understanding the Basics of Public Service Ethics: Promoting Personal and Organizational Ethics* (2009). Explains the role that values and public perception play in public service ethics ([www.ca-ilg.org/ppoe](http://www.ca-ilg.org/ppoe)).

*Ethics Law Compliance Best Practices* (2005). Enables agencies to engage in a self-assessment of ethics law compliance practices ([www.ca-ilg.org/bestpractices](http://www.ca-ilg.org/bestpractices)).

*Walking the Line: What to Do if You Suspect an Ethics Problem* (2005). Answers a frequently-posed question with an eight-step process ([www.ca-ilg.org/whattodo](http://www.ca-ilg.org/whattodo)).

*Ethics Culture Assessment* (2006). Enables local agencies and their leaders to assess and reflect on the agency's ethics culture ([www.ca-ilg.org/culturechecks](http://www.ca-ilg.org/culturechecks)).

# Index

## A

Advisory Committees.....	15
Agendas .....	21
Attorney's fees.....	5, 10, 14, 19, 22, 26

## B

Ballot Measures.....	13
Blogging.....	20
Brown Act.....	19, 32
Business Employment or Management .....	4
Business-Owned Property.....	4

## C

Campaign Contribution Disclosure .....	13
Campaign Contributions .....	1, 13, 27
Charitable Fundraising .....	7
Children .....	4
Civil Rights.....	22
Closed Sessions.....	17-19, 22
Conferences .....	17
Conflict of Interest.....	1, 3
Contracts .....	11

## D

Deliberative Process.....	25
Disclosure.....	3, 7, 13-14, 17-18, 25-28
Disruptions.....	23
Domestic Partner .....	4

## E

E-Mail .....	15-16
Extortion .....	11

## F

Family .....	4
Form 700 .....	3

## G

Gifts .....	1, 3-4, 27
Gifts of Tickets .....	27
Gifts to Public Agencies.....	27
Grand Jury.....	5, 11, 14, 18, 28-29

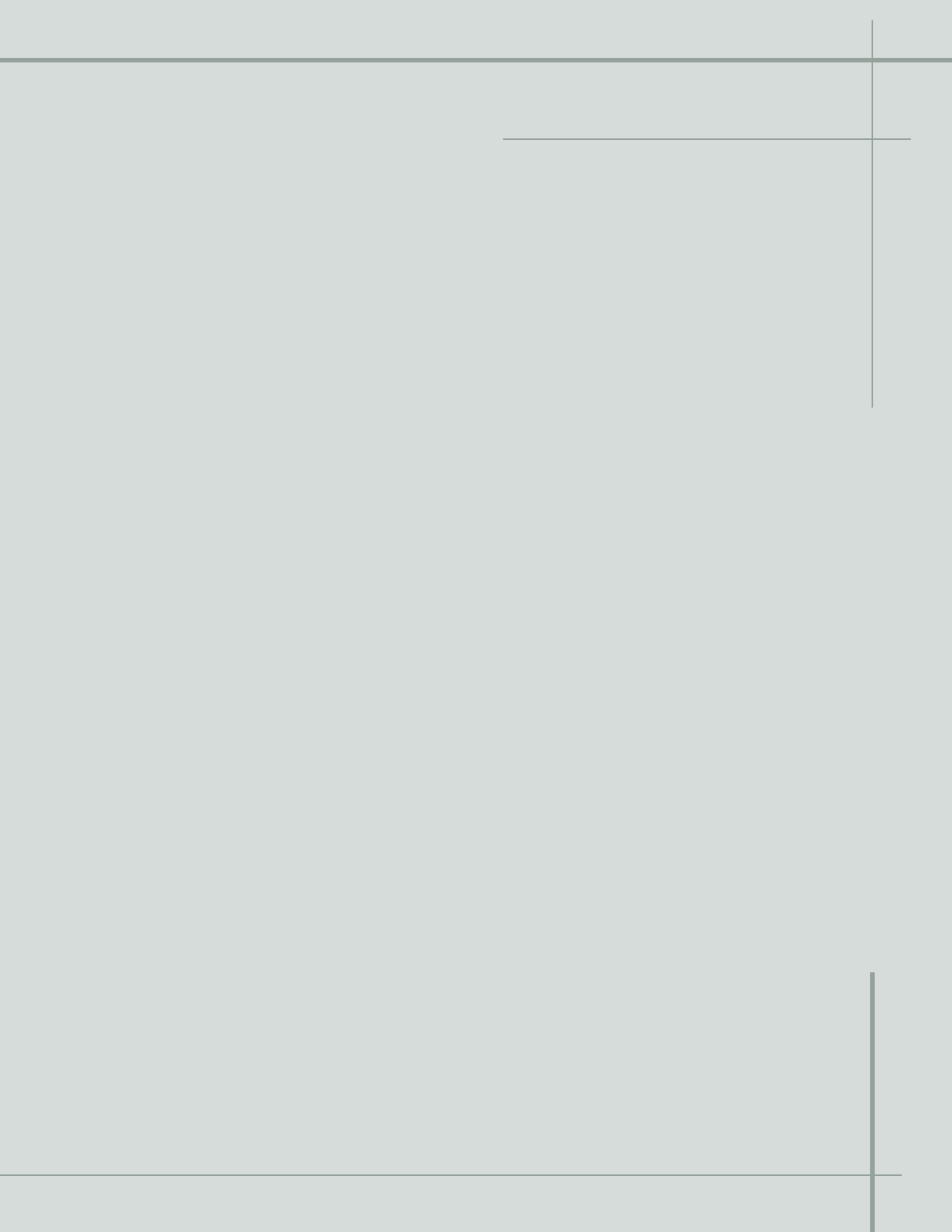
## H

Honest Services Fraud .....	11
-----------------------------	----

## I

Income, Assets or Liabilities .....	4
Investments .....	3-4

<b>L</b>		<b>R</b>	
Loans.....	4	Real Property.....	3-4, 18
		Related Businesses.....	4
<b>M</b>		<b>S</b>	
Mail Fraud.....	11, 29	Serial Meetings.....	16
		Sources of Income.....	3-4
<b>O</b>		Spouse .....	4
Open Meeting Laws.....	15-17, 19-22	Statement of Economic Interests.....	27
		<b>W</b>	
<b>P</b>		Websites .....	20-21, 31
Pending Litigation.....	18, 25	Wire Fraud.....	29
Personal Finances.....	4		
Political			
Reform Act.....	3, 5, 8, 10, 13-14, 28		
Property .....	3-4, 18		
Public Records .....	25-27, 32		



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