

MINUTES OF THE SPECIAL MEETING OF THE
BOARD OF DIRECTORS OF
VISTA IRRIGATION DISTRICT

April 19, 2022

A Special Meeting of the Board of Directors of Vista Irrigation District was held on Tuesday, April 19, 2022, at the offices of the District, 1391 Engineer Street, Vista, California.

1. CALL TO ORDER

President Miller called the meeting to order at 9:00 a.m.

2. ROLL CALL

Directors present: Miller, Vásquez, Sanchez, and MacKenzie.

Directors absent: None.

Staff present: Brett Hodgkiss, General Manager; Lisa Soto, Secretary of the Board; Marlene Kelleher, Director of Administration. General Counsel Elizabeth Mitchell was also present.

Other attendees: None.

3. PLEDGE OF ALLEGIANCE

Director Vásquez led the pledge of allegiance.

4. APPROVAL OF AGENDA

The agenda was approved as presented.

5. PUBLIC COMMENT TIME

No public comments were presented on items not appearing on the agenda.

6. ETHICS TRAINING

See staff report attached hereto.

General Counsel Elizabeth Mitchell of Burke, Williams & Sorensen, LLP provided a two-hour training session on ethics pursuant to Government Code sections 53234 to 53235.2 via a PowerPoint presentation (attached hereto as Exhibit A).

7. DIRECTOR COMMENTS

None were presented.

8. COMMENTS BY GENERAL MANAGER

None were presented.

9. ADJOURNMENT

There being no further business to come before the Board, President Miller adjourned the meeting at 11:04 a.m.



Marty Miller, President

ATTEST:



Lisa Soto, Secretary
Board of Directors
VISTA IRRIGATION DISTRICT

AB 1234 Ethics Training

Vista Irrigation District
Biannual Board Training

Elizabeth A. Mitchell

General Counsel

April 19, 2022

burke
BURKE, WILLIAMS & SORENSEN, LLP

Today's Agenda

1. Introduction: Games and Scared Straight
2. Goals
3. Fair, Open and Impartial Processes and Decision Making (Brown Act/CPRA)
4. Personal Advantages and Perks of Office
5. Personal Financial Gain
4. Ethics Principles



AB 1234 adopted in 2006 in response to City of Bell scandal



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“I’m Not Like Those Officials”

- ▶ Know the rules to make sure your name does not show up in the FPPC’s “Hall of Shame”...

FAIR POLITICAL PRACTICES COMMISSION

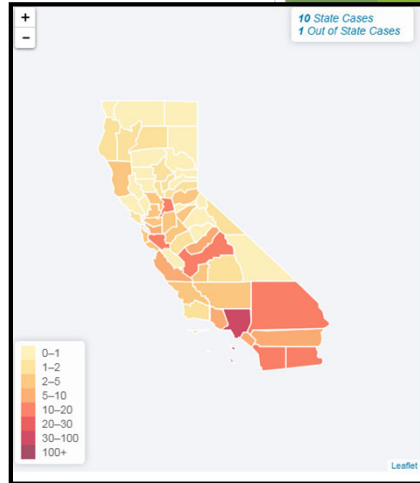
Summaries of Past Enforcement Cases A-Z

www.fppc.ca.gov

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FPPC “Heat Map”

- ▶ The FPPC prosecutes hundreds of cases every year. This map details the location FPPC cases prosecuted.



5

Let's Play a Game

- ▶ *How much was the Fine?*



6

FPPC Enforcement Case

- ▶ In the Matter of Pete P.; FPPC No. 17/1396 Pete P., a Planning Commissioner for the City, failed to timely file an Assuming Office Statement of Economic Interests, in violation of Government Code Section 87202 (1 count).
- ▶ How much was the Fine?



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Fine: \$200

FPPC Enforcement Case How much was the Fine?

- ▶ In the Matter of Eric M. FPPC No. 15/2201, County Supervisor failed to disclose gifts from a concert promotor for several years on his SEI Form then sponsored and voted in favor of vote to extend a permit for the concert promotor within the prior 12 months of the decision.



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Fine: \$9,500

Ethics Laws

California law promotes ethics:

1. by requiring public disclosure
2. by prohibiting certain actions
3. by punishing violations



Let's be SAFE

That's a lot of law to cover in one session...



1. Spot the Issues
2. Ask for Help
3. Failure has Consequences
4. Ethics in Practice

Goals

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



2. Encourage you to **think beyond legal restrictions**



Satisfy your AB 1234 requirement



Attorney Advice

The sooner you speak to legal counsel the better, but remember...



- ▶ General Counsel represents the District not you personally.
- ▶ Reliance on advice from legal counsel is not a defense if your actions result in a violation.
- ▶ Only a formal advice letter from the Fair Political Practices Commission protects you from violations of FPPC regulations.

Be Hypothetical

*Because violations are personal to you, the best practice is to ask questions in the hypothetical
No Confessions Please!*

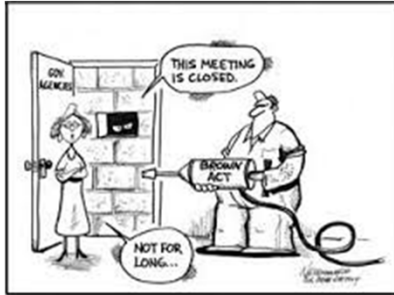


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Part I: Transparency Laws



The Brown Act



- ▶ All *meetings* of the *legislative body* of a local agency must be *open and public*
- ▶ All *persons* must be permitted to *attend* any meeting

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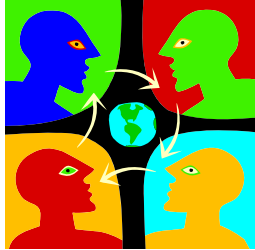
Brown Act-What is a Meeting?

- ▶ **Basic Rule:** Meetings of the Board, its Standing Committees and other designated Committees are subject to the Brown Act.
- ▶ **What is a Meeting?**
 - ▶ any gathering
 - ▶ of a *majority of the members* of a legislative body
 - ▶ at the same time and location
 - ▶ Including teleconference locations
 - ▶ to *hear, discuss, deliberate or take action* upon any item
 - ▶ which is within its subject matter jurisdiction



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Improper Meetings



“A majority of the members of a legislative body *shall not...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action* on any item of business that is within the subject matter jurisdiction of the legislative body.”

GC § 54952(b)(1)

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Improper Serial Meeting

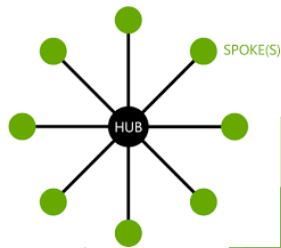
- **Daisy Chain:** If Member A contacts Member B, and Member B contacts Member C, and so on, until a quorum has been involved, this type of “serial meeting” may result in a violation of the Brown Act.



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Improper Serial Meeting

- ▶ **Hub and spoke:** An intermediary -- such as a District staff member or even an applicant -- contacts at least a quorum of the members to develop a collective concurrence on action to be taken by the legislative body.



Individual Meetings - OK

- ▶ A District employee or official may:
 - ▶ engage in “**separate conversations or communications**” outside of a meeting
 - ▶ in order to “**answer questions or provide information**”
 - ▶ so long as that person “**does not communicate to members of the legislative body the comments or positions of any other member or members.**”



GC § 54952.2(b)(2).

Brown Act “Meeting” exceptions:

- ▶ Individual contacts
- ▶ Attendance at community meetings, meetings of other agencies
- ▶ Meetings of “ad hoc” subcommittees - temporary advisory committees of less than a quorum of the board, with a limited purpose, dissolved when the purpose is completed
- ▶ Conferences or seminars
- ▶ Social and ceremonial gatherings
- ▶ Observation of advisory committee meetings
- ▶ 1 on 1 with staff



Hypothetical



You are unsure how to vote at an upcoming meeting and request information from the General Manager. Should you:

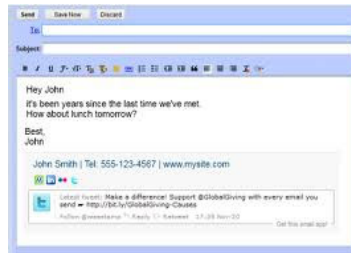
- a) Be transparent and copy the entire Board on your email to the GM.
- b) Wait until after the GM responds to you and hit “Reply All” with your position.
- c) Only email the GM.
- d) None of the above.

Brown Act Violations

- “Informal” meetings that are not noticed
- “Serial” meetings
 - ▶ A series of individual contacts that results in a majority of the members reaching a collective concurrence on an item of business
 - ▶ Can occur by use of technology, such as email or social media
- Discussion of non-agendized items (other than brief response/direction to staff to agendize a future item)
- Improper noticing on the agenda - agenda must substantially comply with requirements

Technology “Meetings”

- ▶ Use of e-mail or other technology/media by a majority of a legislative body to discuss, deliberate, or take action on items within the body’s jurisdiction violates the Brown Act.



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E-mail/Technology

- ▶ **Avoid sending e-mails to the whole body.**
 - ▶ If necessary, provide information only to less than a quorum.
 - ▶ Do not solicit a response.
- ▶ **Be careful replying to e-mails.**
 - ▶ Do not communicate your position or make a commitment on a pending matter.
 - ▶ Do not direct a reply to a majority of the body.
- ▶ **Think carefully before sending any e-mail.**
 - ▶ Remember, your e-mail can be forwarded by others to a majority of the body.
 - ▶ The Internet has a long memory.



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Social Media - AB 992

- ▶ Amends Government Code section 54952.2 to add new provisions
- ▶ Applies from January 1, 2020 through January 1, 2026





Hypothetical



Which of the following is a violation?

- a) You post on social media and only one other Director responds with comments.
- b) One Director “likes” your post.
- c) One Director posts “😊” in response.
- d) All of the above.
- e) None of the above.

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Direct Response Prohibited

- ▶ AB 992 prohibits even one member of the legislative body from responding in any manner to any other member’s social media posts: “A member of the legislative body shall 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.”
- ▶ No exceptions.
- ▶ Applies to just one response, making it a violation of the Brown Act regardless of whether a majority of the legislative body read the response.

Emojis = Discussion

- ▶ AB 992 prohibits a majority of the members of the legislative body from using social media to “discuss among themselves” business of a specific nature that is within the subject matter jurisdiction of the legislative body.
- ▶ Prohibits “communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.”
- ▶ The prohibition against members “discussing among themselves” specifically includes emojis.

Teleconferencing

- ▶ Meetings may be conducted by teleconferencing (i.e., any electronic audio or video connection) under the following conditions:
 - ▶ A quorum is within the jurisdiction;
 - ▶ Agendas must be posted at teleconference locations specifying all teleconference locations;
 - ▶ There is public access to teleconference locations;
 - ▶ There is public opportunity to speak at each teleconference location; and
 - ▶ All votes are taken by roll call.



NEW! AB 361 - Emergency Teleconferencing

- ▶ Meetings may be held remotely without observing normal teleconferencing requirements *if*
 - ▶ Legislative body passes a resolution making certain emergency findings and
 - ▶ Emergency teleconferencing requirements are observed
- ▶ Lasts for 30 days
- ▶ Conditions for renewal GC 54953(e)(3):
 - ▶ (A) The legislative body has reconsidered the circumstances of the state of emergency and
 - ▶ (B) Any of the following circumstances exist:
 - ▶ (i) The state of emergency continues to directly impact the ability of the members to meet safely in person or
 - ▶ (ii) State or local officials continue to impose or recommend measures to promote social distancing.

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PUBLIC PARTICIPATION



Rules on Public Participation:

- ▶ Place must be open and accessible (ADA)
- ▶ Access to agenda materials
- ▶ Opportunity to speak on agenda items and on matters within the District's jurisdiction
- ▶ Opportunity to record meetings (if non-disturbing)
- ▶ Additional time for non-English speakers

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Avoid These Headlines

[Agency] Flouts the Law: Locked
Doors, Elevators Keep Citizens
from Agency Meeting



Agency held a meeting at 10:00 AM. But allegedly none of the 4 doors to meeting were open. There was an elevator that was only accessible to employees with cards. When citizens confronted staff, only a journalist was let in.

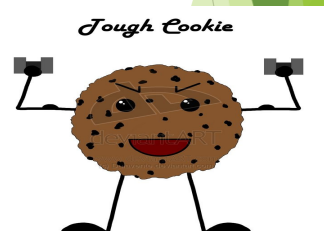
35

Sometimes we need thick skin

City sued longtime critic of City Council and lost and was ordered to pay resident's legal fees of \$117,741.

City argued use of snippets of Council meetings that were critical of Council violated copyright law and caused irreparable harm.

Court stated lawsuit was "meritless"



Brown Act: Agenda Requirements



- ▶ Rule: Brief description of item (20 words or less)
- ▶ Substantial compliance is the test.
- ▶ Courts will look at whether the agenda language, considered as a whole, gives the public *more than a "clue."*

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Brown Act: Internet Agenda Posting

Govt. Code § 54954.2

An online posting of an agenda shall be posted on the primary Internet Web site homepage...that is accessible through a prominent, direct link to the current agenda.





Public Comment



During public comments on non-agendized items a Board Member may:

- a) Have a 5-minute conversation with a member of the public.
- b) Approve a \$5,000 water conservation grant to the School District if they ask and really need it.
- c) Request donations to his/her political campaign.
- d) None of the above.

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Non-Agendized Items

- ▶ Action or discussion on any item not appearing on the posted agenda is generally prohibited.
- ▶ Officials may only:
 - ▶ **Briefly** respond to public statements or questions.
 - ▶ Ask a question for clarification.
 - ▶ Make a **brief** announcement.
 - ▶ Make a **brief** report on his/her activities.
 - ▶ Provide a reference to staff or other sources for factual information.
 - ▶ Request staff to place the matter on a future agenda and report back to the Board in a subsequent meeting.

GC § 54954.2(a)(2)

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Hypothetical



CSDA sends an email to a Director asking the District to take a position in support of some upcoming legislation. You should:

- a) Give direction to staff under Director comments to draft a letter on behalf of the Board providing support for the Directors to sign.
- b) Direct staff to return with the item on the Agenda at the next Board meeting.
- c) Forward the email to the General Manager to have a draft letter prepared for the Directors to sign and send.

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Closed Sessions

- ▶ Closed sessions are an **exception** to the rule that agency meetings must be open and public.
- ▶ The disclosure of confidential information is prohibited unless the legislative body authorizes the disclosure of the information.
- ▶ “**Confidential information**” means communication made in closed session that is specifically related to the basis for the closed session meeting.



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AVOID THESE HEADLINES

DA's Office Chastises Council - Spring 2020

A City Council was scolded for trying to uncover who complained that the Council had violated the state law regarding open meetings. The County District Attorney's Office sent a letter to the City Council and City Attorney regarding allegations that they violated the Brown Act.

The letter and complaint stem from a July 8 meeting when the City Council held a closed-session discussion regarding threatened litigation, but abruptly voted to terminate contracts with the two nonprofit organizations.

There is no reading of the Brown Act that would allow the Council to cite Cal. Gov. Code § 54956.9, go into closed session, and come out to vote to terminate the contracts with the chamber and visitors bureau. On its face, the action taken during the closed session and the ensuing vote was a violation of the Brown Act," District Attorney's office.

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Brown Act Violations - Consequences

- ▶ Request to Cure/Action Invalidated
- ▶ Civil Action to prevent future violations
- ▶ Costs and Attorney's Fees
- ▶ Criminal Charges
 - ▶ Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, **is guilty of a misdemeanor.**

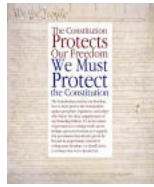
Gov. Code §§ 54959, 54960, 54960.1

CODE COMPLIANCE
NOTICE OF VIOLATION

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Access to Public Records

- ▶ Access to public records is a constitutional right in California



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What is a Public Record?

- ▶ Any writing
- ▶ Containing information relating to the conduct of the public's business
- ▶ Prepared, owned, used or retained by any state or local agency,
- ▶ Regardless of physical form or characteristic. (GC § 6252(e))



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Public Records

Rule: All of the District's public records must be disclosed to the public, upon request, unless there is a specific exemption.

- ▶ As described by one court: "Islands of privacy floating in a sea of disclosure."



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Avoid These Headlines

City Settles Lawsuit Over Alleged Public Records Act Violation

Resident won access to records about mold conditions at a neighbor's home as well as \$10,568 for attorney fees as part of a settlement with the City.



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Avoid These Headlines

L.A. County has repeatedly violated state open records laws, L.A. Times lawsuit alleges

Mar 21, 2018

The Los Angeles Times has sued L.A. County, accusing it of repeatedly and routinely flouting laws designed to ensure government transparency.

Over the last year alone, county officials have refused to release information about the status of homicide investigations, allegations of misconduct against prosecutors and even mundane information such as email addresses for Sheriff's Department employees, the lawsuit says.

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Pop Quiz



Which of the following is a public record subject to disclosure:

- a) A message sent from a District email account.
- b) A message about District business sent from your personal email account on your personal device.
- c) A message about District business sent from your personal email account using a District device.
- d) All of the above.

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Personal Devices/Public Records

City of San Jose v. Superior Court

- ▶ Agency employees ‘or *officials*’ communications about official agency business may be subject to disclosure as “public records” retained by the agency under the CPRA, even if the employees used personal e-mail or text message accounts in their preparation or transmission



What is a Public Record now?

- ▶ Not every document is a “public record.”
- ▶ New Test:
 - ▶ Does it relate in some substantive way to the conduct of the public’s business?
 - ▶ Or is it primarily personal?
- ▶ Factors: content; context; purpose; audience; was the individual acting within the scope of their employment or office.
- ▶ Privacy requires official to decide. 52

Part II: Personal Advantages & Perks

Legal Limitations on Official Benefits and Perks



benefits & perks

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Pop Quiz



The salary of executive officials (General Manager, Dept. Heads) may be approved:

- a) Whenever they want.
- b) At a regular meeting.
- c) At a special meeting.
- d) In closed session.

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Elected Officers Compensation

- ▶ Generally fixed by statute.
- ▶ Cannot be acted on at a special meeting.
- ▶ Automatic increases not permitted.



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Expense Reimbursement



General Rule: **Actual** and **Necessary** Expenses

Policy: Agencies should have a written policy specifying reimbursable activities and rates

Reporting: Timely use of report forms (with receipts documenting the expenses); oral report at subsequent meeting in some cases

Penalty: loss of reimbursement privilege; restitution; civil penalties and 3x value of misused resources; jail; ban from public office

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Pop Quiz



If you take your spouse on official business, you can charge the following to the District:

- a) Room.
- b) Spouse's meals.
- c) Mileage.
- d) Both (a) and (c).
- e) None of the above.

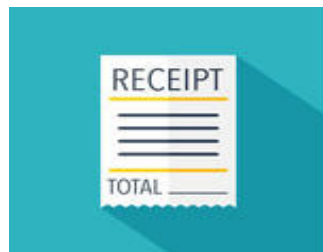


shutterstock.com · 331698641

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Remember...

Your expense report forms are
PUBLIC RECORDS



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GIFTS

► What is a Gift?

- Anything of value you receive for which you do not provide monetary or other consideration of equal or greater value.
- May include discounts and rebates if not also given to the general public.



Report - \$50 or more in a year/source

Limit - \$520/year/source



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Gifts



Options when you receive a gift over \$50:

- Decide if you want to report it on your Form 700.
 - If yes, report on your Annual Form 700
- If not, then within 30 days:
 - Reimburse the donee for the fair market value,
 - Return the gift unused, or
 - Donate the gift to charity (no deductions).
- If the gift exceeds \$500, you have a duty to:
 - reject it or “buy down” the value.

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Disclosure of Gifts

- ▶ Must report gifts on your Form 700 if:
 - ▶ Total value of all gifts from that source during the calendar year is greater than \$50.
 - ▶ Gift are reportable regardless of the location of the donor.

Tip: If the amount is unknown, you must make a good faith estimate of the item's fair market value.




Pop Quiz



When are meals not considered “gifts”?

- a) If provided at a party at a personal residence.
- b) You don't know any other attendees at the event.
- c) You take turns paying for the meal.
- d) You get food poisoning.





**FAIR POLITICAL PRACTICES COMMISSION
STIPULATION, DECISION AND ORDER
(Streamlined Program)**

Complainant, the Enforcement Division of the Fair Political Practices Commission, and R this stipulation will be presented to the Commission at its next regularly scheduled meeting matter can be heard, as a final disposition of the reporting violation(s) described herein.

FPPC CASE NO. 14/904
RESPONDENT: Robert Garibay, Board Trustee, Madera Unified School District
GOVERNMENT CODE SECTION(S) VIOLATED: 87207
DESCRIPTION OF VIOLATION(S): Failure to report receipt of gift(s) aggregating \$50 or more (See Exhibit I attached)

MONETARY PENALTY: \$200 **NUMBER OF COUNTS:** 1

STATEMENT BY RESPONDENT(S):
 I acknowledge that the violation(s) of the Political Reform Act described above and on Exhibit I (attached) have occurred and voluntarily request that the Fair Political Practices Commission resolve this matter by imposition of the monetary penalty specified above. I acknowledge receipt of the *Statement of Respondent's Rights* and voluntarily waive any and all procedural rights to contest this matter in an administrative hearing. All outstanding reports, in connection with these violations, have now been filed. I have attached a cashier's check or money order made payable to the General Fund of the State of California in the amount of the penalty described above.

Dated: _____ X
 Printed Name: ROBERT GARIBAY

STATEMENT BY ENFORCEMENT CHIEF:
 I have reviewed the above stipulation and recommend its approval.

Dated: _____
GARY S. WINUK, ENFORCEMENT CHIEF

ORDER OF THE COMMISSION:
 The foregoing stipulation has been adopted by a majority vote of the Fair Political Practices Commission as its final decision and order and is effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
JOANN REMKE, CHAIR

Other Gifts

There is a rule for everything:

- ▶ Gifts through family members
- ▶ Attendance at Invitation-Only Events
- ▶ Wedding gifts
- ▶ Dating exception
- ▶ Behested payments
- ▶ Travel




See FPPC Guide: *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans*
<https://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/gifts-and-honoraria.html>

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Gifts



FPPC Enforcement Decisions:

“J. L.” as a Mayor of City, failed to timely disclose gifts of two meals totaling \$253.39 on his Statement of Economic Interests. All gifts were from one consultant.

Penalty: \$200.

Spurred by an investigation by the Ventura County District Attorney’s Office into the activities of one city’s officials, the Fair Political Practices Commission found 205 government officials across the state failed to properly report gifts from the same companies.

65

Avoid These Headlines

Los Angeles -- Mayor and four city councilmen were fined for ethics violations for receiving gifts worth more than \$100 and tickets to Hollywood’s hottest awards shows, the city ethics commission voted Tuesday.

The mayor was fined \$20,849 by the city commission. He had earlier been fined \$21,000 by the state’s Fair Political Practice Commission.



Gifts

How much was the fine?

FPPC Enforcement Decision

“M. R.” Director of Recreation and Parks received gifts including free golf course access, range access, cart use, lessons and merchandise discounts that exceeded the reporting threshold of \$50, and failed to report these gifts on his Annual Statements of Economic Interests. He also impermissibly influenced a governmental decision by assisting in the negotiations of agreements with Valley Golf Course and recommending to the City Council that it enter into and amend agreements with Valley Golf Course, which was the source of a gift that exceeded the annual gift limit.



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Fine: \$6,500



POP QUIZ



Can public officials accept “tips” for a job well done?

- a) Never.
- b) Always.
- c) Only if you do an extra good job.
- d) Yes, if you have a performance based contract.

69

Prohibition on Gratuities or Rewards

It is a misdemeanor to receive any kind of gratuity or reward for performing one’s duties.



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Honoraria

- ▶ Receipt of honoraria (e.g., any payment for a speech, article, attendance at a conference, event or similar gathering) is ***prohibited***
- ▶ **Exception:** Speech or article in connection with private business

Tip: You can return or donate the honoraria within 30 days of receipt.



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Avoid These Headlines

Ex-member of governor's Cabinet pays \$5,400 in ethics fines

SACRAMENTO – A former member of Gov. Schwarzenegger's Cabinet who resigned paid **\$5,400 in fines to a state watchdog agency** for violating a ban on accepting speaking fees.

"R. M." who led the State and Consumer Services Agency for three years, resigned after the Los Angeles Times reported that she had accepted speaking fees, including \$15,000 from Pfizer and \$13,500 from Bristol-Myers Squibb while the drug companies were lobbying her .

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Misuse of Public Resources



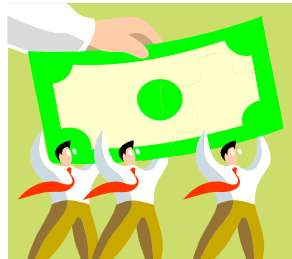
- ▶ **Rule:** No use of public funds or resources for personal, non-public purposes, including campaigns.
- ▶ **“Public Resources”** includes staff time, office equipment and supplies, but excludes incidental or minimal uses.



- ▶ **Penalties:** disqualification from office, jail, civil penalties up to \$1000/day plus 3x the value of the unlawful use.

73

Gifts of Public Funds

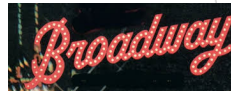


- ▶ Local agencies are prohibited from making a “gift” of public money or anything of value.
- ▶ Expenditures for *public purposes* are not considered gifts even if a private party incidentally benefits.

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In the News Misuse of Public Resources

Current and former officials to be tried for embezzlement



Current and former city officials were charged with embezzlement. The charges stem from a series of trips city officials made to New York allegedly to get a higher bond rating. During the trips, prosecutors said **officials improperly used city money to treat themselves to baseball games and Broadway shows that had nothing to do with city business.**

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QUIZ TIME



Which are not permitted:

- a) Making a few personal copies on the agency copy machine.
- b) Calling your spouse from an agency phone.
- c) Using an agency truck to pick up a new mattress.
- d) All of the above.

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Misuse of Public Resources

Top fire officials suspected of driving county vehicles while collecting \$1,000 monthly personal car allowance.

- ▶ SAN BERNARDINO - San Bernardino County Fire Chief was placed on unpaid administrative leave Wednesday after county supervisors evaluated a human resources report alleging he and a Deputy Fire Chief improperly drove county vehicles for personal use. They reportedly used a county trailer to move personal belongings between 2 cities. The two may have also violated county policy by driving county vehicles while collecting a roughly \$1,000 monthly personal car allowance.



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Mass Mailing Prohibition

- ▶ **Rule:** No newsletter or other mass mailing may be sent at public expense.
- ▶ **Purpose:** Conserve resources, no advantages for incumbents
- ▶ **Application:**
 - ▶ 200+ items/month
 - ▶ official "featured"
- ▶ **Penalties:** Criminal liability; restitution.



Avoid these Headlines

The Public Eye: City fined \$2,000 for newsletter containing prohibited photos

City was fined \$2,000 by the California Fair Political Practices Commission last week for blanketing households with a newsletter that contained photos of City Council members, a violation of the Political Reform Act.

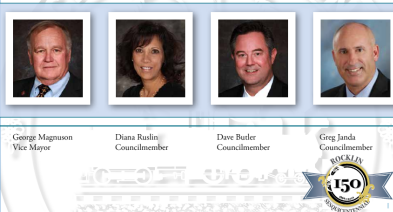
The State considers such activities a prohibited form of campaigning with taxpayer funds that gives incumbents an unfair advantage.

MAYOR'S MESSAGE . . .

Welcome to the inaugural issue of Inside Rocklin. We hope this guide helps you enjoy the best that Rocklin has to offer. Whether you are a long-time resident or new to the area, I invite you to take a look and see what's happening in Rocklin. Rocklin is a thriving city of 60,000 residents consisting of a vibrant and historical downtown, friendly neighborhoods, unique shopping and dining businesses that offer diverse employment. Rocklin residents and visitors alike enjoy numerous hometown community events, scenic parks and rustic open spaces. Public safety is our top priority. We are fortunate to have a highly-ranked fire department, and an accredited police department in part responsible for keeping our crime rate among the lowest in the region. Rocklin is also a center for educational excellence, proudly home to the #1 ranked unified school district in the region—Rocklin Unified. Sierra College and William Jessup University round out higher education choices. Something extra special that makes Rocklin a great place to live, visit or work stems from our caring community. People get involved—and stay involved—by volunteering numerous hours and support in a variety of important ways. And most notable, Rocklin people are nice. It's what sets Rocklin apart and maintains a small-town feel in a mid-size city.

Hang on to this guide, refer to it often to find out what's going on and how you can stay connected to your wonderful community. You can also find the latest information and updates on the City's website at rocklin.ca.gov, or 'like' us on Facebook (City of Rocklin, California Government). Explore and enjoy all that Rocklin has to offer!

Scott Yrill
Mayor, City of Rocklin



Restrictions on Loans

- ▶ Officials cannot receive loans:
 - ▶ from anyone within the official's jurisdiction or with whom the agency contracts; or
 - ▶ greater than \$500 (except in writing and with clear terms)

Exceptions: loans received by the official's campaign committee; normal bank and credit indebtedness; and loans from family members

PERSONAL
LOANS



Solicitations of Political Support

- ▶ Soliciting campaign funds from District officers or employees is unlawful (except when included as part of a communication to a significant segment of the community).
- ▶ Conditioning employment and compensation decisions on political support is also prohibited.



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Part III: Personal Financial Gain



82

Bribery & Extortion

- ▶ Requesting, receiving, or agreeing to receive anything of value, including an “advantage,” in exchange for official action, or using an official position to gain something of value, is a crime.



- ▶ **Penalties:** criminal fines, forfeiture of office and disqualification from office.

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Bribery & Extortion

Mayor resigns after bribery arrest

Mayor steps down. A councilman and the former head of code enforcement are also accused of taking money from a marijuana clinic owner.

Mayor resigned after he, a councilman and a former official were charged in late June with federal bribery in an unfolding corruption scandal, officials said. The Councilmember and the former head of code enforcement, are accused of **taking \$17,000 in bribes from a marijuana dispensary owner** who was working as an FBI informant. **The officials allegedly took the bribes in exchange for their help in opening a store** in the small blue-collar city, according to federal authorities.

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Beverly Hills developer faces federal bribery charge in L.A. County lease deal



Real estate developer was arrested Wednesday on a felony charge of bribing a Los Angeles County employee in exchange for a government lease worth \$45 million, federal law enforcement officials said - May 2018

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Conflicts of Interest Rules

► Political Reform Act

- Government Code § 87100 and following, and the Regulations of the Fair Political Practices Commission (FPPC)

► Contractual Conflicts

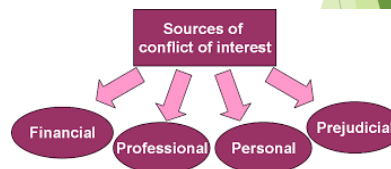
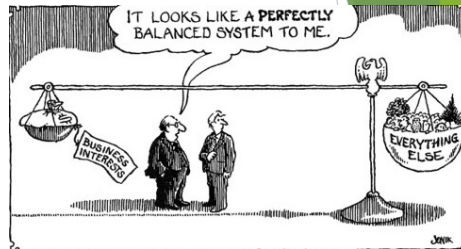
- Government Code § 1090 (FPPC and AG)



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Purpose of Conflict Rules

- ▶ Public officials owe paramount loyalty to the public
- ▶ Personal or private financial interests should not be allowed to enter into the decision making process



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Disclosure of Financial Interests

- ▶ Statements of Economic Interests “Form 700”
- ▶ Purpose:
 - ▶ alert officials of personal interests that might be affected
 - ▶ inform the public about potential conflicts

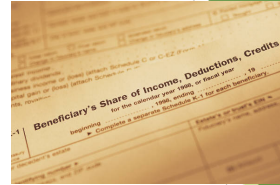


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The Who, What, When and Where of Disclosure

- ▶ **Who?** All “designated” officials.
- ▶ **What?** Interests in real property, investments, business positions, sources of income and gifts.
- ▶ **When?** Upon assuming office, annually (by 4/1), and upon leaving office.
- ▶ **Where?** File with District Secretary, which will send it, if required, to the FPPC. (Online Process as well)

Note: The documents are public records and late filers may face fines or penalties.



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Form 700 Reporting How much was the fine?

FPPC Enforcement Decision:

J. W., as a **Member of the Sunshine Ordinance Task Force** for the City, and failed to timely file the Annual Statement of Economic Interests.



90

Fine: \$200

Can I Participate?

**Conflict-of-Interest Rules
Political Reform Act**



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General Rule of Disqualification

- ▶ A public official may not:
 - make/participate/influence
 - a governmental decision
 - that will have a reasonably foreseeable
 - and material financial effect on
 - the economic interests
 - of the official or his/her immediate family members



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POP QUIZ



The best time to discuss a potential conflict with General Counsel is:

- a) At a meeting because it is convenient and will save money.
- b) After the action/decision so you know all the facts.
- c) As early as possible.
- d) Never, because it's not a privileged communication.

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Recognizing and Seeking Advice

- ▶ The conflict rules and regulations are complex.
- ▶ **Recognizing** potential conflicts is essential.
- ▶ **Talk early** with general counsel and consider seeking advice from the FPPC when economic interests may be affected (positively or negatively) by a decision.



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Five Financial Interest Categories

- ▶ Source of Income
- ▶ Business management, employment or investment
- ▶ Real Property
- ▶ Gifts
- ▶ Personal Financial Effect



96

Economic Interests

► Sources of Income:

Any source of income of **\$500 or more** during the prior 12 months for you or your spouse or domestic partner.



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Economic Interests

How much was the Fine?

FPPC Enforcement Decision:

Assistant City Manager violated the conflict of interest disclosure and disqualification provisions by **failing to disclose his interests in an Orange Julius franchise located in a shopping mall and by participating in decisions relating to a major expansion and restoration of the mall.**



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Fine: \$18,000

Economic Interests *How much was the Fine?*

FPPC Enforcement Decision:

Robert S, a member of a city council, attempted to use his official position to influence a governmental decision in which he had a financial interest, by **speaking before the Planning Commission** regarding the approval of an application for the **subdivision of land owned by a client**.



Fine: \$3,000

Economic Interests

- ▶ **Business management, employment or investment**
 - ▶ Any business entity in which an official is a director, officer, partner, trustee, manager or employee.
 - ▶ Any business entity in which an official has a direct or indirect investment of **\$2,000 or more**.

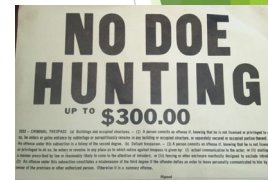


Economic Interests How much was the Fine?

FPPC Enforcement Decision:

Simon L. was on the **City Planning Commission**. Prior to that, he was a member of the Design Review Committee for four years. While serving on the Design Review Committee, Simon L. **twice voted in favor of applications submitted by clients of his architectural firm**, in violation of Government Code Section 87100 (2 counts).

Simon L. **also failed to disclose sources of income on the Statements of Economic Interests** filed for his positions on the Design Review Committee and the Planning Commission in violation of Government Code Sections 87202, 87204, and 87300 (2 counts).



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Fine: \$10,000



QUIZ TIME



Interests in real property are:

- a) A potential ground for a conflict of interest.
- b) Not a conflict if it is your home because of the homestead exemption.
- c) Not a problem as long as your property is more than 500 feet away.
- d) Always a conflict if the property is within the jurisdiction, unless it's a leasehold.

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Newish Real Property Conflict Rules

- ▶ Fair Political Practices Commission (“FPPC”) recently adopted changes to Regulation 18702.2 which provides the materiality standards for interest in real property
- ▶ Changes became effective March 22, 2019
- ▶ Modified the “500-Foot Rule”

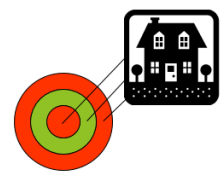


Basic Conflict of Interest Rule is Unchanged

Section 87103 states:

- ▶ “A public official has a financial interest in a decision within the meaning of Section 87100 if it is *reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally*, on the official, a member of his or her immediate family, or on any of the following: ...”

New “500-Foot” Rule



- ▶ Under FPPC Regulation 18702.2:
 - Different depending on the type of financial interest
 - Ownership
 - Leasehold
- ▶ For an official’s financial interest (other than leaseholds), there are 3 categories
- ▶ Broken down by where the official’s property is located in relation to the property that is the subject of the governmental decision

Within 500 feet

- ▶ Where the official's property is located ***within 500 feet*** of property that is the subject of a governmental decision
- ▶ Presumption that a decision within 500 feet of the official's property ***will have a material impact*** on the official's financial interest
- ▶ Public official is ***disqualified*** unless there is clear and convincing evidence to rebut the presumption of a conflict

More than 1,000 Feet Away

Where the official's property is located ***more than 1,000 feet of property*** that is the subject of a governmental decision

- Presumption that a decision more than 1,000 feet of the official's property ***will NOT have a material impact*** on the official's financial interest
- Public official is ***presumed to not have a conflict and may participate*** unless clear and convincing evidence that shows a substantial effect on the public official's property



Between 500 and 1,000 Feet

Under FPPC Regulation 18702.2, a decision involving property between 500 and 1,000 feet will have a material impact on an official's financial interest (other than leaseholds), if the decision would change:

- The development potential of the official's parcel;
- The income producing potential of the official's parcel;
- The highest and best use of the official's parcel;
- The character of the official's parcel by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; **or**
- The market value of the official's parcel.

Leasehold Interests

Under FPPC Regulation 18702.2(c), the reasonably foreseeable financial effects of a governmental decision on any real property in which a governmental official has a leasehold interest as the lessee of the property is material only if the governmental decision will:

- Change the termination date of the lease;
- Increase or decrease the potential rental value of the property;
- Change the official's actual or legally allowable use of the property; or
- Impact the official's use and enjoyment of the property.



Economic Interests

FPPC Enforcement Decision:

A City Councilmember, violated conflict of interest laws by voting to obtain a \$491,520 state grant to extend a water and sewer line to an area of the city where he owned real property and operated an inn and restaurant.

How much was the Fine?



115

Fine: \$4,000

Conflicts Requiring Disqualification - Summary

Ask yourself whether the matter involves:

- ▶ Someone who pays you income
- ▶ Property that you own, lease or have another interest in
- ▶ Your employer
- ▶ One of your investments
- ▶ Someone who has given you a gift
- ▶ Your family's finances

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Effects of Disqualification

If you have a conflict

- Do not participate in any way in the decision
- Do not talk to staff, fellow Directors
- Do not attempt to influence the decisionmakers
- Do not advocate or make public comment
- Do remove yourself from the process entirely

Penalties

If you do not follow disqualification rules:

- Decision could be invalidated
- Offense can be prosecuted as a misdemeanor and conviction could result in loss of office
- Many cases, official faces personal fines of up to \$5,000 to \$10,000 per offense, among other possible penalties
- Attorneys' fees
- Personal and political embarrassment

Economic Conflicts of Interest - POP QUIZ

Wait a minute...don't many of the actions that I participate in have economic benefit to me or my business? How can that be?

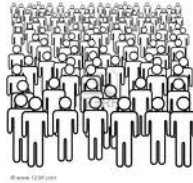


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Exceptions to Potential Economic Interest Conflicts

- ▶ Two exceptions:

- ▶ “Public generally”



- ▶ “Legally required participation”



Public Generally Exception

Decisions that affect a **broad range of persons or interests** may be exempted: 25% of all businesses, all real property, or all individuals.

15% if only real property interest is your home (new 2020)

Example: Water rate decisions



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Legally Required Participation Exception

- ▶ May apply if a conflict disqualifies so many officials that there is no longer a quorum to make a decision.

Note: Does not apply if quorum could be met later.



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Conflicts Created By Future Employment



Delays on the revolving door...

- ▶ May not participate in decisions involving a *prospective* employer (includes interviews and negotiations).
- ▶ Officials and senior management may not represent parties before their former agency for **one year** after leaving office.

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Conflicts Created By Future Employment

FPPC Enforcement Decision:

Kelli M, while acting in her capacity as a member of a **School District Board of Trustees** voted to **approve a contract with the law firm** for legal/professional for an amount not to exceed \$100,000. However, the day before the vote, **Kelli M. had received and accepted a job offer from the same law firm.**

How much was the Fine?



125

Fine: \$4,000

Common Law Conflicts: Personal Interests or Bias

- ▶ Personal interests or biases (positive or negative) about the facts or the parties may cast doubt on your ability to make a fair decision
- ▶ Need to exercise power with actual and the appearance of *disinterested* skill, zeal, and diligence



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Personal Interests or Bias

Procedural due process requires an unbiased decision maker:

- ▶ Personal (non-financial) interest in outcome
- ▶ Bias of loyalty/friendship to individual involved
- ▶ Informational bias due to receiving information outside the public hearing





QUIZ TIME



Will campaign statements disqualify you from voting on an issue after the election?

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Public Interest vs. Personal Interest



City of Fairfield v. Superior Court (1975) 14 Cal.3d 768:

“A councilman has not only a right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance. . . . *Campaign statements...do not disqualify the candidate from voting on matters which come before him after his election.*”

Nasha v. City of Los Angeles (2004) 125 Cal.App.4th 470:

Plaintiff was seeking to develop five lots in Los Angeles. While the matter was pending before the Planning Commission, **one of the Commissioners authored an article attacking the Plaintiff's project.** The Planning Commission voted to deny the project and, in the lawsuit filed by the Plaintiff against the City of Los Angeles, the Court found that *the Planning Commission's decision should be set aside due to an unacceptable probability of actual bias on the part of the Commissioner who authored the article.*

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What Happens If Disqualified?

- ▶ If disqualified:
 - ▶ Identify the applicable interest *with specificity*
 - ▶ Step down from the dais and leave the room
 - ▶ Refrain from any discussion or participation



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Due Process and Ex Parte Contacts

- “Ex parte” communications occur when decision makers receive evidence outside of the noticed hearing
- This can include site visits, speaking with parties/witnesses, conducting outside research, or reading social media
- Because the affected party has a right to comment on the basis for the decision, decision makers should either avoid ex parte contacts, or should disclose any facts gathered outside the hearing or ex parte contacts at the very beginning of the hearing



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Let's Practice

- ▶ Financial interest in development
- ▶ 500 to 1,000 feet
- ▶ Site Visit
- ▶ Discussion with constituent
- ▶ Personal relationship



Contractual Conflicts of Interest Government Code § 1090

- ▶ Section 1090 prohibits **officials and employees** from having **financial interests in contracts** made by them in their **official capacities** or any board of which they are members





Quiz Time



When is it legal to enter into a contract with your agency:

- a) If you use a third-party intermediary (e.g., real estate broker)
- b) If you disclose your interest in advance to the Board and abstain from participating
- c) If you receive only a small payment or get less than fair market value
- d) If you are the best service provider available
- e) Never

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Contractual Conflicts of Interest

- ▶ If a public official or employee has a financial interest in a contract, **the contract is prohibited regardless of whether the official participates in or abstains from the actual decision**



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Avoid These Headlines

Berkeley councilman profited from police chief's public home loan

By Thomas Peele | tpeele@bayareanewsgroup.com

POSTED: 10/02/2015 11:42:21 AM PDT | UPDATED: 4 MONTHS AGO

16 COMMENTS

BERKELEY -- In a move that ethicists call fraught with conflicts and cronyism, a City Council member who voted to give Berkeley police Chief Michael Meehan a \$500,000 housing loan from public funds later worked as his real estate agent and took a commission on the chief's purchase of a home, records show.

Councilman Lawrence Capitelli said he split the nearly \$30,000 commission on the \$1.185 million sale with another



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Violations of § 1090

- ▶ If contract is made in violation of § 1090, the *contract* will be deemed *void*
- ▶ All *monies paid* under the contract *must be returned* to the local agency
- ▶ Willful violations may be punished by fine, imprisonment and disqualification from public office



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Contractual Conflicts of Interest Exceptions

▶ “*Remote interests*” (§ 1091)

(landlord or tenant
of contracting party)

***Still must disclose and
abstain from voting***



▶ “*Non-interests*” (§ 1091.5)

(non-compensated officer
of a non-profit)

May vote

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Part IV: General Ethical Principles

Universal Ethical Values:

- Professional/Trustworthy
- Community First
- Respect
- Fairness



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Ethics Laws vs. Ethics

Law = minimum standards

What we must do

Floor - not the Ceiling

Ethics = What an official should do



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Be Professional

This value looks like:



- ▶ I come prepared to meetings, having read and studied any materials and information provided to me, but with an open mind
- ▶ I respect confidential information
- ▶ I follow through and take responsibility for my actions
- ▶ I keep my knowledge and skills current

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Community First

This value looks like:

- ▶ I make impartial decisions, free of narrow political interests and financial and other personal interests that might impair my independence of judgment or action
- ▶ I comply with both the spirit and the letter of the law (Constitution, State law, County/City Codes, District Regulations and Policies)
- ▶ I do not use District resources or my position for personal gain.



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Be Trustworthy

This value looks like:

- ▶ I act truthfully with the public, District officials, and staff
- ▶ I use accurate information
- ▶ I do what I say I will do
- ▶ I use my title only when conducting official District business, carefully considering whether I am exceeding or appearing to exceed my authority



Be Respectful

This value looks like:

- ▶ I treat people with courtesy and equitably
- ▶ I listen carefully
- ▶ I am engaged - I ask questions
- ▶ I involve staff and counsel early
- ▶ I work towards consensus



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Fairness

This value looks like:

- ▶ I focus on merits not on personalities
- ▶ I promote public involvement
- ▶ I provide more process than required
- ▶ I consider all sides
- ▶ I apply policies consistently



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Final Questions to Ask

- ▶ What would inspire public confidence?
- ▶ What decision best serve the interests of the community as a whole?



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Public Perception

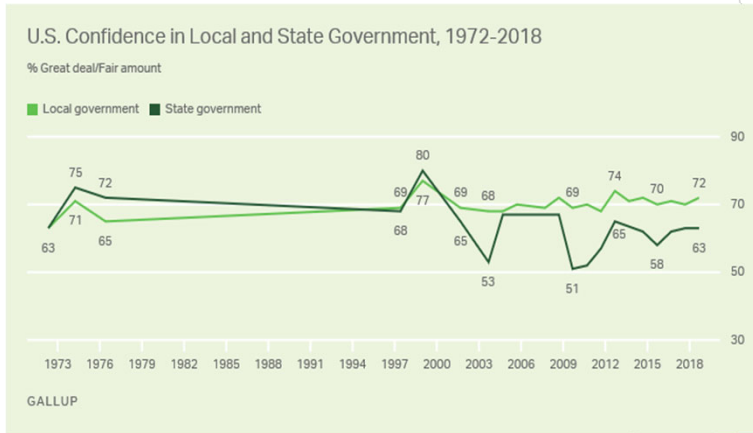
What would you want to read about on the front page?



- ▶ Even if you are confident about the “right thing to do” - Don’t forget about public perception
- ▶ The public needs to believe that “the right thing has been done”



Public Perception



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Resources

- ▶ FPPC: 1-866-ASK-FPPC and on the web at www.fppc.ca.gov
- ▶ Attorney General: www.ca.ag.gov
- ▶ CSDA: <https://www.csdanet.org/home>
- ▶ League of California Cities: www.cacities.org
- ▶ Institute for Local Government: www.ca.ilg.org

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Questions?

Thank You!



burke
BURKE, WILLIAMS & SORENSEN, LLP