



Sample Expense and Use Of Public Resources Policy Statement¹

01/04/2006

Findings

Whereas, _____ [*insert public agency name*] takes its stewardship over the use of its limited public resources seriously.

Whereas, public resources should only be used when there is a substantial benefit to the *city/county/special district*.

Whereas, such benefits include:

1. The opportunity to discuss the community's concerns with state and federal officials;
2. Participating in regional, state and national organizations whose activities affect the *city/county/district*;
3. Attending educational seminars designed to improve officials' skill and information levels; and
4. Promoting public service and morale by recognizing such service.

Whereas, 1) legislative and other regional, state and federal agency business is frequently conducted over meals; 2) sharing a meal with regional, state and federal officials is frequently the best opportunity for a more extensive, focused and uninterrupted communication about the *city/county/district's* policy concerns; and 3) each meal expenditure must comply with the limits and reporting requirements of local, state and federal law.

Whereas, this policy provides guidance to elected and appointed officials on the use and expenditure of *city/county/district* resources, as well as the standards against which those expenditures will be measured.

DRAFTING NOTES

¹ Local agencies that have authority to reimburse legislative body members for expenses incurred in the performance of their official duties must adopt, in a public meeting, written expense policies that specify the types of occurrences which will be reimbursable. *See* Cal. Gov't Code § 53232.2(b). The policy may also specify rates or default to Internal Revenue Service rates. *See* Cal. Gov't Code § 53232.2(c).

[For non-charter cities] Whereas, this policy satisfies the requirements of Government Code sections 53232.2 and 53233.3. *[For charter cities: Whereas, this policy would satisfy the requirements of Government Code sections 53232.2 and 53233.3 in the event such requirements could be constitutionally applied to charter cities.]*

Whereas, this policy supplements the definition of actual and necessary expenses for purposes of state laws relating to permissible uses of public resources.²

Whereas, this policy also supplements the definition of necessary and reasonable expenses for purposes of federal and state income tax laws.³

Whereas, this policy also applies to any charges made to a *city/county/district* credit card,⁴ cash advances or other line of credit.

² See also Cal. Gov't Code §1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties); § 1091.5 (finding no impermissible interest in a contract if officer or employee is reimbursed actual and necessary expenses in performance of official duty); Cal. Water Code § 34741 ("Each director shall receive...expenses incurred in the performance of his duties required or authorized by the board."); Cal. Health & Safety Code § 32103 (allowing travel and incidental expenses incurred hospital district board members in the performance of their official duties as approved by the board); Cal. Gov't Code § 25008 (county supervisors are allowed expenses associated with traveling outside county on county business and to state association meeting); § 25305 (county may purchase automobiles for use of county officers and employees in lieu of mileage; county board may allow officers and employees using county automobiles their actual and necessary expenses when traveling on county business); See Cal. Gov't Code § 36514.5 (city council members); 65 Cal. Op. Att'y Gen. 517, 521 (1982) (interpreting Government Code section 36514.5); Cal. Health & Safety Code § 33114 (similar authority as to expenses of redevelopment agency members).

³ See, e.g., 26 U.S.C. § 162.

⁴ Because of the potential for confusing an agency credit card with a personal card, a number of agencies have concluded it is wiser not to issue officials credit cards. This is consistent with state law that appears not to forgive inappropriate public agency expenses if they are reimbursed. In the prosecution of one county supervisor for personal use of public resources, the court concluded that reimbursement was not a defense. See *People v. Bishop*, 2000 WL 520878 (2000) (conviction for personal and campaign use of county facilities and personnel). The court cited to *People v. Dillon*, 199 Cal. 1 (1926), a case in which convictions were upheld on facts demonstrating that the city was reimbursed for money improperly disbursed by the defendant. While *Dillon* did not expressly reject a reimbursement defense, the court said the decision cannot be reconciled with such a defense.

Authorized Expenses⁵

City/County/District funds, equipment, supplies (including letterhead), titles,⁶ and staff time must only be used for authorized *city/county/district* business.⁷ Expenses incurred in connection with the following types of activities generally constitute authorized expenses, as long as the other requirements of this policy are met:

1. Communicating with representatives of regional, state and national government on *city/county/district* adopted policy positions;⁸
2. Attending educational seminars designed to improve officials' skill and information levels;⁹
3. Participating in regional, state and national¹⁰ organizations whose activities affect the *city's/county's/district's* interests;
4. Recognizing service to the *city/county/district* (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);¹¹
5. Attending *city/county/district* events;¹²

⁵ This section is designed to satisfy Government Code section 53232.2(b), which requires local agencies to specify what types of occurrences qualify for reimbursement.

⁶ Some agencies allow elected officials to use their titles "for identification purposes only" as long as the communication makes it clear that the use of the title does not imply agency participation in or endorsement of a communication.

⁷ State law prohibits personal use of public resources. *See, e.g.*, Cal. Gov't Code § 8314 (making it unlawful for state or local officials to use public resources for personal or campaign purposes).

⁸ *See* Cal. Gov't Code §§ 50023 (legislative bodies of cities and counties may directly or through a representative attend legislative bodies and meet with representatives of executive agencies, and present information; cost and expense incident to such meetings are proper charges against the local agency); 53060.5 (cost of "attending" the Legislature and presenting information are proper charges against special districts; each district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

⁹ *See Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).

¹⁰ Some agencies may want to limit pre-approved travel to in-state travel only. This may be accomplished in the section that follows by requiring pre-approval for all out-of-state-travel.

¹¹ Counties have specific statutory authority to honor those who have performed unique or noteworthy public service. *See* Cal. Gov't Code § 26206 (specifying that such honors must be of nominal value and cost). *See also* 10 Cal. Op. Att'y Gen. 18 (1947) (school district may issue recognition pins).

¹² Agency officials may wish to consider whether attending certain agency events are expenses that officials should bear personally (or through their officeholder accounts under the Political Reform Act), particularly if attendance at such events is politically advantageous.

6. Implementing a *city/county/district*-approved strategy for attracting or retaining businesses to the *city/county/district*, which will typically involve at least one staff member; and¹³

7. [For those agencies that pay meeting stipends, for example, water districts] Meetings such as those listed above for which a meeting stipend is expressly authorized under this policy.

All other expenditures require prior approval by the *city/county/district* governing body.¹⁴

The following expenses also require prior governing body approval:

1. International [and out-of-state]¹⁵ travel;
2. Expenses which exceed the annual limits established for each office holder;¹⁶ and
3. Expenses exceeding \$_____ per trip.¹⁷

Examples of personal expenses that the *city/county/district* will not reimburse include, but are not limited to:

1. The personal portion of any trip;
2. Political or charitable contributions or events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children- or pet-related expenses;¹⁸

¹³ A consensus among the peer reviewers was that such meetings typically ought to involve the agency's economic development staff or chief administrative officer to insure the meetings are maximally productive.

¹⁴ Any expense not authorized by the agency's expense reimbursement policy must be approved in advance at a public meeting of the governing body. See Cal. Gov't Code §53232.2(f).

¹⁵ For some agencies, pre-approval of out-of-state travel may not make sense, given the frequency with which such travel occurs or the proximity of state lines.

¹⁶ Some jurisdictions find it useful to set an annual per office holder "budget" for such expenses. Such a budget does not, however, excuse agency officials from making a determination that each expense complies with the agency's policy, the law and ethical considerations. A strong argument can be made that, effective January 1, 2006, agencies may not pay flat monthly mileage allowances without requiring a mileage log or other proof of travel. See Cal. Gov't Code §53232.3(a)-(c).

¹⁷ The threshold for pre-approval of travel over a certain amount for any kind of travel is subject to community standards.

¹⁸ 75 Cal. Op. Att'y Gen. 20 (1992) (concluding there is no substantial public purpose associated with a public agency paying for spouse travel expenses).

4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other cultural events;
5. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
6. Personal losses incurred while on *city/county/district* business. Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

Meeting Stipends¹⁹

General

Consistent with _____,²⁰ directors receive \$ _____²¹ per day (“daily

¹⁹ This section should only be included for those local agencies whose enabling acts provide for per-day meeting stipends.

²⁰ Insert relevant code section establishing meeting stipend amounts and limits for type of agency.

²¹ Insert amount that does not exceed statutory limits. State law limits direct compensation for some local officials. These limits do not apply to any local agency that pays compensation in the form of a salary, including members of the board of directors of irrigation districts which provide electricity, directors of utility districts with boards having seven members and harbor district directors. The limits apply primarily to officials of independent districts who do not fall within these last two exceptions. With regard to nonsalaried officials, a stipend for attending a meeting or for a day of service can be paid for: a meeting of any “legislative body” of the agency (as Government Code section 54952 defines that term), a meeting of an advisory body (such as a less-than-a-quorum, temporary, *ad hoc* advisory subcommittee of a legislative body), and conference attendance including ethics training conferences, assuming that the stipend is authorized by another statute. Cal. Gov’t Code § 53232.1(a). If the agency wishes to compensate officials for attendance at other events, it may do so “only if the governing body has adopted, in a public meeting, a written policy specifying” the other events which constitute “the performance of official duties” allowing compensation. Cal. Gov’t Code § 53232.1(b).

City councils fix the compensation of all appointive officers and employees by resolution or ordinance. Cal. Gov’t Code § 36506. We believe this statute provides authority to compensate city appointive officers and employees and reimburse expenses. For counties, the board of supervisors prescribes the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees. Except as otherwise required by Article XI of the California Constitution, such action may be taken by resolution of the board of supervisors as well as by ordinance. Cal. Gov’t Code § 25300.

Note, however, that unless specifically authorized by another statute, a city council may not enact an ordinance providing for compensation to elected city council members in excess of the schedules authorized under the Government Code. *See* Cal. Gov’t Code § 36516(d). If a statute provides for additional council member compensation for serving on a commission--but that statute does not specify an amount of compensation-- the compensation is \$150 per month. *See* Cal. Gov’t Code § 36516(d). If a community development commission is formed to oversee redevelopment functions, commissioner compensation may not exceed \$75 per commissioner per meeting, with a maximum of two meetings (\$150) per month. *See* Cal. Health & Safety Code §34130.5(b). If a community development commission is

meeting stipend”) for each day’s attendance at meetings, as defined in this policy. Such compensation is in addition to any reimbursement for meals, lodging, travel and expenses consistent with this policy.

Meetings and Service Subject To Daily Stipend

To be entitled to a daily stipend under this policy, the event in question must constitute one of the following:

1. A meeting of the district board within the meaning of Government Code section 54952.2(a);²²
2. A meeting of a district committee within the meaning of Government Code section 54952(b);²³
3. An advisory body meeting within the meaning of Government Code section 54952(b);²⁴ or
4. A conference or organized educational activity conducted in compliance with Government Code section 54952.2(c), including ethics training required by Government Code sections 53234 and following.²⁵
5. A meeting of any multi-jurisdictional governmental body on which the district

formed to oversee both redevelopment and housing authority functions, commissioner compensation may not exceed \$150 per commissioner per meeting, with a maximum of two meetings (\$300) per month. *See* Cal. Health & Safety Code §34130.5(c).

²² *See* Cal. Gov’t Code § 53232.1(a)(1) (authorizing that compensation be paid at meeting of a legislative body and tying it to the definition of meeting in section 54952.2(a), which reads as follows:

As used in this chapter, “meeting” includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.)

²³ That section reads as follows:

A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

See Cal. Gov’t Code § 53232.1(a)(2).

²⁴ *See* Cal. Gov’t Code § 53232.1(a)(2) (authorizing that compensation be paid at meeting of an advisory body). *See also* Cal. Gov’t Code § 54952(b) (“advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body”).

²⁵ *See* Cal. Gov’t Code § 53232.1(a)(3) (authorizing that compensation be paid at conferences or organized educational activities).

director serves as the district's designated representative.²⁶

6. Any meeting attended or service provided on a given day at the formal request of the district board and for which the district board approves payment of a daily meeting stipend.²⁷

Aggregate Limits

The number of days for which a district director receives a daily stipend will not exceed the aggregate limits established by state law.²⁸

Cost Control²⁹

To conserve *city/county/district* resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the *city/county/district* will be limited to the costs that fall within the guidelines.

Transportation³⁰

²⁶ See Cal. Gov't Code § 54952.2(a). That section reads as follows:

(a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

Note that this is the test for meeting suggested by the Association for California Water Agencies in its sample policy on directors' compensation and expense reimbursement. See Cal. Gov't Code § 53232.1(a)(3).

²⁷ Check to make sure your district's enabling act includes authorization for payment of a daily stipend for non-meeting expenses.

²⁸ See footnote 19 above for examples.

²⁹ Some agencies have chosen (usually through a request for proposals process) to work with a single travel agency to promote cost control and accountability on airline flights and lodging. Another option is to limit the number of staff who can contact the travel agency to book or change travel plans.

³⁰ The sample policy reflects the requirement that local reimbursement policies either specify reasonable reimbursement rates or use IRS rates for travel, meals, lodging and other authorized expenses. See Cal.

The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental vehicles may be reimbursed under this provision if more than one *city/county/district* official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.³¹

Airfare. Airfares that are equal or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities (www.cacities.org/travel), the California State Association of Counties (<http://www.csac.counties.org/default.asp?id=635>) and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.³²

Automobile. Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect (*see* www.irs.gov). For 2006, the rate is 44.5 cents per mile. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle.³³ This amount does not include

Gov't Code § 53232.2(c). This requirement, as well as the requirement that expenses be reimbursed after the fact based on receipts supports the view that vehicle allowances are not permitted. *See* Cal. Gov't Code § 53232.3. Nevertheless, a statute that permits a vehicle allowance still exists. *See* Cal. Gov't Code § 1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties). Even if the validity of vehicle allowances was not in question, however, using the more typical Internal Revenue Service Code mileage rate for distance actually traveled avoids questions over the amount of any such allowance. *See Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975) (successful challenge to a flat expense allowance for non-itemized expenses that was not supported by an ordinance or resolution finding such expenses were actual, necessary or beneficial to the public). The court found the allowance violated the law as an unlawful gift of public funds. *See* Cal. Const. art. XVI, § 6. Note that there is a special statutory reimbursement rate for special district directors traveling on legislative business. *See* Cal. Gov't Code § 53060.5 (cost of "attending" the Legislature and presenting information are proper charges against special districts; each special district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

³¹ *See* Cal. Gov't Code § 53232.2(e) ("Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.").

³² Those rates can be accessed from the state's website without being a member of these programs by going to <http://www.catravelmart.com/default.htm> and clicking on "Discount Travel Fares for Official Business."

³³ The sample policy reflects the requirement that local reimbursement policies either specify reasonable reimbursement rates or use Internal Revenue Service rates for travel, meals, lodging and other authorized expenses. *See* Cal. Gov't Code § 53232.2(c). This requirement, as well as the requirement that expenses be reimbursed after the fact based on receipts supports the view that vehicle allowances are not permitted. *See* Cal. Gov't Code § 53232.3. Nevertheless, a statute that permits a vehicle allowance still exists. *See* Cal. Gov't Code § 1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties). Even if the validity of vehicle

bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.

Car Rental. Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

Taxis/Shuttles. Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

Lodging³⁴

Lodging expenses will be reimbursed or paid for when travel on official *city/county/district* business reasonably requires an overnight stay.³⁵

Conferences/Meetings. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking.³⁶ If the group rate is not available, see next section.

Other Lodging. Travelers must request government rates, when available.³⁷ A listing

allowances was not in question, however, using the more typical Internal Revenue Service Code mileage rate for distance actually traveled avoids questions over the amount of any such allowance. *See Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975) (successful challenge to a flat expense allowance for non-itemized expenses that was not supported by an ordinance or resolution finding such expenses were actual, necessary or beneficial to the public). The court found the allowance violated the law as an unlawful gift of public funds. *See Cal. Const. art. XVI, § 6*. Note that there is a special statutory reimbursement rate for special district directors traveling on legislative business. *See Cal. Gov't Code § 53060.5* (cost of "attending" the Legislature and presenting information are proper charges against special districts; each special district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

³⁴ A local expense reimbursement policy may specify what constitutes reasonable rates for lodging. If the policy does not, then the reimbursable rates default to those specified in the Internal Revenue Service guidelines. *See Cal. Gov't Code §53232.2(c)*. *See also* Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem. An agency may want to provide guidance on what some circumstances reasonably requiring an overnight stay (for example, by distance or hours of travel from the agency's location).

³⁵ An agency may want to provide guidance on what some circumstances reasonably requiring an overnight stay (for example, by distance or hours of travel from the agency's location).

³⁶ *See Cal. Gov't Code §53232.2(d)*. If those rates are not available at the time the lodging is booked, the lodging rates must be comparable to those allowed by the Internal Revenue Service or government rates. *Id.*

³⁷ Local agency officials must use group or government rates for non-conference-related lodging and transportation services. *See Cal. Gov't Code §53232.2(e)*. The Internal Revenue Service establishes per

of hotels offering government rates in different areas is available at <http://www.catravelSMART.com/lodguideframes.htm>. Lodging rates that are equal or less to government rates are presumed to be reasonable and hence reimbursable for purposes of this policy.

*Option #1 (Median Hotel Cost):*³⁸ In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the median retail price for lodging for that area listed on websites like www.priceline.com or an equivalent service shall be considered reasonable and hence reimbursable.³⁹

Option #2 (Flat Cap). In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed \$150 per night⁴⁰ are presumed reasonable and hence reimbursable.

Option #3 (IRS Rates). In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.⁴¹

Meals

Reimbursable meal expenses and associated gratuities will not exceed the following rates per person:⁴²

diem thresholds for employees; any amounts in excess of the per diem for a given area is treated as additional wages for tax purposes. For example, for 2006, the standard per diem rate for lodging in the continental United States is \$60. However the rate for the San Francisco area (as defined) is \$130.

³⁸ Select the option that best works for your agency.

³⁹ With www.priceline.com, one has the option of specifying what quality of hotel (for example, “3 Star, Moderate—Upscale”); and agency’s policy could specify maximum quality thresholds to provide further guidance.

⁴⁰ Or any other threshold that meets community standards.

⁴¹ See Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem). The site also has references to hotels that have government rates at or below Internal Revenue Service per diem limits. For example, for 2006, the standard per diem rate for lodging in the continental United States is \$60. However the rate for the San Francisco area (as defined) is \$130.

⁴² AB1234 allows a local expense reimbursement policy to specify what constitutes reasonable rates for meals. If the policy does not, then the reimbursable rates default to those specified in the Internal Revenue Service guidelines. See Cal. Gov’t Code §53232.2(c). See also Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem. The Internal Revenue Service establishes per diem thresholds for employees; any amounts in excess of the per diem for a given area is treated as additional wages for tax purposes. For example, for 2006, the standard per diem rate for meals and incidental expenses in the continental United States is \$39. However the rate for Los Angeles, San Francisco, and San Diego areas (as defined) is \$64.

The issue of how high or low to set per meal rates is strictly a matter of community standards. For example, state senators and staff are reimbursed according to the General Services Administration rates: by

Breakfast \$___

Lunch \$___

Dinner \$___⁴³

[The city/county/district will not pay for alcohol/personal bar expenses.]⁴⁴

[For group meal events organized by others (for example, conferences and other types of activities that fall within the list of “authorized expenditures” above), the city/county/district recognizes that the per person cost may exceed these maximums.]

Telephone/Fax/Cellular⁴⁵

Officials will be reimbursed for actual telephone and fax expenses incurred on city/county/district business. Telephone bills should identify which calls were made on city/county/district business. For cellular calls when the official has a particular number of minutes included in the official’s plan, the official can identify the percentage of calls made on public business.

geographic area; the web address for these rates is:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2006&contentType=GSA_BASIC&contentId=17943&queryState=California&noc=T.

⁴³ The policy can also provide that such amounts can be annually adjusted to reflect changes in the cost of living in accordance with statistics published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, all urban consumers for the _____ Metropolitan Area.

⁴⁴ Alcohol-related expenses should or should not be reimbursed according to community standards. An alternative to an all or nothing policy on alcoholic beverages is to give specified management-level employees authority to engage in “third policy hosting expenses” for alcoholic beverages.

⁴⁵ Note that it may be an effective cost control measure to provide elected officials with access to agency telephones and faxes for official business and not to reimburse for calls and faxes made on personal equipment.

Internet

Officials will be reimbursed for Internet access connection and/or usage fees away from home, not to exceed \$15.00 per day, if Internet access is necessary for *city/county/district*-related business.

Airport Parking

Long-term parking must be used for travel exceeding 24-hours.⁴⁶

Other

Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which *city/county/district* officials receive reimbursement from another agency are not reimbursable.

Cash Advance Policy

From time to time, it may be necessary for an official⁴⁷ to request a cash advance to cover anticipated expenses while traveling or doing business on the *city/county/district's* behalf. Such request for an advance should be submitted to the *[indicate whom]*⁴⁸ _____ days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. The benefits of such expenditure to the residents of *city/county/district*;
3. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
4. The dates of the expenditure(s).

Any unused advance must be returned to the *city/county/district* treasury within two⁴⁹

⁴⁶ The point has been made that long-term parking at some airports can involve extensive waits for shuttle buses, etc. Again, the agency has discretion to set parameters that meet local practicalities and community standards.

⁴⁷ Some agencies limit cash advances. One approach is to make cash advances only available for line (less well compensated) staff and elected and appointed officials in the amount of the recommended Internal Revenue Service per diem for the area being traveled to. Another is to offer partial cash advances.

⁴⁸ For example, agency manager for elected officials and supervising department heads for staff.

⁴⁹ Other time thresholds may be appropriate.

business days⁵⁰ of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

In the event [*indicate who will be processing such requests*] _____ is uncertain as to whether a request complies with this policy, such individual must seek resolution from the *city/county/district* governing board.

Credit Card Use Policy

City/county/district does not issue credit cards to individual office holders but does have an agency credit card for selected *city/county/district* expenses.⁵¹ *City/county/district* office holders may use the *city/county/ district's* credit card for such purposes as airline tickets and hotel reservations by following the same procedures for cash advances. Receipts documenting expenses incurred on the *city/county/district* credit card and compliance with this policy must be submitted within five business days of use.⁵²

City/County/District credit cards may not be used for personal expenses, even if the official subsequently reimburses the *city/county/district*.⁵³

⁵⁰ Choose a time period that is practical, but also is mindful of legal restrictions that exist with respect to having extended access to agency cash. This issue is analogous to the "float" issue when officials use agency credit cards for personal purposes. See Cal. Penal Code § 424.

⁵¹ The decision on whether to issue agency credit cards to individuals is a policy determination. Many experienced administrators advise against issuing agency credit cards to either elected officials or staff because of the potential for inadvertent use for personal purposes and the legal questions about whether one can be protected from civil and criminal liability by reimbursing the agency. (See footnote 3). An alternative used by some public agencies is the Cal-Card program, which provides for specific dollar limits per card holder and can be restricted for use with certain kinds of vendors. The Cal-Card provides a clear audit/documentation trail. The program is administered through a master contract with the State of California. For more information, see www.documents.dgs.ca.gov/pd/calcard/calcardreq.pdf. Potential alternative language if an agency does issue credit cards is as follows:

City/County/District officials with *city/county/district* credit cards may only use those cards for official agency business consistent with this expense policy. Credit card expenses will be periodically reviewed by the governing body or its designee. Each credit card holder will, as a part of that individual's expense report, document compliance with this expense policy.

⁵² Choose a time period that is practical, but enables agency financial staff to verify charges on the credit card monthly bill.

⁵³ Note that this provision can be useful even if an agency does not issue credit cards to individuals because it establishes that using a central credit card for personal purposes is impermissible.

Expense Report Content and Submission Deadline

All cash advance expenditures, *[credit card expenses]* and expense reimbursement requests must be submitted on an expense report form provided by the *city/county/district*. *[This form shall include the following advisory:*

All expenses reported on this form must comply with the city/county/ district's policies relating to expenses and use of public resources. The information submitted on this form is a public record. Penalties for misusing public resources and violating the city/county/ district's policies include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability.]

Expense reports must document that the expense in question met the requirements of this policy.⁵⁴ For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the *city/county/ district's* adopted legislative positions and priorities.

Officials must submit their expense reports within 30 days of an expense being incurred, accompanied by receipts documenting each expense.⁵⁵ Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation.

Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

Audits of Expense Reports

⁵⁴ Local agencies must use expense report forms. *See* Cal. Gov't Code §53232.3(a). All expenses must be documented with receipts. *See* Cal. Gov't Code §53232.3(c). These documents are, of course, public records subject to disclosure. *See* Cal. Gov't Code §53232.3(e).

⁵⁵ An expense reimbursement policy must specify what constitutes a "reasonable time" within which requests for reimbursement must be submitted. *See* Cal. Gov't Code §53232.3(c). If the deadline for expense reimbursement requests is too long or non-existent, it may be difficult to remember why certain expenses were incurred. Moreover, there may be audit issues in terms of recognizing the expense in the proper year.

Finally, the Internal Revenue Service requires that expenses that are reimbursed after 60 days be reported as income to reimburse. Under an "accountable plan," expense reimbursements are not taxable to the employee; however, if the employee does not submit their substantiated claim for reimbursement within 60 days of the expenditure, then the reimbursement is taxable to the employee and reported in Box 1 of Form W-2. See discussion beginning on page 10 http://www.irs.gov/pub/irs-pdf/p15_05.pdf, discussion beginning on page 27 <http://www.irs.gov/pub/irs-pdf/p463.pdf>, and discussion beginning on page 48 <http://www.irs.gov/pub/irs-pdf/p535.pdf>.

All expenses are subject to verification that they comply with this policy.

Reports to Governing Board

At the following *city/county/district* governing body meeting, each official shall briefly report on any Brown Act meetings attended at *city/county/district* expense⁵⁶ [*as well as any conferences, educational seminars or meetings with legislators or other governmental officials*].⁵⁷

If multiple officials attended, a joint report may be made.⁵⁸ The report may be made orally or in writing.

⁵⁶ AB 1234 requires members of a legislative body to report on “meetings” attended at public expense at the next meeting of the legislative body. Cal. Gov’t Code § 53232.3(d). “Meetings” for purpose of this section are tied to the Brown Act meaning of the term, Cal. Gov’t Code § 53232.3(d): any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains. *See* Cal. Gov’t Code § 54952.2.

An example would be when a city council member or supervisor represents his or her agency on a joint powers agency board and pays for the official’s expenses in serving in that representative capacity.

The report must be made at the next meeting of the legislative body that paid for its member to attend the meeting. Cal. Gov’t Code § 53232.3(d).

The report should be agendized in some manner, both to remind the official of the obligation to report and to comply with Brown Act requirements.

⁵⁷ Some public agencies have also voluntarily adopted requirements that any time an official attends a conference or similar gathering at public expense that a report be provided back to the body. Again, the report typically can be written or oral.

⁵⁸ In making a joint report, officials should be mindful about open meeting laws governing communications among members of a legislative body. There is a conference exception to the Brown Act, as long as a majority of the members of a legislative body does not discuss among themselves business that is within the subject matter jurisdiction of the local agency (other than as part of the scheduled program). *See* Cal. Gov’t Code § 54952.2(c)(2). Officials should not discuss among themselves the content of a joint report in advance of a public meeting. Simply asking one official to be the lead on the report during the public meeting and then asking others if anything was omitted should avoid Brown Act issues.

Compliance with Laws

City/County/District officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws.⁵⁹ All agency expenditures are public records subject to disclosure under the Public Records Act [*and other laws*]⁶⁰

Violation of This Policy

Under state law, use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the *city/county/district*, 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities, 4) civil penalties of up to \$1,000 per day and three times the value of the resources used, and 5) prosecution for misuse of public resources.⁶¹

⁵⁹ For example, meals are considered "gifts" to legislators that must be reported by them if the total value of gifts given from the agency exceeds \$50 in a year; there also is an annual gift limit. In 2003-2004, this limit is \$340. *See* Cal. Gov't Code § 87103(3). Registered lobbyists, by contrast, are limited to gifts of \$10 per month. *See* Cal. Gov't Code §§ 86201-86204.

⁶⁰ *See generally* Cal. Gov't Code §§ 6250 et seq. (California Public Records Act). Special districts have an additional obligation to prepare and annual summary of expense reimbursements over \$100 and make those available for public disclosure. Cal. Gov't Code § 53065.5.

⁶¹ *See* Cal. Gov't Code § 53232.4.