

# **ETHICS AND PUBLIC SERVICE**



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AB 1234 Training – January 2026 by the Office of the General Counsel



# SESSION OBJECTIVES

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1. To familiarize you with laws that govern your service and when to ask questions
2. To encourage you to think beyond legal restrictions and provide tools for doing so
3. Help you comply with AB 1234 requirements
  - A. Training
  - B. Expense Reimbursement



# PUBLIC SERVICE ETHICS IS DIFFERENT

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- Laws play a bigger role
- Perception as important as reality
- Gut is not a reliable guide
  - Not logical
  - Not intuitive



# ETHICS V. ETHICS LAW

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- Law = Minimum standards
  - What we must do
- Ethics is what we ought to do
  - Above and beyond law's minimum requirements
- Just because its legal doesn't mean it is ethical (or public will perceive it to be so)



# PERSONAL AND ORGANIZATIONAL ETHICS

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- Every organization has a culture, ethically
  - Code of Conduct
- Every person has an ethical compass
  - Role models?
    - Parents
    - Public officials



# LEADERSHIP AND ETHICS

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Where do we look for examples of ethics?

- Corporate America?
- Federal Government?
- State Government?
- Local Government?



# LEADERSHIP AND ETHICS

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- Organizational Ethics – Where to begin...
- Who is driving the bus?
  - The Community
  - Board
  - General Manager
  - Board Appointees
  - Personal Pride



# THE ETHICS EXPLOSION - CALIFORNIA

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- **Democracy as Tyranny – Majority Rule – Aristotle**
- **Constitutional Democracy - Democracy by the Rules**
  - Right to Vote: White, Male, Property Owner
- 1800's
  - Common Carrier Prohibition – ethics laws aimed at powerful railroad barons
  - Birth of Contract Prohibition
- 1940's – 1970's
  - Expansion of Contract Prohibition (Govt. Code 1090)
  - Brown Act
  - Public Contract Rules
  - Public Records Act



# THE ETHICS EXPLOSION - CALIFORNIA

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- 1970's – 2000
  - Political Reform Act -- Proposition 9 -- 1974
  - Bias, Due Process
  - Public Contract Code -- Consolidated - 1981
  - Common Law Conflicts
  - Revolving Door restrictions -- State Officials
  
- 2000 - Present
  - AB 1234
  - Revolving Door -- Expanded to Local Officials
  - New Gift Rules

# FOUR GROUPS OF ETHICS LAWS

## CORE TOPICS – FPPC REG. 18371

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



**Key Ethics Law Principles For Public Servants**

*Note that the following are not statements of law, but rather principles the law is designed to achieve. The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws. If an issue arises for you under these principles, consult your agency counsel.*

**PERSONAL FINANCIAL GAIN**  
Public officials:

- Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests (see reverse for list of types of financial interests).
- Cannot have an interest in a contract made by their agency.
- Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- Cannot influence agency decisions relating to potential prospective employees.
- May not acquire interests in property within redevelopment areas over which they have decision-making influence.

**PERSONAL ADVANTAGES & PERKS**  
Public officials:

- Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$360 (2006) from a single source in a given year.
- Cannot receive compensation from third parties for speaking, writing an article or attending a conference.

**GOVERNMENT TRANSPARENCY**  
Public officials:

- Must disclose their financial interests.
- Must conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Must allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- Must disclose information about significant (\$5000 or more) fundraising activities for legislative, governmental or charitable purposes.

**FAIR PROCESSES**  
Public officials:

- Have a responsibility to assure fair and competitive agency contracting processes.
- Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner or dependent children).
- Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings – such as land use permits – involving campaign contributors (does not apply to elected bodies).
- Cannot solicit campaign contributions of more than \$250 from permit applicants while application is pending and for three months after a decision (does not apply to elected bodies).
- Cannot represent individuals before their agency for one year after leaving agency service.
- Must conduct public hearings in accordance with due process principles.

 **INSTITUTE FOR LOCAL GOVERNMENT**

# GROUP 1: PERSONAL FINANCIAL GAIN ISSUES

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





# EXAMPLES OF LAWS

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- Bribery and related crimes
  - Dollars? Favors? Dinner?
- Financial interest disqualification requirements
- Revolving door restrictions





# BRIBERY

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- Rule: Public officials may not solicit, receive or agree to receive a benefit in exchange for their official actions
- Penalties: Loss of office, prison time, fines, restitution, attorneys fees and public embarrassment





# CASE STUDY: STRIPPERGATE

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- Council members charged under federal law with tying campaign contributions to the city's consideration of a "no touch" rule
- Strip club owners were cooperating/wearing wires during conversations
- Jury convicted; council members resigned
- Officials were financially ruined and emotionally devastated



# BRIBERY – FEDERAL LAW

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- Section 666 – U.S. Code
  - Theft or Bribery Concerning Programs Receiving Federal Funds
  - \$5000 Threshold
  - The illegal act does not need to be related to the federal funds received by the agency

18 U.S.C. § 666



# BRIBERY – FEDERAL LAW

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- Honest Services – Frauds & Swindles
  - Defrauding the public of its right to a public servant's honest services, including its right to his/her conscientious, loyal, faithful, disinterested, unbiased service, to be performed free of deceit, undue influence, concealment, bribery, fraud and corruption.

18 U.S.C. §§ 1341, 1346



# **BRIBERY: HONEST SERVICES MAIL FRAUD**

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Cases: How do they get started?

- Your SEI
- Disgruntled staffer or opponent
- FPPC Tip Line
- Disgruntled Donor/Contributor
- Scorned Spouse



# **BRIBERY: HONEST SERVICES MAIL FRAUD**

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## Summary of Behaviors Which Make You a Target

- Trading votes or political prerogatives for \$\$
- Avoid “on-the-side” consulting businesses
- Avoid conflicts with family businesses
  - Jobs
  - Contracts
- Do not use public money/assets for private gain
- Avoid self-dealing – no matter how slight



# SIMILAR CRIMES

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





# THE POLITICAL REFORM ACT

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## **The Fundamental Provisions**

No public official shall make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision if he or she knows or has reason to know that he or she has a financial interest in the decision. Cal. Gov't Code § 87100. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a foreseeable and material financial effect on the official or one or more of his or her economic interests. Cal. Gov't Code § 87103; 2 Cal. Code of Regs. § 18700(a).



# PERSONAL FINANCIAL GAIN

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## The Political Reform Act

- FPPC, Form 700
- Oral and Written Advice
- Disclose/Disqualification
- Economic Interests



# THE POLITICAL REFORM ACT

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## **Analysis: Four Step Test**

1. Is the financial effect “reasonably foreseeable?”
2. Is it “material”?
3. Is the effect on the official the same as on the public generally?
4. When is the official “making, participating in the making, or using his or her position to influence” the governmental decision from which the financial effects results? (Quid Pro Quo)



# THE POLITICAL REFORM ACT

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Exceptions?

Public Generally

Legally Required Participation



# **ECONOMIC INTERESTS – FORM 700 - Financial Discl.**

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1. Business Entities
2. Real Property
3. Sources of Income
4. Sources of Gifts
5. Personal Finances



# 1. BUSINESS ENTITIES

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- Direct or Indirect Investment of \$2000
- Are you a director, officer, partner, trustee, employee or do you hold a management position
- Parent/subsidiary
- Defined: Any organization operated for profit

## 2. REAL PROPERTY INTEREST

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- \$2000 or more
- Direct or indirect
- Partner's/child's property
- Tenancy interest  
(except month to month)
- 500 foot rule





# Revised 500 foot rule (2019)

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Regarding property holdings (other than leasehold interests), you have a conflict if the matter involves:

**Property 500 feet or less** from the public official's property UNLESS there is clear and convincing evidence that the decision will not have any measurable impact on the official's property.

**Property between 500 feet to 1000 feet** from the official's property AND action would change the parcel's

- a. Development potential
- b. Income producing potential
- c. Highest and best use
- d. Character by substantially altering
  - i. traffic levels
  - ii. intensity of use
  - iii. parking
  - iv. view
  - v. privacy
  - vi. noise levels
  - vii. air quality
- e. Market Value

**Property more than 1000 feet** from the official's property is presumed not to be material, but this presumption can be rebutted with clear and convincing evidence.



# What about decisions affecting leasehold real property interests?

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- When a public official's leasehold property interests are involved, there will be a conflict of interest if:
  - The Decision will:
    - Change termination dates
    - Increase/decrease potential rental value
    - Change the actual or legally allowable use
    - Impact the use and enjoyment of the property
  - Exceptions:
    - Solely infrastructure repairs, replacement and maintenance
    - Adoption/amendment of general plan



## 3. SOURCES OF INCOME

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- \$500 or more – can be:
- Your own income
- Promised income
- Partner's/child's income
- Loans/guarantors





## 4. SOURCES OF GIFTS

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- Form 700 → Disclose \$50 or more
  - Aggregate by Source – calendar year
- \$630 or more – aggregate 12 months prior to decision
- \$630 annual (2026) gift limit; exceptions
- Amazingly detailed regulations



# Registered Lobbyist Gift Limit

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- **\$10 Lobbyist Gift Limit:** Elected state officials, including members of the legislature, and legislative employees may not accept a gift or gifts totaling more than \$10 in a calendar month from any individual who is registered as a lobbyist under state law. The \$10 limit also applies to gifts received by officials and employees of state agencies if their agency is listed on the registration statement of the lobbyist's employer or firm.



# Loan Limitations

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- Public officials who are required to file Statements of Economic Interests (Form 700s) may not receive any personal loan aggregating more than \$250 from an official, employee, or consultant of, or from anyone who contracts with, their governmental agencies.



# More on Loan Limitations

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- In addition, elected officials may not receive any personal loan aggregating more than \$500 from a single lender unless certain terms of the loan are specified in writing. Under certain circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift to the official who received it.



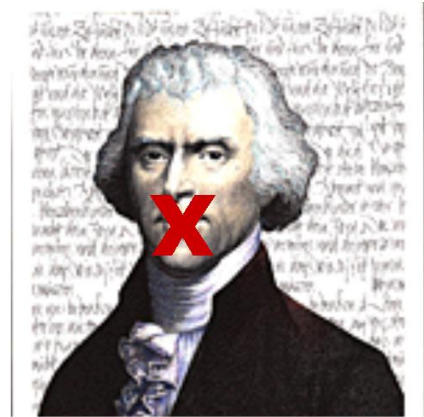
## 5. PERSONAL FINANCES RULE

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- You have a financial interest if you can reasonably foresee a financial effect of \$500 or more
- 12 months prior to/after the decision

# IF YOU ARE DISQUALIFIED FOR A FINANCIAL CONFLICT

- Don't discuss or influence (staff or colleagues)
- Identify nature of conflict at meeting
- Leave room (unless the matter is on consent)
- Limited exceptions
  - Owned property
  - Owned/controlled business



# DISQUALIFICATION BASED ON FINANCIAL INTERESTS

- Rule: You may not participate in a decision if “your” economic interests are affected by a decision
- Effect can be positive or negative





# DISQUALIFICATION VERSUS ABSTENTION

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- Abstention => voluntary
- Disqualification => Legally required
  - Does not imply wrongdoing
  - Unless you don't disqualify yourself when required



# PENALTIES

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- Invalidate decision
- Misdemeanor (could result in loss of office)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys fees (yours and others)
- Embarrassment (personal/political)



# CASE STUDY: THE TRAVEL STORE

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- Elected official in travel business
  - Twice failed to disclose on SEI
- Voted on consent calendar
- Included approval of payments to her travel agency (\$28,481 total)
- Possible fine under PRA: \$76,000 (ultimate fine: \$29,000); possible felony under Gov't. Code 1097



# FUTURE EMPLOYMENT ISSUES

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- Revolving door prohibition
  - Electeds, managers
  - Cannot represent people for pay for a year after leaving their agency
  - City of Mountain View - Effective July 1, 2006 but not at BART (Self-dealing prohibition still applies)
- No participation in decisions involving future employers
  - Cut it off – in writing, email



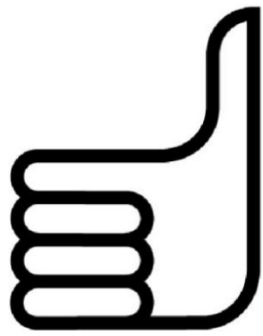
# MASS (BULK) MAILING

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Simplified: Prohibits the govt. from mailing (at public expense) 200 or more same or similar pieces of mail which feature an elected official(s).

- Newsletters
- Letters

Penalties: 2X or 3X the cost of the mailing is possible



## **BEST PRACTICES**

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



# WARNING! SPECIAL RULES FOR CONTRACTS

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- Government Code Section 1090
- Disqualification may not be enough
  - Direct or indirect interest
  - Limited exceptions
- May have to refund money paid
- Felony: \$1,000 fine, imprisonment, and loss of office





# CONTRACTS – GOVERNMENT CODE 1090

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- Thomson v. Call
- People v. Honig
- People v. Chacon
- Statutory Provision
- Government Code section 1090 states in pertinent part:  
"Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."



## GROUP 2: PERKS

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- “Perk” or Perquisite – French
  - “Casual income or profits accruing to the lord of a feudal manor”
  - “A privilege, gain or profit incidental to an employment in addition to regular salary or wages”



## GROUP 2: PERKS

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- **Principles: No Unauthorized Perks**

- Democratic equality
- Public servants should not receive **unauthorized** special benefits by virtue of their positions



# Don't use government resources to cover up your affairs !

- Alabama governor Bentley quits amid sex scandal.
- Converted campaign contributions to personal use – to cover up his affair with a staffer.
- Failed to file report re campaign funds.



But we don't need to leave California  
for examples of bad behavior !

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# This happens regularly

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- Court docs: Rep. Hunter used campaign money in affairs
- [Newsroom](#)
- US attorneys are alleging Rep. Duncan Hunter (R-CA) used campaign funds to pursue extra-marital relationships with five different women — including lobbyists and congressional staffers. CNN's [Tom Foreman](#) reports on the new allegations that come as [Hunter's wife, Margaret, agreed to cooperate](#) with investigators.

# TWO KINDS OF PERK RULES

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





# NOT ALL GIFTS HAVE BOWS

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- Meals, food and drink (including receptions)
- Entertainment (concerts & sporting events)
- Certain kinds of travel and lodging
- BART Employee Gift Policy – Management Policy



# NOT ALL GIFTS HAVE BOWS

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## ■ Gifts

- From anywhere--inside or outside the jurisdiction
- \$50 or more -- disclose on annual statement
- \$590 --- \$590 for the 2023.
- Disclosure
  - Aggregate from one source
  - Based on **calendar** year
- Disqualification - \$590 or more. (Rose to \$590 effective January 1, 2023 to December 31, 2024.) Accepting less is OK
  - – but disqualification from participating in the decision making process may result because **you go back 12 months preceding the decision – not “calendar” months!**



**Observation: Power makes you look ten years younger, twenty pounds lighter and everyone laughs at your jokes**

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“When you become an elected official, you will attract new “best friends” in a number you wish you had in high school.”



# EXCEPTIONS TO THE DEFINITION OF "GIFT"

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1. Informational material
2. Returned unused (within 30 days)
3. Relatives - close family
4. Campaign contributions
5. Plaques or awards (less than \$250)
6. Home hospitality
7. Exchange of gifts – birthdays, holidays, where similar in value
8. Devise or inheritance
9. Free admission where you give a speech; travel within California and lodging as necessary for the speech

## **GIFTS**

# **GUIDES TO GIFT REGULATIONS**

## **§18940**

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- a. Limits on Gifts -- Government Code §89503
- b. Gift Limit Amount -- §18940.2
- c. Definition of "Gift" -- Government Code §82028(a)
  - 1. Receipt. Promise and Acceptance of Gifts -- §18941
  - 2. Payments for Food -- §18941.1
- d. Exclusion and Exceptions
  - 1. Exceptions to "Gift" and Exceptions to Gift Limits -- §18942
  - 2. Definition of "Informational Material" -- §18942.1
- e. Return, Donation or Reimbursement of a Gift -- §18943
- f. Recipient of the Gift
  - 1. Valuation of Gifts to an Official and His or Her Family -- §18944
  - 2. Passes or Tickets Given to an Agency -- §18944.1
  - 3. Gifts to an Agency -- §18944.2

## **GIFTS**

# **GUIDES TO GIFT REGULATIONS**

**(Continued)**

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- g. Sources of Gifts -- Government Code §18945
  - 1. Cumulation of Gifts; "Single" source -- §18945.1
  - 2. Intermediary of a Gift -- §18945.4
  - 3. Gift from Multiple Donors -- §18945.4
- h. Reporting and Valuation of Gifts: General Rule -- §18946
  - 1. Passes and Tickets -- §18946.1
  - 2. Testimonial Dinners and Events -- §18946.2
  - 3. Wedding Gifts -- §18946.3
  - 4. Tickets to Nonprofit and Political Fundraisers -- §18946.4
  - 5. Prizes and Awards from Bona Fide Competitions -- §18946.5
- i. Travel -- §18950 through §18950.4



# GESTURE OF TICKET FROM NON-PROFIT/POLITICAL FUNDRAISERS NOT COUNTED AS “GIFT” IF:

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1. Single Ticket;
2. If held by the organization;
3. One ticket directly from the organization
4. Official must use the ticket personally
5. Counts toward gift limit
6. How does it count? → Face value minus donation portion

## **GIFTS**

# **GIFTS TO THE PUBLIC AGENCY (VERSUS THE PUBLIC OFFICIAL)**

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### **FOUR CRITERIA:**

1. Agency must receive and control payment.
2. Payment must be used for official agency business.
3. Agency must determine the specific official who will use the payment.
  - Donor may specify purpose -- not person.
  - Not for elected or 87200 officials (i.e. folks filing Form 700s)
4. Agency must memorialize receipt of the payment; disclose on internet and in writing.



# PERKS - OTHER OFFERS

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- No free transportation from transportation carriers
- No honoraria (fees) for speaking or writing
  - Any payment made for speech given, article written or attendance at any public or private conference, convention, meeting, meal, social event, etc.



# USE OF PUBLIC RESOURCES ISSUES

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- Personal use of public resources (including staff time and agency equipment) prohibited
- Personal errands
- Political use of public resources also prohibited



# EXAMPLE: EXPENSE REIMBURSEMENT

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

# CONSEQUENCES OF VIOLATIONS

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





# WHAT IS THE BART RULE ON GIFTS?

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NO GIFTS!



# **CASE STUDY: SACRAMENTO SUBURBAN WATER DISTRICT**

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

# POLITICAL USE OF PUBLIC RESOURCES

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





## BEST PRACTICE

- Avoid perks and the temptation to rationalize about them
  - Legally risky
  - Public relations headache
  - Byron's Rule: No Gifts!!



# GROUP 3: TRANSPARENCY LAWS

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## Principles:

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





# TRANSPARENCY RULES

- Conduct business in open and publicized meetings
- Allow public to participate in meetings
- Allow public inspection of records

**INSTITUTE for LOCAL GOVERNMENT**  
*Celebrating 50 years of service to local officials*  
[www.ilsg.org](http://www.ilsg.org)

**The ABCs of Open Government Laws**

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

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

**CALIFORNIA'S TRANSPARENCY LAWS REQUIRE PUBLIC OFFICIALS TO:**

- A.** Conduct the public's business in open and publicized meetings, except for the limited circumstances under which the law allows closed sessions.
- B.** Allow the public to participate in meetings.
- C.** Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.

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

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



# For a Regular Meeting of a Legislative body

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- An agenda adequately describing the business items that will be addressed in the meeting must be posted in a public place for a full 72 hours prior to the meeting time.



# For a Special Meeting of a Legislative body

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- An agenda adequately describing the business items that will be addressed in the meeting must be posted in a public place for a full 24 hours prior to the meeting time.



# For an Emergency Meeting of a Legislative Body

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- An agenda adequately describing the business items that will be addressed in the meeting must be posted in a public place for one hour prior to the meeting time with telephonic notice going to media outlets that have requested notice of such meetings.



# For a dire emergency meeting of a Legislative Body

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- Since September 11<sup>th</sup>, dire emergency meetings have been added to the statutory scheme of the Brown Act. Mass destruction or terrorist activity posing immediate peril is the justification for such meetings. Notice to the public is made at the time the presiding officer notifies the legislative body members.



# CONDUCTING BUSINESS AT OPEN MEETINGS

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- A majority may not consult outside an agency-convened meeting
- Key concept: what constitutes a meeting
  - Example: Serial communications (beware of emails and other social media communications)
- Exceptions for certain kinds of events
  - As long as a majority does not consult among themselves (conferences, purely social events, being in the audience of another's meeting, etc.)



# CONSEQUENCES OF VIOLATIONS

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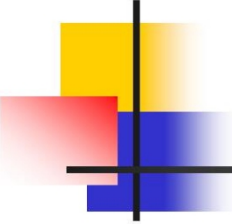
- Nullification of decision
- Criminal sanctions for intentional violations (up to 6 months in jail/\$1000 fine)
- Intense adverse media attention

# The Transition from AB 361 Rules



AB 2449 does not repeal the previously-enacted alternative teleconferencing rules that were passed under AB 361 and under which many governments are currently running their meetings.

- Instead, the new rules under AB 2449 are in addition to those enacted under AB 361.
- Because the AB 361 rules can only be used during a declared State of Emergency, however, they will become inapplicable on February 28, 2023, when the current State of Emergency ends.
- Between January 1, 2023 and February 28, 2023, the AB 361 rules will only apply IF the local legislative bodies continue to adopt resolutions allowing for teleconferencing under AB 361's set of rules.
- Beginning February 28, 2023, local legislative bodies may only use teleconferencing under either the new AB 2449 rules or the pre-pandemic teleconferencing rules, which remain in the Brown Act.



# AB 2449 (2022) provides agencies with long-term permissions to hold remote meetings.

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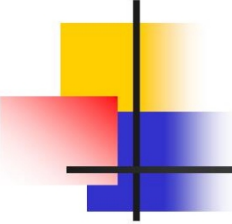
- AB 2449 reiterates the standard Brown Act teleconference rules, recodifies the rules set out in AB 361 for times of declared emergencies, and also provides for relaxed (in comparison to pre-pandemic times) teleconferencing rules when a member of the legislative body needs to attend remotely for an emergency, or other reasons supported by “just cause.”
- (AB 2449 amends Sections 54953 and 54954.2 of the Govt. Code.)



# Newly Added Teleconference Rules – 1/1/2023

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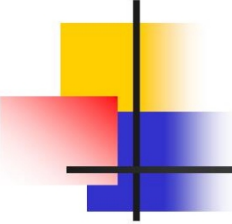
- Under the new teleconference rules, a legislative body may hold a “hybrid” (partial teleconference, partial in-person) meeting without having to comply with certain procedural requirements (post agendas at all teleconference locations, identify all teleconference locations in the agenda, make all teleconference locations open to the public) in the following circumstances:
  - One or more members of the legislative body (but less than a quorum) have “just cause” for not attending the meeting in person (childcare or family caregiving need, contagious illness, physical or mental disability need, or travel while on public business); or
  - One or more members of the legislative body (but less than a quorum) experience an emergency circumstance (a physical or family emergency that prevents in-person attendance).



## AB 2449 places restrictions on the number of times any one member may attend remotely in a year as well as imposing other limitations.

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- With “just cause”, a member participating remotely under AB 2449 may participate remotely under the “just cause” provision only during two meetings per calendar year.
- In “emergency circumstances,” defined as a physical or family emergency that prevents the member from attending in person, the member can participate remotely by requesting approval to do so from the legislative body. The legislative body may take action on the request as soon as possible, including at the beginning of the meeting, even if there was not sufficient time to place the request formally on the agenda.

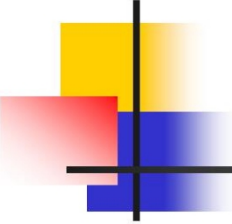


# Under either the “Just Cause” or “Emergency Circumstances” provisions, disclosures are necessary and must be stated.

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- Under either circumstance, the member in question must give a general description of the circumstances relating to their need to appear remotely, but need not disclose any medical diagnosis, disability or other confidential medical information.

# What is “Just Cause”?

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- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the member to participate remotely.
  - A contagious illness that prevents a member from attending in person
  - A need related to a physical or mental disability as defined under the California Fair Employment and Housing Act that is not otherwise accommodated as required under the Brown Act.
  - Travel while on official local government business.



# SB 707 has expanded the scope of just cause remote attendance

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- SB 707 expands the circumstances under which a committee member may use just cause remote attendance to include any of the following:
- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner
- A contagious illness that prevents the member from attending in person
- A need related to a physical or mental condition that does not qualify for disability accommodation
- Travel while on official business of the District or another state or local agency
- A physical or family medical emergency that prevents the member from attending in person (previously a basis for "emergency circumstances" remote participation) SB 707 eliminated "emergency circumstances" as a separate type of remote participation and folded this circumstance into "just cause" remote participation
- (NEW) An immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires the member to participate remotely
- (NEW) Military service obligations that result in a member being unable to attend in person because they are serving under official written orders for active duty, drill, annual training, or any other duty required as a member of the California National Guard or a United States Military Reserve organization that requires the member to be at least 50 miles outside the District's boundaries
- .



# Requirements for Remote Participation for “Just Cause”:

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- The Board member must notify the Board at the earliest opportunity possible, including at the start of a regular meeting , of their need to participate remotely for just cause including a general description of the circumstances relating to their need to appear remotely.
- A Board member participating remotely for just cause must publicly disclose at the meeting before any action is taken, whether any other individual 18 years of age or older are present in the room at the remote location with the Board member, and the general nature of the Board member’s relationship with any such individuals. (Query: Is this based upon a concern about third parties pulling strings ?)
- A Board member participating remotely for just cause must participate in the meeting via **BOTH** audio and video media.
- A Board member may participate remotely for just cause for no more than two meetings per calendar year.

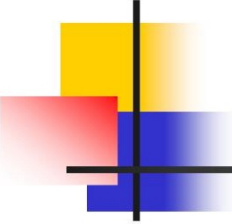


# What are “Emergency Circumstances”

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- The actual definition of “Emergency circumstances” is actually quite narrow. It is defined as a physical or family medical emergency that prevents the Board member from attending in person.
- There is substantial overlap with the grounds for Just Cause remote participation.
- Additional grounds for remote meetings that would be permitted under this criteria are circumstances that pose a physical emergency such as storms, fires, floods, earthquakes or other “physical” causes making attending in person problematic.

# Requirements for Remote Participation under “Emergency Circumstances”:



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- The Board member must make a request of the Board to participate remotely due to emergency circumstances as soon as possible, and must include a general description of the circumstances relating to the need to appear remotely. The general description need not exceed twenty words and shall not require the Board member to disclose a medical diagnosis or disability, or any confidential medical information.
- The Board must approve the request by a majority vote. A separate request must be made, and a separate vote must be taken, for each meeting at which a Board member participates remotely due to emergency circumstances.
- If the Board member's request does not allow sufficient time to place the item on the meeting agenda for Board action on the request, the Board may discuss and take action on the request at the beginning of the meeting after publicly identifying the item.
- A Board member participating remotely for emergency circumstances must publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the Board member, and the general nature of the Board member's relationship with any such individuals.
- A Board member participating remotely for emergency circumstances must participate in the meeting via BOTH audio and video media.



# Additional Restrictions on AB 2449 teleconferencing.

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- In addition, AB 2449 provides that a member cannot participate solely by teleconference under the new AB 2449 framework for more than 3 consecutive months or more than 20 percent of the agency's regular meetings (i.e. no more than two meetings if the agency meets fewer than 10 times per year).
- NOTE: Beyond two "just cause" remote participation requests, all the other remote participation requests under this limitation would need to be based upon the "emergency circumstances" justification.

# New SB 707 authorizes fully remote meetings for some advisory bodies



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- SB 707 authorizes fully remote meetings by subsidiary legislative bodies, such as advisory committees appointed by the Board, subject to certain requirements and exceptions.
- Note that elected officials serving as committee members in their official capacities are not permitted to rely upon the following rules for remote attendance at committee meetings, but may still use traditional teleconferencing or just cause remote attendance at such meetings.



# Who is eligible for fully remote meetings ?

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- A subsidiary body is eligible to hold fully remote meetings if the body satisfies all of the following conditions:
- The body is created by formal action of the Board;
- The body serves exclusively in an advisory capacity;
- The body is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements, grants, or allocations of funds; and
- The body does not have primary subject matter jurisdiction, as defined by charter, ordinance, resolution, or other formal action of the Board, that focuses on elections, budgets, police oversight, privacy, removing from, or restricting access to, materials available in public libraries, or taxes or related spending proposals.



# Who is not eligible ?

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- The following BART advisory committees are not eligible for fully remote meetings based on the committee's primary subject matter jurisdiction:
- Audit Committee (budget and general financial matters)
- Measure RR Bond Oversight Committee (taxes and related spending proposals)
- BART Police Civilian Review Board (police oversight)
- Transit Security Advisory Committee (police oversight)



# General Rule for BART Advisory Committees

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- All other BART advisory committees appointed by the Board satisfy the requirements for fully remote meetings. Note that individual members of the non-eligible committees may still be able to participate remotely under provisions permitting remote attendance as a disability accommodation, remote attendance for just cause, and traditional teleconferencing.



# Necessary Findings for BART Committees to hold fully remote meetings

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- In order for eligible BART committees to hold fully remote meetings, the BART Board must first make the following findings by majority vote, and must thereafter adopt the findings every six months:
- The Board has considered the circumstances of the subsidiary body;
- Remote meetings of the subsidiary body would enhance public access to meetings of the subsidiary body, and the public has been made aware of the type of remote participation, including audio-visual or telephonic, that will be made available at a regularly scheduled meeting and has been provided the opportunity to comment at an in-person meeting of the legislative body authorizing the subsidiary body to meet entirely remotely; and
- Remote meetings of the subsidiary body would promote the attraction, retention, and diversity of subsidiary body members.



# More about fully remote advisory body meetings

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- If the Board adopts the above findings, advisory committees may hold fully remote meetings subject to the following requirements:
- The District must designate one physical meeting location within District boundaries where committee members participating in person are present and where members of the public may physically attend the meeting.
- At least one District staff person must be present at the physical meeting location.
- The meeting agenda must be posted at the physical meeting location.
- Committee members participating remotely must visibly appear on camera during the open session portion of the meeting, unless the committee member has a physical or mental condition that is not a disability that results in a need to participate off camera.
- A committee member's appearance on camera may cease only when their appearance would be technologically infeasible, including when the member experiences a lack of reliable broadband or internet connectivity that would be remedied by joining without video. If this happens, the member must announce the reason for their nonappearance prior to turning off their camera.



# Additional restrictions worth mentioning.

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- A quorum of the body must still meet in-person (but still possibly in multiple posted locations within the jurisdiction with traditional teleconferencing but all in one site if any member utilizes AB 2449 relaxed remote access).
- The body must meet following AB 2449 “relaxed” remote access rules:
  - Provide either a two-way audio and visual system or a two-way phone service in addition to live webcasting;
  - Identify a call-in or internet-based access option on the agenda, in addition to the in-person meeting location;
  - Ensure that if a disruption to the online meeting occurs, the body takes no further action on agendized items until public access is restored; and
  - Avoid requiring public comments to be submitted in advance, and provide a real-time option for the public to address the body at the meeting.

# Does SB 707 make changes to this?



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- Note that SB 707 leaves unchanged the just cause requirement that at least a quorum of committee members participate in person from a singular physical location clearly identified on the agenda that is open to the public and within the BART District. Members are also still required to announce at the start of the meeting their need to participate remotely for just cause, including a general description of the circumstances relating to the need to participate remotely.
- SB 707 adds a requirement that the minutes of any meeting at which a member participates remotely for just cause identify the specific provision of the Brown Act that the member relied upon to participate remotely, i.e., for a caregiving need, for a contagious illness, etc.



# Special Note re Teleconferencing

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- In 2024, the Attorney General provided two opinions interpreting Brown Act provisions. Although Attorney General opinions do not have the same force as published court decisions, they still are considered as authoritative on the issues they address. Agencies may—and should—rely on them for guidance.
- In one of the two opinions, issued in July, the Attorney General considered the interplay of the Brown Act and the federal Americans with Disabilities (“ADA”). Specifically, his opinion considered whether the ADA allows remote meeting participation to serve as a reasonable accommodation for a member of a Brown Act body with a qualifying disability.
- The Attorney General answered “yes” to this question. (Cal. Att. Gen. Op. 23-1002, Jul. 24, 2024.) Years ago the Attorney General had concluded the contrary. But because of the post-Covid changes to the Brown Act expanding on the right of members to participate remotely, the Attorney General concluded the prior reasoning no longer applied.
- The new opinion noted, however, that disabled members accommodated through remote participation are required to comply with two conditions the Legislature placed on remote participation. Specifically, these members must be connected in real time through both audio and visual means, and they must disclose the identities of any adults present with them at the remote location.



# **~~Remote Attendance for Members with Disabilities~~**

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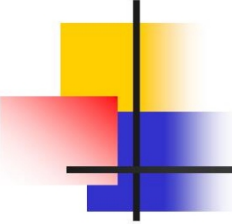
- SB 707 adds provisions expressly permitting a committee member with a disability to attend committee meetings remotely as a reasonable accommodation pursuant to any applicable law.
- A member participating remotely as a disability accommodation must participate using both audio and camera, except that a member may participate solely with audio if their disability results in a need to participate off camera.
- The member must disclose at the beginning of the meeting whether any other individual age 18 years or older are present in the room with them, and the general nature of the member's relationship with the individual.
- Remote participation as a disability accommodation must be treated as in-person attendance at the physical meeting location for all purposes, including establishing a quorum.



# Expiration of AB 2449 authorization

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- The new statutory authorization expires by its own terms on January 1, 2026. At that point, absent further legislative, the Brown Act's teleconferencing provisions will revert to essentially the same language as before the pandemic.
- Note that SB 707 extends the provisions of AB 2449's just cause remote teleconferencing with certain revisions added regarding fully remote teleconferencing for appropriate advisory bodies.



# Some governments enact additional transparency rules

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- BART not only requires compliance with the Brown Act for its formal advisory bodies (advisory to the Board), but it also requires that bodies that are not subject to the Brown Act (i.e. those not formed by the District) be subject to meeting notification requirements and accessibility requirements.



# BART's Brown Act Lite Rules

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- The trigger for these “Brown Act Lite” noticing and accessibility requirements is the attendance of one or more members of the Board at these non-Brown Act public meetings.
- The BAC is an example of one of these types of “Brown Act Lite” bodies.



# PUBLIC RECORDS

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- Agendas and meeting materials
- Other writings prepared, owned, used or retained by agency (including electronic)
- New: Public emails on private devices have recently been ruled public records!
- Penalties: Adverse media attention + costs and attorneys fees if litigated

# FINANCIAL INTEREST DISCLOSURE

- Transparency includes obligation for high level public servants to disclose financial interests
  - Assuming office
  - Annually while in office
  - Upon leaving office

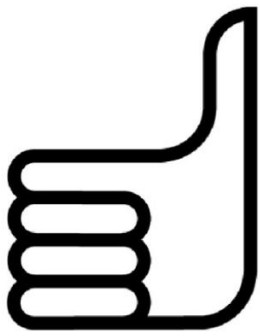




# CHARITABLE FUNDRAISING

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- Rule applies to elected officials who are successful in getting someone to contribute \$5,000 or more to a cause during a calendar year.
- Must disclose \$5,000 or more from single source within 30 days.
- Causes include charitable, legislative or governmental purpose



## BEST PRACTICES

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



# GROUP 4: FAIR PROCESS LAWS

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





# FAIR PROCESS LAWS

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- Due process requirements and rules against bias
  - *Nasha LLC v. City of Los Angeles*
  - *Clark v. Hermosa Beach*
- Incompatible office prohibitions
- Trading Votes: Illegal!





# Nasha LLC v. City of LA

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- The essential issue presented was whether the Planning Commission's decision should be set aside due to an unacceptable probability of actual bias on the part of one of the decisionmakers.
- While this matter was pending before the Planning Commission, one of its members authored an article attacking the project under consideration. Accordingly, Nasha's claim of bias was well founded. The judgment in favor of the City was reversed with directions.



# Clark v. Hermosa Beach

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- The City exhibited bias in connection with its unsuccessful effort to impose a construction moratorium. In February 1992, the Council had attempted, but failed, to enact a moratorium on the construction of buildings higher than 30 feet. The measure fell one vote short of the four votes needed. (See Gov. Code, § 65858.) Consequently, the City's 35-foot height restriction remained in effect in R-3 zones. Yet, shortly after the moratorium failed, the Council and the planning commission denied permits on three projects (including the Clarks') involving 35-foot structures. This sequence of events indicated that the City was attempting to do — by a majority vote on a project-by-project basis — what the law required a four-fifths vote of the Council to accomplish.<sup>21</sup> At a minimum, this evidence established that the Council was not impartial to the Clarks' project.

# FAIR PROCESS LAWS

continued

- Competitive bidding requirements
  - State law defines
  - Also local requirements
  - Principles:
    - Everyone has a right to compete for agency's business
    - That competition produces the best price for taxpayers
- Example:
  - Council member steered contracts to sister's firm and apparently received kickbacks

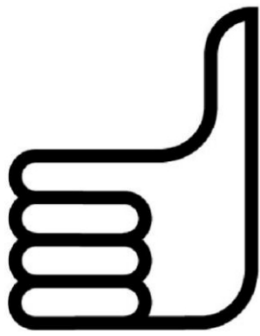


# FAIR PROCESS LAWS

continued

- Disqualification requirements if decision involves family members
  - The Law and Ethics
- Campaign contribution restrictions (appointed bodies)
- Soliciting campaign contributions from employees



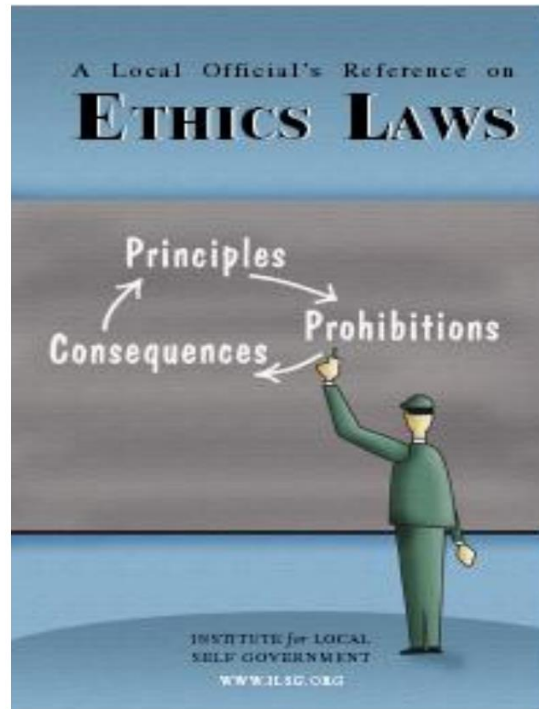


## BEST PRACTICES

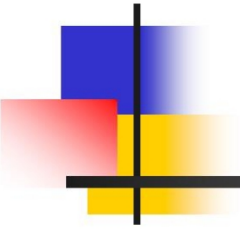
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- Think fairness and merit-based decision-making in your decisions
- Keep politics separate from relationships with agency staff

# RESOURCES FOR FURTHER READING



# **BEYOND THE LAW: PUBLIC SERVICE ETHICS PRINCIPLES**





# ETHICS = VALUES

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- Six universal ethical values:
  - Trustworthiness - Honesty
  - Loyalty
  - Responsibility
    - Community interest
  - Respect
  - Fairness
  - Compassion

**Source: Institute for Global Ethics**

# APPLYING VALUES TO PUBLIC SERVICE

## Trustworthiness:

- I am truthful with my fellow officials, the public and others.

### PUBLIC SERVICE VALUES

When we talk about the values that ought to guide one's public service, what kinds of values do we mean? The following provides some ideas on values that can inform one's public service and suggests examples of what those values mean in practice.

#### Trustworthiness

- I remember that my role is first and foremost to serve the community.
- I am truthful with my fellow elected officials, the public and others.
- I avoid any actions that would cause the public to question whether my decisions are based on personal interests instead of the public's interests.
- I do not accept gifts or other special considerations because of my public position.
- I do not knowingly use false or inaccurate information to support my position.
- I do not use my public position for personal gain.
- I carefully consider any promises I make (including campaign promises), and then keep them.

#### Fairness

- I make decisions based on the merits of the issues.
- I honor the law's and the public's expectation that agency policies will be applied consistently.
- I support the public's right to know and promote meaningful public involvement.
- I support merit-based processes for the award of public employment and public contracts.
- I am impartial and do not favor those who either have helped me or are in a position to do so.
- I promote equality and treat all people equitably.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I credit others' contributions in moving our community's interests forward.
- I maintain consistent standards, but am sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms.

#### Responsibility

- I work to improve the quality of life in the community and promote the best interests of the public.
- I promote the efficient use of agency resources.
- I do not use agency resources for personal or political benefit.
- I represent the official positions of the agency to the best of my ability when authorized to do so.
- I explicitly state that my personal opinions do not represent the agency's position and do not allow the inference that they do.
- I take responsibility for my own actions, even when it is uncomfortable to do so.

#### Compassion

- I realize that some people are intimidated by the public process and try to make their interactions as stress-free as possible.
- I convey the agency's care for and commitment to its community members.
- I am attuned to, and care about, the needs and concerns of the public, officials, and staff.
- I recognize my responsibility to society's less fortunate.
- I consider appropriate exceptions to policies when there are unintended consequences or undue burdens.

#### Loyalty

- I safeguard confidential information.
- I avoid employment, contracts and other financial, political and personal interests that can conflict with my public duties.
- I prioritize competing issues based on objective benefits and burdens to the public interest, not to myself, my family, friends or business associates.
- I don't oppose final decisions once they have been made by the decision makers, except through internal lines of communication.
- I put loyalty to the public's interests above personal and political loyalties.

#### Respect

- I treat fellow officials, staff and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personality traits or other issues that might distract me from focusing on what is best for the community.
- I gain value from diverse opinions and build consensus.
- I follow through on commitments, keep others informed, and make timely responses.
- I am approachable and open-minded, and I convey this to others.
- I listen carefully and ask questions that add value to discussions.
- I involve all appropriate stakeholders in meetings affecting agency decisions.

#### Trustworthiness

- I do not use information that I acquire in my public capacity for personal advantage.
- I do not promise that which I have reason to believe is unrealistic.
- I disclose suspected instances of impropriety to the appropriate authorities, but I never make false charges or charges for political advantage.
- I do not disclose confidential information without proper legal authorization.
- I am proactive and innovative when setting goals and considering policies.
- I consider the broader regional and statewide implications of the agency's decisions and issues.
- I promote intelligent innovation to move forward the agency's policies and services.

#### Compassion

- I come to meetings and I come to them prepared.
- I work to improve the quality of life in my community.

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- I listen carefully and ask questions that add value to discussions.
- I involve all appropriate stakeholders in meetings affecting agency decisions.

#### The Importance of Public Perception

The interesting – and somewhat unique – aspect of public service ethics is that it is not exclusively an introspective process. A public official can be absolutely confident that he or she is able to put personal interests or relationships aside, but the public may still question whether indeed that is so.

Public perception, therefore, matters a great deal in one's analysis of what the "right thing to do" is in public service. This is because, as public servants, public officials are stewards of the public's trust in the public's governing institutions.

In short, public service ethics is not only about doing the right thing, but also about the public's confidence that indeed the right thing has been done. But not doing the right thing just because the public's perception may be negative can have its own pitfalls. To step, or at times tiptoe, along the trail toward good government, here is a simple (but not necessarily easy) process:

- **First Step:** Figure out what "the right thing" to do is.
- **Second Step:** Figure out what the public's perception of "the right thing to do" would be.
- **Third Step:** When needed, balance the first two steps and follow the path which best supports public service values.



# ANALYZING ETHICAL DILEMMAS

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Two kinds of dilemmas:

- Two competing “right values”
- Doing the right thing costs more than one wants to pay



# EXAMPLE

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- Campaign contributor wants you to do commercial/zoning on their property
- Residential zoning may be in the best interests of the community
- Right versus right dilemma (loyalty versus responsibility)
  - Doing the right thing (acting on responsibility) then becomes a personal cost dilemma

# QUESTIONS TO ASK

- What would inspire public confidence?
- Ask: Why am I choosing this alternative?
- What would you want to read about on the front page?
- How do you want to be remembered?





# KEY LESSONS

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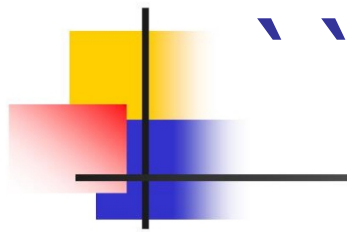
- The law sets minimum standards for ethical behavior
  - Violations of ethics laws carry stiff penalties
  - When in doubt, ask and ask early
- It's your choice how high you want to set your sights above the minimum requirements of the law



# AB 1234 COMPLIANCE

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



**QUESTIONS?**