

Understanding Public Service Ethics Laws: AB1234 Training

City of Santa Rosa

Tuesday, March 9, 2021



How to Ask a Question During the Webinar

- All webinar participants will be on MUTE during the entire call.
- Please TYPE any questions into the question box at any time during the webinar.
- The moderator will read your questions during the question period at the end of the webinar.



How to Get Credit

You must have your own log-in

You must be present for the full two hour training

You must answer the virtual polling questions

Other Housekeeping Items

You will receive your certificate via email by Fri., April 2

If you an attorney looking for MCLE credit, please contact ILG

Contact Kim Danko at kdanko@ca-ilg.org with questions or concerns

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**California Special
Districts Association**
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We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground.

ILG's Programs & Services



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



Understanding Public Service Ethics, Laws & Principles

AB 1234 Ethics Training

City of Santa Rosa

March 9, 2021

Presented by: Lindsay Thorson & Nick Ghirelli

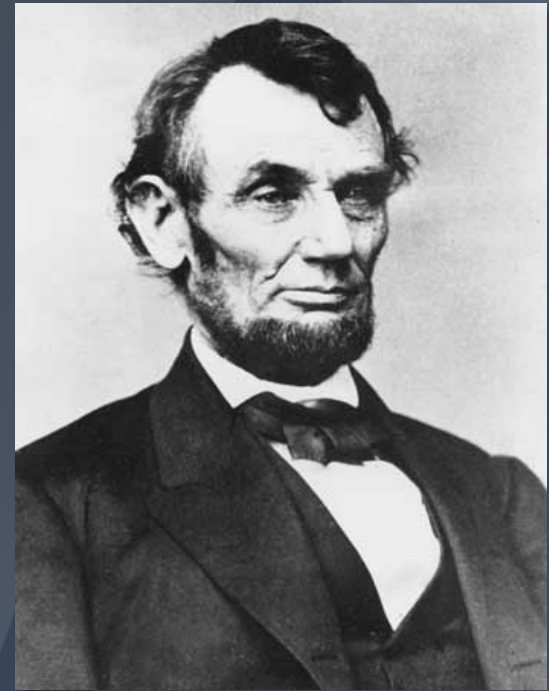
The Typical Reaction to this Topic



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

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

— *Abraham Lincoln*



Thoughts About Ethics in Government



- “I don't like people who are in politics for themselves and not for others. You want that, you can go into show business.”

— Elvis Presley

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

- **The desire for ethical conduct in government dates back to the beginning of democracy**
- **Oath of Office in ancient Athens taken by public officials:**
 - Promised to not engage in any act of dishonesty and to obey the City's laws
 - Pledged to make the City greater, better and more beautiful than it was when they took office
 - Reflected not only a commitment to not do bad acts, but also a promise to do good

The Relationship Between Ethics and the Law

- The law is the starting point for most ethical analyses
- The law is the floor for ethical conduct, not the ceiling
- Just because it's legal, doesn't mean the public will see it as being right
- Legal nuances are political losers

Why Are We Here?

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



Principles of Ethics



- **“Make decisions on the merits, free from partiality, prejudice or conflicts of interest.”**
 - Bias rules
 - Conflict of interest rules
 - Due process requirements

Principles of Ethics

- **“Public office is a trust; use it only to advance public interests, not personal gain.”**
 - Conflict of interest laws
 - Anti-bribery laws

Principles of Ethics

- **“Conduct government openly, efficiently, equitably, and honorably so the public can make informed judgments and hold public officials accountable.”**
 - The Brown Act
 - Disclosure Requirements
 - Public Records Act



Principles of Ethics



- **“Honor and respect democratic principles; observe the letter and the spirit of the law.”**
 - Due process requirements
 - Public bidding laws

Principles of Ethics

- **“Safeguard public confidence in the integrity of government by avoiding appearances of impropriety and conduct unbecoming a public official.”**

- Source: Josephson Institute of Ethics

Principles of Good Government

- Transparency is easier
- Process is important
- There is such a thing as bad publicity

Such as....

Los Angeles Times

CALIFORNIA

LOS ANGELES EDITION

Wednesday, July 30, 2003

00

Intimes.com/california

THE RECALL CAMPAIGN

Divorced Pair Consider Races for Governor

Former Senate candidate Michael Huffington takes out papers. Arianna Huffington weighs a bid as fans on a Web site urge her to run.

By MATRA GOLD
Times Staff Writer

RELATED STORY
Politico woman: Two ex-senators of Congress urge her to run for governor. **B3**

THEY ARE amid the oddest of California's revolving political seasons, one pair of possible candidates to replace Gov. Gray Davis has emerged as especially intriguing: political conservative Arianna Huffington and her ex-husband, Michael Huffington, a former congressman.

No less than Davis himself reached on the novelty of potential bids by the candidate-divorced-candidate-gained-candidate-candidate producer and her ex-wife, a former New York Governor Republican-backed-left-of-center independent.

"That'd be sort of interesting," he said with a shrug.

Last week, Michael Huffington took out papers to run in the Oct. 7 recall election, a move that surprised many political strategists who have seen little of the former congressman since he spent \$25 million in a losing bid to unseat U.S. Sen. Edward Feinstein in 1994. On Tuesday, a spokesman said Huffington would not stand for election.

Although she said the recall about "a Republican power grab," Huffington said she could represent an alternative choice in an election that, so far, includes only conservatives and a Green Party leader among the major candidates.

"People are very frustrated with politics as usual," she said Tuesday from Aspen, Colo., where she was attending a conference sponsored by Politico magazine. "That opportunity when it presented by the vacuum in this election is really what I find very appealing.... The very fact that it's going to be elective presents an opportunity to run a populist campaign with a lot of grass roots support."

For now, her supporters are keeping their fingers crossed that her ex-husband



PLEA AGREEMENT: Daryl W. Sweeney and his wife, Betty, listen to his lawyer read a prepared statement after the mayor entered a guilty plea. Sweeney will remain free on bond until his sentencing in October. He faces about 26 years in prison.

Mayor Pleads Guilty in Carson Corruption Case

Daryl Sweeney admits conspiring to extort money from waste

his city contract and pledged to cooperate with federal prosecutors pending other political corruption reforms in Southern California.

Party.

Blumenthal said that Sweeney is already cooperating with prosecutors and that "we hope he will tell us everything that we need to know."

placed their guilt in me. I have faced you."

Dowsey became the sixth defendant, the second mayor

Why Should You Care?



Four Groups of Ethics Laws



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

Group 1: Personal Financial Gain

Group 1: Personal Financial Gain

- **Political Reform Act**
 - Disclosure Requirements
 - Recusal (Abstention) Requirements
- **Government Code Section 1090**
 - Conflicts of interest in decisions involving contracts
- **Prospective Employment**

The Political Reform Act (PRA)

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



The Political Reform Act: Recusal (Abstention) Requirements

- “No public official . . . shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”
 - Political Reform Act, Government Code § 87100

Intent of Conflict of Interest Laws

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

The Political Reform Act: Disclosure of Economic Interests

- **Form 700 Statement of Economic Interests (SEI)**

- Report your interests accurately
- Penalties for late filing / failure to file
- Accurate reporting prevents conflicts & increases public confidence
- Failure to report an interest will almost always make the FPPC, public, and press more suspicious

The Political Reform Act: Disclosure of Economic Interests

■ Form 700 Statement of Economic Interests

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

The Political Reform Act: Disclosure of Economic Interests

- **Other types of disclosures:**

- **As a candidate, report campaign contributions**
 - Various FPCC Reporting Forms (Form 410 and others)
- **As an elected officeholder, report “Behested contributions”**
 - Contributions by a third party to a nonprofit at your request equaling or exceeding \$5,000 in a calendar year
 - Applies only when a single source contributes the \$5,000 (not multiple sources) to the nonprofit
 - FPCC Reporting Form 803

The Test

- **FPPC Basic Test for Conflicts:**

- Is it reasonably foreseeable
 - that a governmental decision
 - will have a material financial effect
 - on any of your financial interests
 - distinguishable from the public generally?

Is a Governmental Decision Involved?

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

Is a Governmental Decision Involved?

- **“Participates in making” a decision**
 - Acts within authority of his/her office or position and advises or makes recommendations to decision-maker
 - Negotiates, without significant substantive review, with third party regarding governmental decision
- **“Attempts to use an official position to influence a decision”**
 - Contacts or appears before or otherwise attempts to influence any member, officer, employee or consultant of the agency, or
 - Advocates on behalf of his/her agency to another governmental agency

What are your Economic Interests?



- Real property interests worth at least \$2,000
- Sources of income of \$500 or more in the last 12 months
 - Includes non-profit entities
- Investments worth \$2,000 or more
- Business interests
- Gifts of \$520 from a single source over the last 12 months

What are your Economic Interests?



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

Your Sources of Income

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



Investments and Business Interests

■ Investments

- Investments worth \$2,000 or more
- Mutual Fund exception

■ Business Interests

- Management or employment
- “Related” business entities
- Property interests of businesses



Sources of Gifts



■ Donors of Gifts

- Aggregating \$520 from a single source in a 12-month period
- Cash, presents
- Meals, food and drink
- Entertainment
- Travel and lodging

Much more about gifts coming up...

Materiality Standards for Impacts on Real Property Interests: Ownership

■ Direct Decisions

- Property is subject of a general plan amendment, zoning/rezoning, or permit decision

■ Indirect Decisions

- The decision could change the development potential, the character, or the use of the property, and the official's property is near the affected property



Materiality Standards for Impacts on Real Property Interests: Ownership

- **500 Foot Rule**
 - No longer a bright line but still very relevant.
- **New Rules:**
 - Would affect the real property value of property within 500 feet of the official's property
 - Property between 500 and 1000 feet of the official's property that changes: See next slide
 - Property 1,000 feet or more from official's property, rebuttable presumption of no interest



Property Between 500 and 1,000 Feet From a Proposed Decision

- **An official has a conflict if the decision materially affects the following aspects of the official's property:**
 - Development potential
 - Income producing potential
 - Highest and best use
 - Market value
 - Character, including:
 - Traffic level and parking
 - Intensity of use
 - Privacy
 - View
 - Noise
 - Air quality

Examples

City action on pedestrian path that passed within 500 feet of Mayor's residence

NO CONFLICT



Very large residential development more than 1,000 feet from Councilmember's residence

CONFLICT



Materiality Standards for Impacts on Real Property Interests: Ownership

■ Exceptions

1. There is no material financial effect if a decision solely concerns **repairs, replacement or maintenance of existing streets, water, sewer, storm drainage** or similar facilities
2. There is no material financial effect if a decision solely concerns **general plan policy decisions**, unless the decision is initiated by the public official
3. **Common areas in common interest developments** are now **excluded from the definition of “real property”** for the purpose of conducting a conflict of interest analysis

Materiality Standards for Impacts on Real Property Interests: Exceptions

- **Public Generally Exception**

- A significant segment of the public will be affected in the same manner

- **Legally Required Participation Exception – Rule of Necessity**

- Not enough members to participate because of conflicts of interest
- Random selection process
- Explanation in minutes as to why exception must be used

Materiality Standards for Impacts on Business Interests

- **A presumption of materiality if the business is directly involved in the decision**
 - For example, contracts between city and the business entity
- **Otherwise**, the financial effect is material if the decision may result in an increase or decrease of:
 - assets or liabilities (at least \$1,000,000)
 - 5% of gross revenues (at least \$10,000)
 - Expenses (\$250,000 or more OR 1% of the entity's revenue, at least \$2,500)
- **Exception:** If official's interest in business entity is \$25,000 or less and the official owns less than 1%, only direct involvement is material

Identifying a Conflict

- **4-Step Test for Conflicts of Interest:**

1. Will the governmental decision result in a “reasonably foreseeable” financial effect on one of your financial interests?
2. If yes, is the effect on that interest “material”?
3. If the effect is material, is the effect the same as effects on the “public generally”?
4. If the effect is material and no exceptions apply, then you may not make, participate in, or use your official position to influence that governmental decision

Identifying a Conflict

Bottom line:



If you are considering a “materiality” question, it is time to ask for legal assistance

If You Are Disqualified

1. Don't discuss with or influence staff or colleagues
2. Identify the nature of your conflict at the meeting
3. Leave chambers after stating abstention (except for items on consent calendar)

Note: You cannot avoid disclosure by leaving chambers



Quiz – Which Scenario has the least likelihood to cause a Conflict of Interest

- A.** City employee owns stock in the amount of \$3,000 in Apple and is working on contract for purchasing more iPhones and iPads for the City
- B.** City employee's sister works for a general contractor who is the lowest responsible bidder for a new public works project
- C.** City employee works in the Planning Department and is reviewing a land use application filed by the employee's spouse
- D.** City employee's spouse is an employee of a consultant who provides services to the City

Quiz – Answer B

B. City employee's sister works for a general contractor who is the lowest responsible bidder for a new public works project

■ Why?

- Employee's sister is not a member of the employee's immediate family
- Also we don't know if the employee works in a management position or in the Public Works Department responsible for the project
- However, even though this is not a technical conflict of interest, it has the appearance of impropriety and the employee should inform his or her supervisor and potentially recuse him- or herself from the decision anyway

Participation as a Member of the Public

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



PRA Penalties



- **Invalidation of decision**
- **Misdemeanor**
 - could result in loss of office
- **Fines**
 - \$5,000 to \$10,000 per violation
- **Attorney's fees**
 - yours and others
- **Embarrassment**
 - personal / political

Getting Help

- **Talk to your legal counsel**
- **Seek advice from the FPFC**
 - 1-866-ASK-FPFC
 - Request a formal advice letter, if time permits
- **“If in doubt, sit it out.”**

Government Code Section 1090

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



Government Code Section 1090

- **Officer or employee of the City**
- **Financial interest or that of your spouse in a contract**
 - Direct contractual interest
 - Indirect benefit from the making of a contract
- **Contract made by the official or body of which you are a member**
 - Broadly interpreted to include negotiations, discussions, design, planning, etc.



Government Code Section 1090

- If you have or may have a financial interest in contract, contact your legal counsel immediately
- Cannot un-ring the bell
- In many cases, abstention doesn't help.
- There are some exceptions that are complicated and very limited.

Section 1090 and Non-profit Entities

Honig Conviction Derails a Reform-Minded Career : Education: Many praise state schools superintendent as a national leader. But there were also failures.

January 31, 1993 | JEAN MERL | TIMES EDUCATION WRITER

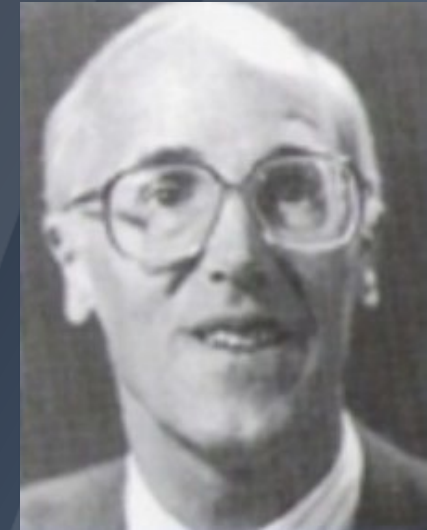
  Email  Share  G+   Tweet   Recommend 

Bill Honig's decade as state schools chief produced a number of notable successes that forged national reputations--for California as a state ahead of the curve in improving school quality, and for Honig as a tireless voice for education reform.

On Friday, he also became the state's only superintendent of schools ever to be convicted of a felony and face the loss of his office. A Sacramento jury's guilty verdict on four counts of conflict of interest puts an ironic end to an era of foment in California education.

"What's ironic in light of the trial is that in dealing with him as a politician, there was never any guile. There were no games. He was very upfront and direct," Sen. Gary K. Hart, a Santa Barbara Democrat who chairs the Senate Education Committee and who wants to run for Honig's office, said Saturday.

Honig's tenure was a period of near-feverish reform efforts. Largely because of his efforts, science textbooks now teach about evolution, math textbooks stress problem solving over rote learning, and reading books favor real literature over Dick and Jane--changes felt nationwide because of California's dominance in the textbook market. Similarly, new curricula, or "frameworks," in such areas as social studies, math and language arts also became national models.



Section 1090 and Follow-On Contracts

- **Section 1090 Preclusion on Awarding “Follow-on” Contracts to Consultants who recommended that additional work**
 - Sometimes vendors or consultants may be contracted to conduct an assessment of a program or make a recommendation on how the public entity should change its operations.
 - Once that vendor or consultant has completed that task, that vendor is likely precluded from being awarded a subsequent contract to do the program, implement the recommendation or to do that “follow-on” work.
 - This is because, as a consultant, they would have participated in “making” of that “follow-on” contract that brings them that additional work.

Government Code Section 1090

■ Exceptions

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

■ Examples

- You are the landlord or tenant of the entity that is seeking a contract from your city
- The entity is considering entering into a contract with an employee’s spouse’s business
- You are a member of a nonprofit in your spare time

Quiz – which of the following is least likely to result in a Section 1090 conflict?

- A.** City employee or employee's spouse owns stock in supplier of goods or services to the City and the employee is involved in procurement of those goods or services
- B.** City Employee's spouse is a consultant who provides services to the City and is compensated by the City
- C.** City employee's spouse works for a consultant that is seeking to become the City's contract land use consultant and the employee works in the Planning Department with decision making authority over the contract
- D.** City employee serves as a non-compensated officer of a non-profit that receives City support

Quiz – Answer D

D. Employee serves as a non-compensated officer of a non-profit that receives City support

- Why?
 - A Non-interest
 - Disclosure may be required

Section 1090 Penalties

■ Severe Penalties

- Contracts are not just “voidable,” but void
- May have to refund money
- Willful violation is a felony
- Fines (up to \$1,000) or imprisonment
- Prohibition against holding public office
- Usual tool of the DA to prosecute for corruption



Section 1090 Penalties

■ Defenses that don't work

- Contract was fair, just and equitable to all parties
- Legal counsel said it was okay to participate
- I abstained from the decision.



Group 2: Gifts, Perks & Misuse of Public Funds

Gifts & Perks

- **Principles:**

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



The Obvious: Do Not Take Bribes

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



The Obvious: Do Not Take Bribes

L.A. NOW

SOUTHERN CALIFORNIA -- THIS JUST IN

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Cathe Wilson, former Temple City mayor, sentenced to prison for bribery, perjury [Updated]

June 23, 2011 | 11:23 am



Former Temple City Mayor Cathe Wilson was sentenced Thursday to four years in state prison after her conviction for bribery and perjury involving a sweetheart deal with a developer while in office.

Los Angeles Superior Court Superior Court Judge Alex Ricciardulli sentenced the 78-year-old ex-mayor and ordered her to pay \$10,000 in restitution.

The Obvious: Do Not Take Bribes

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Former Upland mayor pleads guilty to federal bribery charges

April 26, 2012 | 11:09 am

AA

Comments

Tweet

Like



This post has been corrected. Please see the note below.

Former Upland Mayor John Pomierski pleaded guilty Thursday to bribery involving a scheme to extort money and campaign contributions from businesses seeking permits and other city services.

The Obvious: Do Not Take Bribes

L.A. NOW

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Santa Fe Springs official took bribes while lying to FBI

June 28, 2012 | 3:08 pm



Santa Fe Springs Councilman Joseph Serrano Sr. repeatedly shook down a medical marijuana dispensary owner who was working as an FBI informant, taking a total of \$11,500 in payments in 2010 and 2011, according to a plea agreement released Thursday by the U.S. attorney's office.

Serrano has agreed to plead guilty to one federal count of felony bribery.

The 28-page agreement is the latest example of corruption in a small Los Angeles County town -- and shows the brazen extent to which the [Santa Fe](#)

[Springs](#) official negotiated the cash bribes even after he had been interviewed by FBI agents probing allegations of corruption in the city.

What is a gift?

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

Gifts Don't Always Have Bows

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



Gift Reporting and Gift Limit

- **Report:**

- All gifts worth \$50 or more
- Can be several gifts from same source given within one calendar year

- **Do not accept:**

- Gifts from a single person or entity worth more \$520 or more
- Several gifts given in same calendar year count

- **This limit is raised every odd-numbered year to account for inflation**

Gift Rules Apply to...

- Elected officers of a local government agency
- Chief Executive (or other official who manages public investments)
- Candidates for any of these offices
- Anyone else listed in the local conflict of interest code
- Consultants

Gift Exceptions: Relationships



- Existing personal or business relationships
- Long term relationships (BFFs)
- Bona fide dating relationships

Gift Exceptions: Families

- Spouse
- Minor child
- Parent (& Parent-in-law)
- Sibling (& Sibling-in-law)
- Grandparent
- Grandchild
- Niece / Nephew
- Aunt / Uncle
- First cousin
- Spouse of any of these



Holiday Exception to Gift Rules



- Gifts exchanged between Form 700 Filers and another individual, other than a lobbyist, on holidays, birthdays, or similar occasions
- Gifts exchanged must not be substantially disproportionate in value

Gift Exceptions: to & from the City

- Payments made to the City
- City-provided tickets or passes
- Employee raffle or gift exchange
- Gifts from public agencies to agency officials
- Group gifts



Other Exceptions to Gift Rules

- Home hospitality
- Contest prizes
- Awards or trophies
- Wedding reception food, drink, favors
- Disaster assistance
- Emergency leave credits
- Bereavement offerings
- Inheritance
- Acts of neighborliness or human compassion
- Informational materials at conferences, etc.
- Free admission to conferences
- Unused tickets or passes
- Tickets to non-profit or political fundraiser

Watch Out!

- **Quirky valuation and reporting rules:**
 - Wedding gifts
 - Invitation-only events
 - Group gifts
- **Gifts in disguise:**
 - Gifts to your family that benefit you
 - Events honoring you
 - Official or ceremonial functions
- **Ask if a question comes up!**



Returned or Donated Gifts

- **A gift is not deemed “accepted” or “received” if, within 30 days after receipt:**
 - the gift is not used and is returned to donor;
 - the donor is reimbursed; or
 - the gift is donated to charitable organization or government agency without claiming a tax deduction

Disclose or Refuse

Disclose

- \$50 or more
- Track
- Fair market value

Refuse

- Refuse (must if > \$520)
- Return
- Donate

Gift Quiz

- Meeting of City staff and a City consultant is setup and occurs remotely on Zoom
- Meeting runs into the lunch hour
- Consultant offers to have its staff call and have lunch brought over to an employee's home by Grubhub delivery as part of the meeting
- Per person cost of the lunch, including delivery cost is \$18 per person
- Is that a gift?

Answer – Yes it is a gift

- Yes, the free lunch is a gift
- Is the gift reportable?

Honoraria

- **Honorarium = a payment made in consideration for...**
 - giving a speech,
 - publishing an article, or
 - attending a conference, meeting, event, etc.
- **As a public official, you cannot accept honoraria**
- **Some exceptions apply**



Loans

The image shows a collage of various financial service advertisements. A prominent yellow advertisement in the center is circled in red. It features a cartoon illustration of a man in a suit holding money and the text: "Strapped for Cash? CALL THE LOAN ARRANGER" and "555-CASH". Other visible ads include "Pawbrokers, Gold & Other Valuables", "GREENBACK'S PAYDAY LOANS - 24 hrs", and "BUSTER'S BUY & SELL".

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

Loan Exceptions

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



No Free or Discounted Transportation

- **No free travel from transportation companies**
 - Cal. Const. art. XII § 7
- **Only applies to public officers**
- **Exclusion for frequent flyer mileage and discounts given unrelated to your official position**



Do Not Use Public Resources for Political or Personal Purposes

No Mass Mailings

No Personal Use of Staff

No Personal Purposes

No Campaign Use

Mass Mailing Rule

- **Newsletters or other mass mailings cannot be sent at public expense**
 - A mass mailing is: (a) the delivery of a tangible item, (b) that “features” an elected official, (c) at public expense, (d) in a quantity of 200 or more, (e) in a calendar month. (Government Code §§ 89001- 89003)
- ***Do not single out an elected official by photograph or signature***
- Websites are NOT a mass mailing because they are not a “tangible item”

No Campaign Use of City Resources or Staff

- **Cannot use City staff or resources to help a campaign for a ballot measure or a candidate**
 - Equipment – no use of copying machines, phones, computers, etc.
 - Office space – no free use of office space or meeting rooms to meet and plan campaign events
 - Staff assistance – no use of secretaries to, for example, prepare and send out letters supporting a candidate or ballot measure

Prohibition on Gifts of Public Funds

- **The City cannot give away public funds or anything of value for free**
 - There must be consideration (i.e., a contract)

OR

- The grant must serve a “public purpose” of the donating agency



Reimbursements

1. Adopt and follow reimbursement policy
2. Use expense form
3. Document expenses
4. Avoid using City credit cards if possible; never use a City credit card for personal charges

Penalties for the Misuse of Public Funds

- No reimbursement
- Restitution to the City
- Up to \$5,000 per violation
- Own attorneys' fees (\$3,000-\$30,000)
- Others' attorneys' fees (for private actions to enforce law)
- Up to four years in jail
- Permanent disqualification from office



Group 3: Governmental Transparency

The Public Records Act



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

What is a Public Record?



- **“Public record”** defined as
 - Any writing
 - with information relating to the conduct of the public’s business
 - prepared, owned, used or retained by a state or local agency
 - regardless of physical form or characteristics

What is a Public Record?



- **“Writing” includes**
 - Handwritten or printed documents
 - Photos and videos
 - Voicemails
 - Drawings, plans, maps
 - **Emails, text messages, tweets, etc.**

Avoid Combining Public & Private



- **Personal or political business?**
 - Don't tack it onto an email about City business
- **Email Threads**
 - Changing Topics? Create new email

What is a Public Record?

- Must be related to the conduct of the public's business
- and prepared, owned, used, or retained by the City

Does NOT include every piece of paper in City Hall

Common Statutory Exemptions

- Preliminary drafts, notes or interagency or intra-agency memoranda not kept in ordinary course of business (balancing test)
- Personnel, medical or similar records
- Documents created in anticipation of, or during, litigation
- Personal information like SS#s, home address and telephone #
- Salary information IS subject to disclosure

Catch-All Exemption – Balancing Test



- “On the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record”

- Government Code Section 6255

Waiver of Exemptions

- **Maintain confidentiality of exempt public records**
- **Inadvertent disclosure of an exempt record does not waive the exemption**
 - Government Code Section 6254.5
- **Intentional, deliberate disclosure waives an exemption**

Ralph M. Brown Act



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

Topics

**To whom
does the Act
apply?**

**What is a
meeting?**

**What rules
apply to
meetings?**

**What are
the
remedies for
a violation?**

Act Applies to “Legislative Bodies”

- **What is a “legislative body?”**

- Governing body of the local agency
- Subordinate boards & commissions created by formal action of the governing body
- Standing committees with a regular meeting schedule and continuing subject matter jurisdiction

- **What is not a “legislative body?”**

- Advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body

What is a “meeting”?

■ Elements:

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



Serial Meetings Are Illegal

- **What is an illegal serial meeting?**

- Series of direct or indirect communications (intermediaries/technology)
- By a majority of the body
- To discuss, deliberate, or take action on any item of business or potential business

- **Individual briefings are okay**

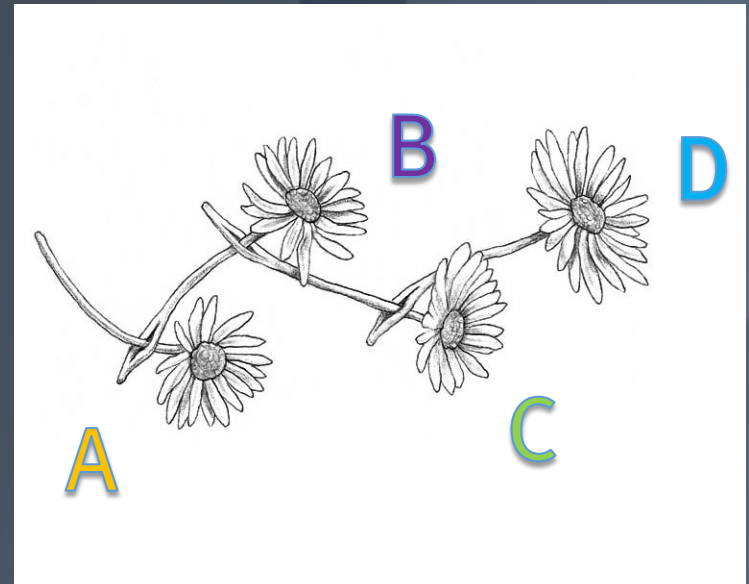
- “Unidirectional”
- Don’t describe views of any other members
- Don’t ask about other member’s views

2 Types of Illegal Serial Meetings

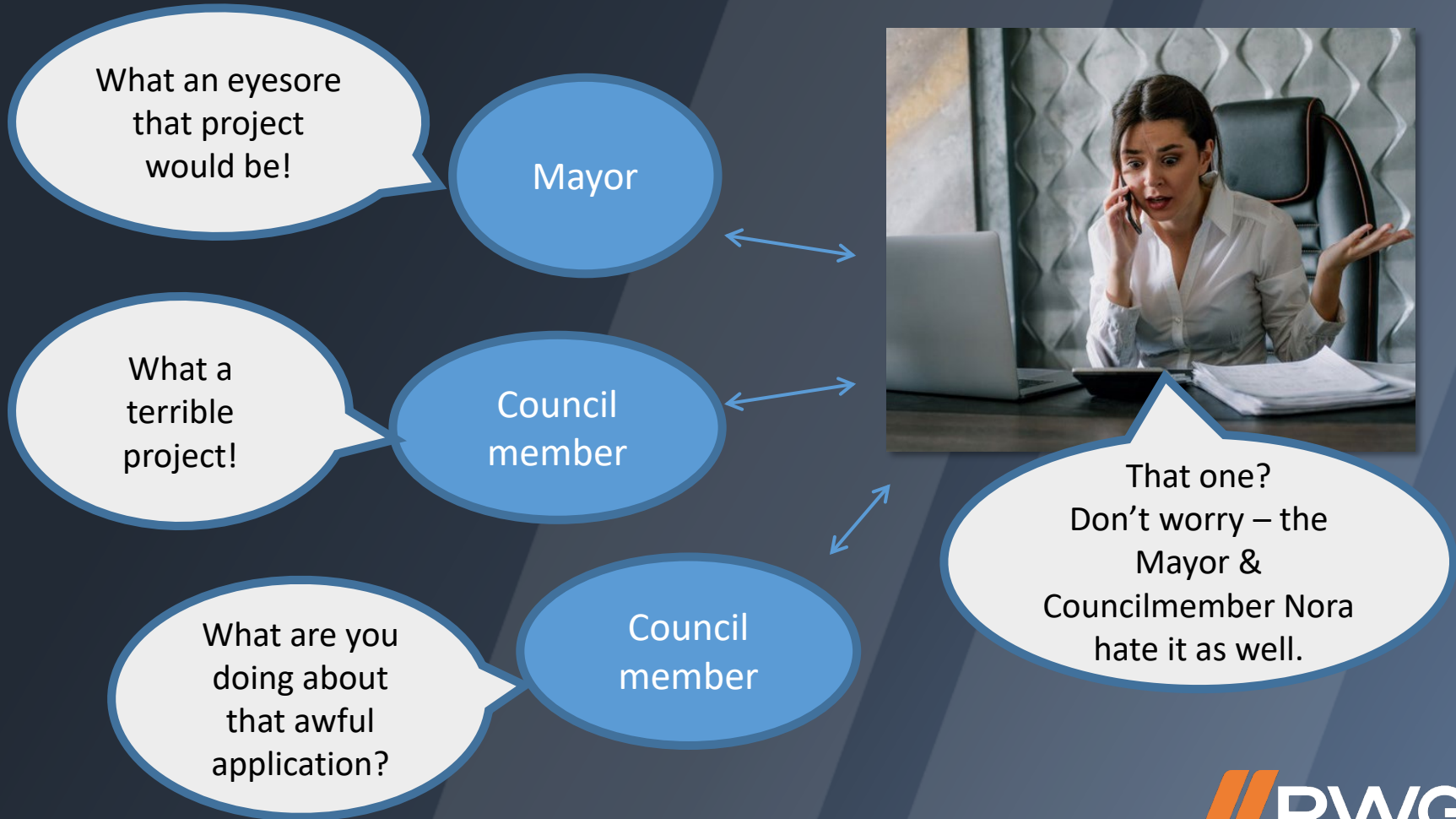
Hub & Spoke



Chain



Serial Meeting: Hub & Spoke



Unintentional Serial Meetings

- **Serial meetings in the digital age**

- Group e-mails and texts
- Comment sections
- Social Media
 - Twitter, Instagram, Facebook, etc. can result in inadvertent violations

Tips for Electronic Communication



■ DO NOT:

- Communicate your position on a pending matter to a majority of members
- Solicit responses from other members when forwarding information you receive
- **REPLY ALL**

Tips for Electronic Communication



- **DO:**
 - Use caution (“bcc”!) when emailing other members.
- ***Deliberations must occur publicly in a meeting. Not by text or on social media!***

Internet-Based Social Media Platforms (Gov't Code 54952.2)

- **DO NOT:**

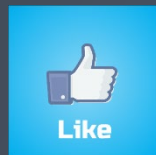
- Respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.
- **Applies to TWO members – majority not required.**
- Practice Tip: Don't respond to a fellow councilmembers' posts on social media AT ALL



Internet-Based Social Media Platforms (Gov't Code 54952.2)

- **DO NOT:**

- Make, post or share communications between members of a legislative body
- Includes comments or use of digital icons that express reactions to communications made by other members of the legislative body
- **Applies to TWO members – majority not required.**
- Practice Tip: Don't follow each other on social media.



Internet-Based Social Media Platforms (Gov't Code 54952.2)

- **OKAY TO:**

- Answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body.



Meeting Exceptions

- **When is a meeting not a “meeting?”**
 - Individual contacts
 - Conferences and seminars
 - Community meetings
 - Another body of the City when it is an open and noticed meeting of that body
 - Social or ceremonial events
 - Ad hoc committee meetings
 - Observation of standing committee meetings

Regular Meeting



- **Day, time, and location is set by resolution or ordinance**
 - Agenda must be posted 72 hours in advance
 - General, brief description of items of business

Special Meeting

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



Emergency Meeting

- An “emergency” meeting may be called to address certain emergencies, such as a terrorist act or crippling disaster, without complying with the 24-hour notice/posting requirement.
- Certain requirements apply for notifying the press and for conducting closed sessions as part of the emergency meeting.

Adjourned Meeting

- Regular or special meetings may be adjourned to specific time and place
- If no time stated, meeting is continued to the hour for regular meetings
- Less than a quorum may adjourn
- Secretary or Clerk may adjourn to stated time and place



Agenda Requirements



- Agendas must be publicly accessible and distributed in advance to those who request copies
- Agenda must be posted on City's website
- Teleconference location, if any, must be included on the agenda*

Other Agenda Requirements

- **No discussion or action on items not on the posted agenda**
 - Absolute rule for special meetings
 - Exceptions for regular meetings

Agenda Requirements – Exceptions

- **Items not on the posted agenda can be discussed and acted upon if:**
 - Item came to the City's attention after the agenda was posted and
 - There's an emergency or immediate need to take action before the next meeting
 - Two-thirds vote required



Exceptions – Continued

- **Other exceptions**

- Brief response to public comments
- Questions for clarification / refer to staff
- Brief announcement or report on activities
- Request for future report
- Agree to place item on future agenda
- Emergency situation exists – requires a majority vote

Public Comments at Meetings



- **The public has a right to speak on:**
 - Any item within the subject matter jurisdiction of the body (regular meetings only)
 - A specific item of business on the agenda (any meeting)

Public Participation



- Not required to “register”
- Rules of decorum permitted
- Time limits okay
- Recording permitted
- Public agencies may not prohibit public criticism of the agency or the legislative body

Closed Sessions

- **Most common topics:**

- Personnel matters
- Labor negotiations
- Real property matters
- Pending, threatened, or contemplated litigation



Enforcement & Consequences

- **Types of enforcement actions:**

- 1. Civil action to invalidate a decision or action**

- District attorney or any interested person
- Notice and opportunity to cure, with commitment to refrain from alleged violation
- If not cured and there is subsequent court action, challenger can recover attorneys' fees and costs

- 2. Criminal prosecution**

- Brought by the district attorney
- There must have been an **action taken at a meeting** in violation of the Brown Act, **with intent** to deprive public of information
- Misdemeanor

Brown Act Quiz

- The City Council agenda includes an item to discuss the growing problem of affordable housing in the City. Unfortunately, the discussion leads to more questions than answers. The City Council appoints a committee comprised of two out of the five Council Members to develop specific policy proposals to address affordable housing. The committee is asked to report back in two months.

Can these two members meet to discuss the policy proposals without an agendized meeting?

Answer: Probably Yes

Yes, if the two members constitute a legitimate ad hoc committee.

Group 4: Fair Process Laws

Group 4: Fair Process Laws

**“Common Law”
Conflicts & Due
Process**

**Campaign
Contributions**

**Qualifications
for Office and
Incompatible
Offices**

**Competitive
Bidding**

The Due Process Clause

- “No person shall be ... deprived of life, liberty, or property, without due process of law”

U.S. Constitution amendment V

Due Process in Local Government

- **The Due Process Clause is implicated whenever the City conducts a public hearing:**
 - Land use permits
 - Annexation requests
 - License revocations
 - Terminating or disciplining certain employees

What does “Due Process” Mean?

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



An Impartial Decisionmaker

- Pre-existing views on the general policy issues related to a matter do not create disqualifying bias
- Due process does not require that the decisionmaker be an “intellectual eunuch” – someone with no views or opinions at all
 - **Andrews v. Agricultural Labor Relations Board (1981)**

An Impartial Decisionmaker

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

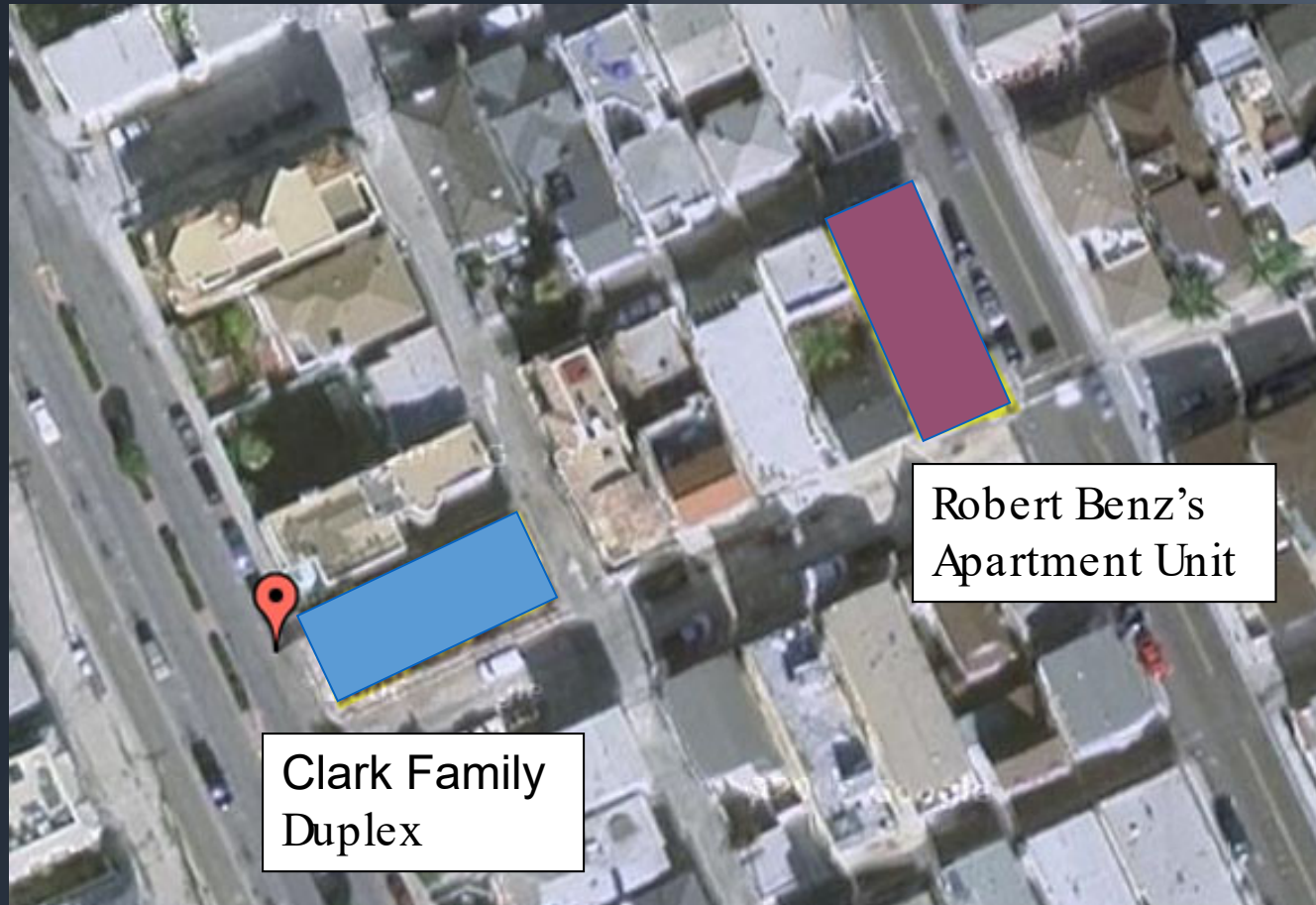
Common Law Doctrine Against Conflicts of Interests

**Law made by
court decisions**

**Applies when
public official is
tempted by
personal interests**

**Reduced
application of the
doctrine but
it is not dead**

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



Lessons from the *Clark* case

Why no violation of the Political Reform Act?

Month-to-month tenancy is not an interest in real property under Political Reform Act

Public officials should not participate in decisions that affect their personal interests

Requirement for objective & unbiased decisionmakers

Bias: *Nasha v. City of Los Angeles*

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



Bias: Fairfield v. Superior Court

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



Tips for Decisionmakers



- If you think you cannot be fair, don't participate
- Avoid statements before the close of a hearing that suggest your mind is made up
- Make your decision based on the evidence presented at the hearing – from staff, the parties, and the public – not beforehand

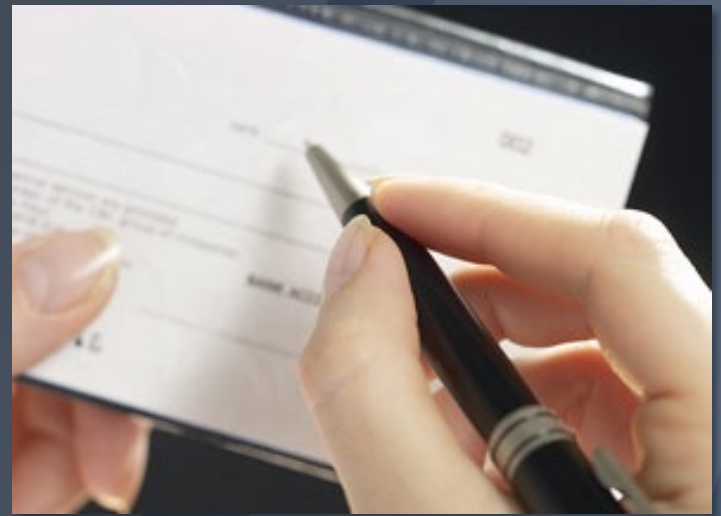
Tips for Decisionmakers



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

Campaign Contributions

- **Generally no conflict of interest**
- **Special rule for appointed boards and commissions**
 - \$250 / 12 month / 3 month rule



Campaign Contributions

- You cannot solicit campaign contributions from other officers or employees of the City – Government Code Section 3205
- Prohibition applies to direct or indirect solicitation of contributions (except as part of a larger mailer)
- Violation is a misdemeanor

Conditions to Holding Office: Residency within Jurisdiction

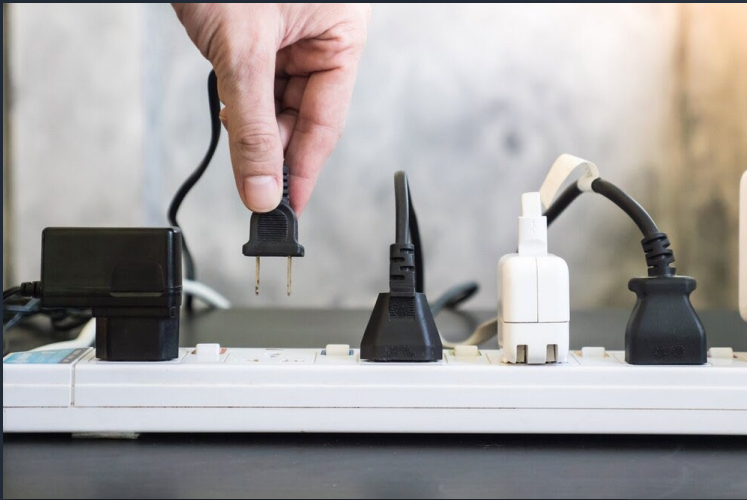
- An elected official must be an “elector” of the City
- An “elector” must be a U.S. citizen & resident of an election precinct
- Registered to vote in the city/district
- Maintain principal residence (domicile) in city/district

Residency within Jurisdiction

- If during your term of office, you move your domicile to somewhere outside the City's limits, you cease to be an elector
- If you cease to be an elector, your office becomes vacant (Gov. Code Section 36502)



"Incompatible" Offices



- Cannot hold two incompatible offices!
- Applies to public offices, not employment
- Loss of first office upon acceptance of incompatible office

“Incompatible Offices”

■ Examples:

- City councilmember & school board member
- District Board member & fire chief
- Public utility district member & board of supervisors member
- Water replenishment district board member & and city councilmember

Anti-Nepotism

- **Local agencies will have (or should have) anti-nepotism policies such as:**
 - Limitation on appointment or promotion into a department in which a relative already holds a position if:
 - Supervisor-subordinate relationship
 - Performance of shared duties on same or related work assignments
 - Same immediate supervisor
 - No employment of a public official's immediate family during public official's term of office

Conflicts in Decisions Affecting Prospective Employer

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

- Government Code §87407



Competitive Bidding

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



Competitive Bidding



- **Contract goes to lowest responsive, responsible bidder**
- **Exceptions**
 - Emergencies
 - Small contracts
 - Financial, engineering, legal services
 - Professional services

Questions to Ask

- What would the reasonable person think?
- Are you comfortable with how your action will be reported in the press?
- Is this how you want to be remembered?





Thank you!

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