SHRA
CHANGING LIVES

SACRAMENTO HOUSING AND REDEVELOPMENT COMMISSION (SHRC)

COMMISSIONER DESK REFERENCE

INSIDE:

WELCOME LETTER

LA SHELLE DOZIER, EXECUTIVE DIRECTOR

Welcome to your new role as one of the eleven Sacramento Housing and Redevelopment Commissioners. We are delighted to have you onboard with the Commission. Whether you are representing the City or County, I look forward to hearing from you all and working with you over the next several years. In this Desk Reference, you will find a wealth of information about the Sacramento Housing and Redevelopment Agency, your role as a Commissioner, and the most current projects we are undertaking. As you begin your role as Commissioner and throughout your appointment, I encourage you to familiarize yourself with this content as it will ease your transition into your new role.

Our mission is to provide affordable housing opportunities, revitalize communities and to serve as the Housing Authority for the City and County of Sacramento. The SHRC is a critical part of that mission and I looking forward to working with you.

La Shelle Dozier

EXECUTIVE DIRECTOR, SHRA

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SHRA OVERVIEW

ABOUT THE SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

SHRA, a joint powers agency, was created to ensure the ongoing development of affordable housing and to continuously fuel community redevelopment projects in the City and County of Sacramento. We meet these goals by creating safer neighborhoods and a more robust economy, so individuals, families and children in our community have the opportunity for a better life. Our work has been recognized among the best in the country by the U.S. Department of Housing and Urban Development (HUD) and others. Every day, our team of over 200 employees secures funding, battles for support, organizes our partners and engages the Sacramento community in a proactive collaboration to change lives.

BELOW: Sacramento's Tower Bridge, a key landmark of the city.

OUR MISSION

SHRA's mission is to provide affordable housing opportunities, revitalize communities and to serve as the Housing Authority for the City and County of Sacramento.

OUR VISION

Our vision for Sacramento is a region:

- *Where all neighborhoods are excellent places to live, work and do business*
- *Where all people have access to decent, safe and affordable housing*
- *Where everyone can obtain a job and attain financial self-sufficiency*

OUR GOALS

To help achieve our Vision, SHRA is working to fulfill these goals:

- *Develop, preserve and finance a continuum of affordable housing opportunities for Sacramento City and County residents*
- *Effectively and efficiently maintain Agency-owned housing by providing tenant-based rental assistance programs*
- *Revitalize lower income neighborhoods to create healthy and sustainable communities*
- *Promote economic development through strategic infrastructure and public facility improvements*

CHANGING LIVES EVERY DAY

Since its formation in 1982, SHRA has been offering people greater stability, opportunity and housing security. Every day, our team secures funding, advocates for support, manages partnerships and engages the Sacramento community in a proactive collaboration to change lives.

We create affordable living, enhance neighborhood safety and help fuel the surrounding economy, so that we're not just providing a safety net but also cultivating the resources that help families and whole communities flourish.

BELOW: SHRA and Habitat for Humanity raise wall at The Avenues project

WHAT WE DO

*We focus our efforts on **five** main areas to achieve our mission:*

1 Affordable Housing

We give our residents the tools and guidance needed to build a life and plan a future. Working with a variety of financing tools, we continuously expand housing opportunities for Sacramento's underserved community and homeless.

We do this through:

- our voucher programs
- rehabilitating and preserving older properties
- constructing new rental and ownership housing
- offering mortgage assistance programs

2 Housing Authority

As one of the largest landlords in Sacramento, we provide safe, decent housing for 50,000 residents. Our staff works around the clock to make sure our properties are well maintained and livable for our residents. We also administer rental assistance for private housing through approximately 13,448 vouchers funded by HUD.

3 Community Revitalization

Through our community revitalization program, we collaborate with various neighborhoods and their residents to enhance the aesthetics of blighted areas resulting in safer communities to live and work. These programs have stimulated investments from the private sector resulting in new jobs and housing opportunities in lower income neighborhoods. We focus our efforts on streetscapes, lighting, parks and community centers, mixed-use developments.

4 Homeless Solutions

We work with public and nonprofit partners to find and implement innovative solutions to provide shelter and assistance with permanent housing for people who are experiencing homelessness. Our programs provide case management, job training, education opportunities and more.

5 Neighborhood Investment

In order to revitalize low income communities, we administer a number of programs, including the Choice Neighborhoods and Promise Zone Initiatives. These programs accelerate job creation in underserved neighborhoods and revitalize commercial corridors for commercial and residential use. We are proud these programs meet the educational needs of low income neighborhoods by creating solutions ranging from increasing basic core competencies at the elementary school level to offering career readiness programs for adults.

QUICK FACTS AND FIGURES

$398.9 MILLION BUDGET
FY 2024

$277.6 MILLION
federal funding support

$24 MILLION
state and local funding

220
employees

$473 MILLION
loan portfolio management

$246.6 MILLION
committed in multifamily loan & mortgage revenue bond issuance assistance for affordable housing in 2023

24,316 UNITS
units financed and monitoring in the past 20 years

2495 UNITS
assisted for new construction, renovation, or in the pipeline

956
homeownership opportunities created

995 HOUSED
homeless families and individuals

50,000 INDIVIDUALS
safely and affordably housed

3,371 UNITS
of affordable housing owned/managed

$181.5 MILLION

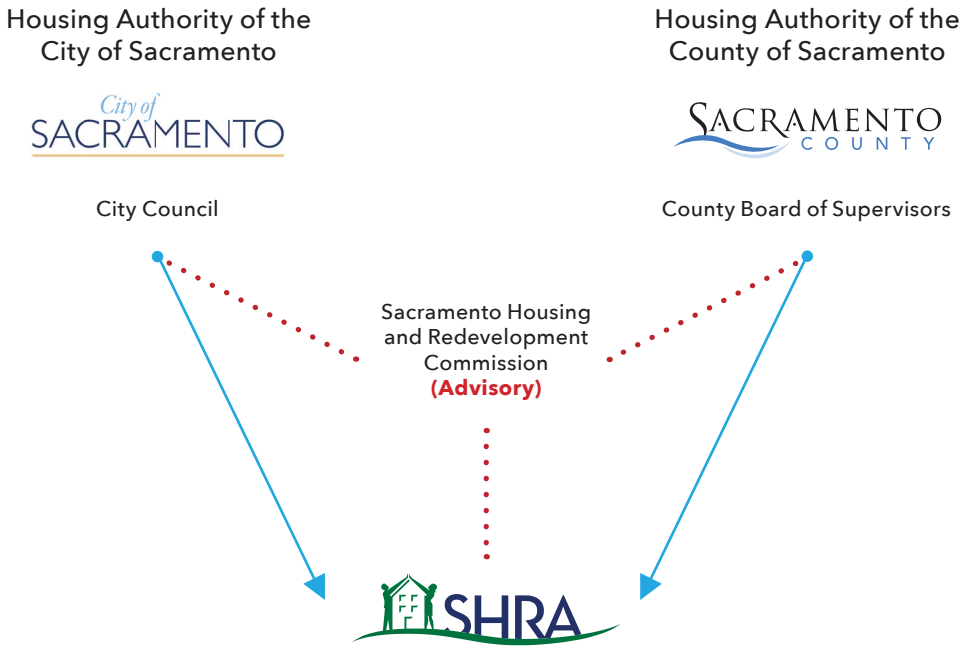
in Housing Assistance Payments (HAP) for 13,448 vouchers

$10.6 MILLION
in Community Development Block Grant funds invested

2,403
senior citizens served through Meals on Wheels programs

SHRA GOVERNING/ADVISORY BOARDS

SHRA has two governing boards: The Sacramento City Council and the Sacramento County Board of Supervisors. Depending on what funds are being used, SHRA brings items for approval to either the City Council, the City Council acting as the City Housing Authority Board, the County Board of Supervisors or the County Board of Supervisors acting as the County Housing Authority Board. The Sacramento Housing and Redevelopment Commission is not a governing board, but instead serves as an advisory board to the City and County.



The City and County officially established the SHRA Commission (SHRC) in 1974. When the SHRC was formed, the City and County retained final approval authority related to the following:

- Budgets
- Policies and procedures
- Auditor contracts
- Job classifications and wage schedules
- Acquisition, disposition or development of property
- Selection of developers
- Project changes or assignments
- Eminent domain actions; and
- Issues brought directly to them by the Executive Director.

JOINT POWERS AUTHORITY STRUCTURE

SHRA is a Joint Powers authority. Due to the JPA structure, SHRA has four governing boards: The Sacramento City Council who also serves as the Housing Authority of the City and the Sacramento County Board of Supervisors who also serves as the Housing Authority of the County. For most matters, the Housing Commission is an advisory board. What this means in a more tangible sense, is that for many items that will come up in Commission meeting, the SHRC will have a chance to weigh in and provide recommendations and those recommendations with be considered by the governing boards when they ultimately provide final approval of an item.

Please see the **Appendix** for the full resolutions which created the JPA.

On October 27, 1981, Resolution No. HA-1497, adopted by the Housing Authority of the County of Sacramento delegated a series of powers to the SHRC. This document contains seven sections and explains the authority of the Commission in detail. Please see the **Appendix** for full Delegation of Powers.

Please refer to the SHRA Organizational Structure section in the appendix to see more about each SHRA department and what it does. If you want to learn more about our organization, please take some time to explore the SHRA website. You'll find information on where residents can find housing, landlord and resident resources, as well as many resources for developers and community members.

SACRAMENTO HOUSING & REDEVELOPMENT COMMISSION (SHRC) OVERVIEW

SHRC ROLES AND RESPONSIBILITIES

You are part of an advisory board! As such, your role differs from members of a governing board.

Some of the Commission's main responsibilities include:

- Provide ongoing review and recommendation regarding proposed SHRA actions prior to final review by the City Council or Board of Supervisors
- Review and make recommendations regarding annual allocations and five-year plans for federal community development and housing funds
- Make recommendations regarding the allocation of funds to affordable multifamily housing development projects

In some cases, the SHRC does have final approval power. This includes approval of the annual plan, Agency schedules of fees and charges, and the annual procurement and solicitation report. These items will be presented to the SHRC in specific SHRA Commission staff reports. Note that this is the only time this specific report template will be used – in all other cases you will casting an advisory vote on a report formatted to move on to the City or County for final approval.

The Commission consists of eleven members:

- Five members are appointed by the City Council.
- Six members are appointed by the Board of Supervisors.
- Of the eleven members, two must be public housing residents and one of those residents must be over the age of 62.
- Of the eleven members, one must have previously experienced homelessness.

Who is my point of contact? What can they help me with?

The Agency Clerk serves as your main point of contact. This person will work with you to facilitate whatever you may need as a Commissioner.

BYLAWS

The Sacramento Housing and Redevelopment Commission operates based on bylaws. The current bylaws were most recently amended on April 5, 2023, and dictate the roles, responsibilities, and functions of the Commission.

A copy of the bylaws can be found in the **Appendix** of this desk reference. An important note: Section 1.2 (a) is no longer in effect. The Commission is no longer tasked with investigating living, dwelling, and housing conditions.

SHRC PROCESSES AND POLICIES - COMMISSION MEETINGS

Meetings

Regular meetings of the Commission are held on the 1st and 3rd Wednesdays of each month (as needed) at 4:30pm.

Meeting Materials

Before each meeting, the central materials you will receive are:

- **Agenda** which describes the items to be discussed at the meeting
- **Staff reports**
  - A staff report is a document which requests authorization of an action or is an informational item for a governing body. Topics can range from a financing affordable housing, the Public Housing Annual Plan, or approval of a grant application – anything that the Commission or governing bodies might need to weigh in on. It is a standardized and structured way to communicate and capture details.
  - Staff reports will often have attachments. This could be things like PowerPoints and written reports.
  - Common staff reports include:
    - SHRC Staff Reports
    - City Council or City Housing Authority Staff Reports
    - Board of Supervisor or County Housing Authority Staff Reports

- **Agenda** which describes the items to be discussed at the meeting
  - A resolution is used by a governing body to authorize actions. An example of how this would work would be that SHRA staff would provide a staff report. Once the SHRC has reviewed the staff report and agrees to the information, they would sign a resolution stating their support for the content of the staff report.

Meeting materials are posted at SHRA.org the Friday prior to each meeting. You will get an email letting you know when that has happened. We ask that you review these materials ahead of the meeting.

What can I expect from a Regular Meeting?[1]

Before meeting: review meeting materials in advance of Regular Meeting. Contact responsible staff in advance to clarify facts and issues regarding matters scheduled for pending meetings

- You will receive an email letting you know when meeting materials have been posted, usually on Friday afternoon or evening.

During meeting: a majority of all members shall constitute a quorum. If there is not a quorum (at a Regular or Special meeting) when all items not requiring a quorum are completed, the meeting shall be adjourned.

- The Agency Clerk will compile the records of any regular or special meeting, including a tally of the votes taken on any matter of business. The Agency Clerk will also record the meeting minutes.
- Meeting are conducted in accordance with the Brown Act and Rosenberg's Rules of Order.
- See the **Appendix** for an overview of Rosenberg's Rules of Order

After meeting: Presentations and approved minutes will be posted to website

[1] Be sure to review the Brown Act to understand the California Laws on public board meeting rules

What can I expect to review throughout the year?

- Commission Elections (Held in January)
- Affordable Housing Financing
- The Public Housing Five Year and Annual Plans
- Housing Choice Voucher (HCV) Administrative Plan
- Public Housing Admissions and Continued Occupancy Plan
- Budget
- Admissions and continuous occupancy policy
- Annual Procurement Solicitation Report
- The Consolidated Plan and Action Plan which covers:
  - Community Development Block Grant
  - HOME (Home Investment Partnership Program)
  - HOPWA (Housing Opportunities for Persons with Aids)
  - Emergency Solutions Grant for Homeless Assistance Programs
  - and amendments, modifications and other administrative requirements of these programs

THE COMMISSION'S ROLE IN DEVELOPMENT

The Commission plays a vital role in reviewing and providing recommendations about how affordable housing is financed by the Development department. As you can see in the overview of the Development department (page 34), our Development team manages, leverages, and administers much of the affordable housing funding for the City and County. As Commissioners, you will be reviewing and providing recommendations about how Federal, State ands Local funds are allocated across projects in Sacramento.

All of our affordable housing projects are structured around having certain units tied to certain income levels. Affordable housing is tied to area median income (AMI). Each year, SHRA programs will set income limits based on AMI.

Units that are designated as affordable serve people who are lower income (typically households who have incomes below 60% of AMI). Projects must commit to reserving a specific number of units for low-income households to

qualify for financing from SHRA. The number of units restricted to low-income households and the affordability level varies by project. In some cases, a whole apartment building will be targeted at a certain AMI level and other times, such as at Mirasol Village, developments will have a mix of market rate and low income units. SHRA's goal is to ensure that the maximum number of units within each development are targeted to low-income households to ensure that households are not paying more than 30% of their income on housing.

In the **Appendix** you will find maps of Low and Moderate income areas in Sacramento for both the City and County.

2021 Sample Income limits

	1 person	Family of four
Extremely low income: 0-30% of AMI	30% = $19,050	$27,2000
Very low income: 30% to 50% of AMI	50% = $31,750	$45,300
Lower income: 50% to 80% of AMI; the term may also be used to mean 0% to 80% of AMI	80% = $50,750	$72,500

As a Commissioner, you will be expected to review and provide recommendations about the following programs as well as ad hoc requests:

	PROGRAM	SHRC'S ROLE
FEDERAL FUNDS	• The Community Development Block Grant (CDBG) • The Home Investment Partnership Program (HOME) • The Housing Opportunities for Persons with AIDS (HOPWA) • The Emergency Solutions Grant (ESG)	• Participate in annual workshops to develop Consolidated Plan and Annual Action Plans • Review and make recommendations
STATE FUNDS	• Homekey • No Place Like Home • + more!	• Review and make recommendations
LOCAL FUNDS	• Housing Trust Fund • Mixed Income Housing Ordinance Funds	
BONDS	• Mortgage Revenue Bonds	

Your onboarding training video provides a more in-depth overview of affordable housing financing programs. Please be sure to review that content to better understand affordable housing financing and SHRA's role.

COMMISSION'S ROLE IN PROCUREMENT

Agency procurement policy requires that all purchase orders and agreements for routine services, supplies and maintenance exceeding $100,000 be approved by the Sacramento Housing and Redevelopment Commission.

Each year, the Commission will review the Annual and Subsequent Years Authorization for Solicitation, Award and Approval of Annual Expenditure Caps and Per Contract Caps for Routine Services. This report covers anticipated services needed during the coming and subsequent years. Any procurement that exceeds $100,000 that is not included in this report or in the adopted budget resolution will be presented individually for approval at a future Commission, City, or County meeting.

The Commissioners will also review any new and updated procurement policies that may be proposed.

SHRC ETHICS AND COMPLIANCE

An important aspect of being a Commissioner is ensuring that we are in compliance with all laws, bylaws, regulations and codes. Commissioners are required to attend biannual ethics training. Please review and refer to the following sections to understand SHRC ethics and compliance.

This information is critical to your role and includes:

- SHRC Commission Code of Conduct
- Brown Act Overview
- SHRA Commission Media Relations Policy
- Form 700 Conflict of interest filing

At a high level, there are some critical things to know about staying in compliance as a Commissioner:

KEY TAKEAWAYS

SHRC COMMISSION CODE OF CONDUCT

- Commissioners shall conduct themselves in accordance with all laws, with civility and respect.
- In your role as Commissioner, you must demonstrate loyalty to the interest of the agency and its residents and programs.
- Additionally, you must recognize and act in accordance with your defined role.
- Commissioners are also not to meet 1-on-1 with organizations seeking to do work with the Agency once a proposal or application has been submitted.

THE BROWN ACT

The Brown Act guarantees the public's right to attend and participate in meetings of local legislative bodies, and as a response to growing concerns about local government officials' practice of holding secret meetings that were not in compliance with advance public notice requirements. A meeting, as defined by the Brown Act, is "any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the legislative body". This includes but is not limited to:

- Group emails
- Informal meetings outside of Commission meetings
- Teleconference meetings

SHRA COMMISSION MEDIA RELATIONS POLICY

- Commission members, as individual members of the community, have the right to make public comment in a private capacity. Commissioners are not prohibited from speaking to the media about Agency issues on which the Commission has officially voted. However, commissioners do not serve as spokespersons on behalf of the Agency. When speaking to the media, commissioners must clearly state to reporters that they are not representing or commenting on behalf of SHRA or its Commission.
- Any Commission member who receives a request for information from a member of the news media must refer the reporter to the Public Information Officer.

FORM 700 CONFLICT OF INTEREST FILING

Each Commissioner will be required to file a Statements of Economic Interests - Form 700 (Form 700) upon appointment, and termination, as well as annually.

For further information, please review Understanding the Basics of Public Service Ethics Laws which is provided in the **Appendix.**

Have a question about a compliance issue? Err on the side of caution and reach out to the Agency Clerk.

CODE OF CONDUCT

The SHRC Code of Conduct requires that the Commission and its members act in an ethical, businesslike, productive, and lawful manner. In order to maintain public confidence in the Agency, even the appearance of impropriety should be avoided. Please review the Code of Conduct, located in the **Appendix** of the document.

BROWN ACT

The Ralph M. Brown Act is California's "sunshine" law for local government and is one of the most important things to understand in your role as a Commissioner. It is found in the California Government Code beginning at Section 54950. In a nutshell, it requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can keep control over their government.

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act definition of the term "meeting" (Section 54952.2) is a very broad definition that encompasses almost every gathering of a majority of Council members.

For further information, please review **Open & Public V A GUIDE TO THE RALPH M. BROWN ACT** as well as the **Summary of the Major Provisions and Requirements of the Ralph M. Brown Act** in the **Appendix**.

SHRC MEDIA POLICY

There may be times that you are asked questions by members of the media. Please review the following policy to understand the Media policy for SHRC.

SHRA
CHANGING LIVES

Sacramento Housing and Redevelopment Agency
POLICY/PROCEDURE INSTRUCTION

TO: Sacramento Housing and Redevelopment Commission

FROM: La Shelle Dozier, Executive Director

SUBJECT: Media Relations

EFFECTIVE: May 1, 2019

Scope and Purpose:

Scope - This policy applies to all members of the Sacramento Housing and Redevelopment Commission (SHRC), a governing board of the Sacramento Housing and Redevelopment Agency (SHRA/Agency).

Purpose - The purpose of this SHRC Media Relations Policy is to establish a protocol for responding appropriately to media inquiries to ensure that all information released to the media is accurate and consistent with the Agency's position, and provided in a timely and efficient manner. This policy is intended to work in conjunction with the Agency's media policy.

Policy:

The Public Information Officer (PIO) is responsible for SHRA's media relations under the direction of the Executive Director. The Executive Director, or her/his designee, shall serve as the media spokesperson on behalf of the Agency.

Commission members, as individual members of the community, have the right to make public comment in a private capacity. Commissioners are not prohibited from speaking to the media about Agency issues on which the Commission has officially voted. However, commissioners do not serve as spokespersons on behalf of the Agency. When speaking to the media, commissioners must clearly state to reporters that they are not representing or commenting on behalf of SHRA or its Commission. Commissioners must clearly state if they are commenting in the capacity of their relationship with some other organization or entity.

FORM 700 CONFLICT OF INTEREST FILING

As a commissioner you are required by the State of California to disclose any conflict of interest.

About the Fair P…P… C… (FPPC)

The Fair Political Practices Commission is a non-partisan state commission that has primary responsibility for the impartial and effective administration of the Political Reform Act. The Act regulates campaign financing, conflicts of interest, lobbying, and governmental ethics. The Commission's objectives are to ensure that public officials act in a fair and unbiased manner in the governmental decision-making process, to promote transparency in government, and to foster public trust in the political system.

What is the Form 700?

Every elected official and public employee who makes or influences governmental decisions is required to submit a Statement of Economic Interest, also known as the Form 700. The Form 700 provides transparency and ensures accountability in two ways:

1. It provides necessary information to the public about an official's personal financial interests to ensure that officials are making decisions in the best interest of the public and not enhancing their personal finances.
2. It serves as a reminder to the public official of potential conflicts of interest (see below) so the official can abstain from making or participating in governmental decisions that are deemed conflicts of interest.

What are Conflicts of Interest?

Under the Act, a public official has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision.

The Form 700 and SHRA Policy require disclosure of the following:

- Investments in business entities (e.g., stock holdings, owning a business, a partnership)
- Interests in real estate (real property)
- Sources of personal income, including gifts, loans and travel payments
- Positions of management or employment with business entities

FPPC Conflict of Interest Filings

Each Commissioner is required to file a Statements of Economic Interests - Form 700 (Form 700) upon appointment, and termination, as well as annually. SHRA has contracted with a firm named Netfile, which allows you to file electronically.

Recusal Requirements

An official with conflict of interest may not make, participate in making, or use his or her position to influence a governmental decision. When appearing before his or her own agency or an agency subject to the authority or budgetary control of his or her agency, an official is making, participating in making, or using his or her position to influence a decision any time the official takes any action to influence the decision including directing a decision, voting, providing information or a recommendation, or contacting or appearing before any other agency official. When appearing before any other agency, the official must not act or purport to act in his or her official capacity or on behalf of his or her agency.

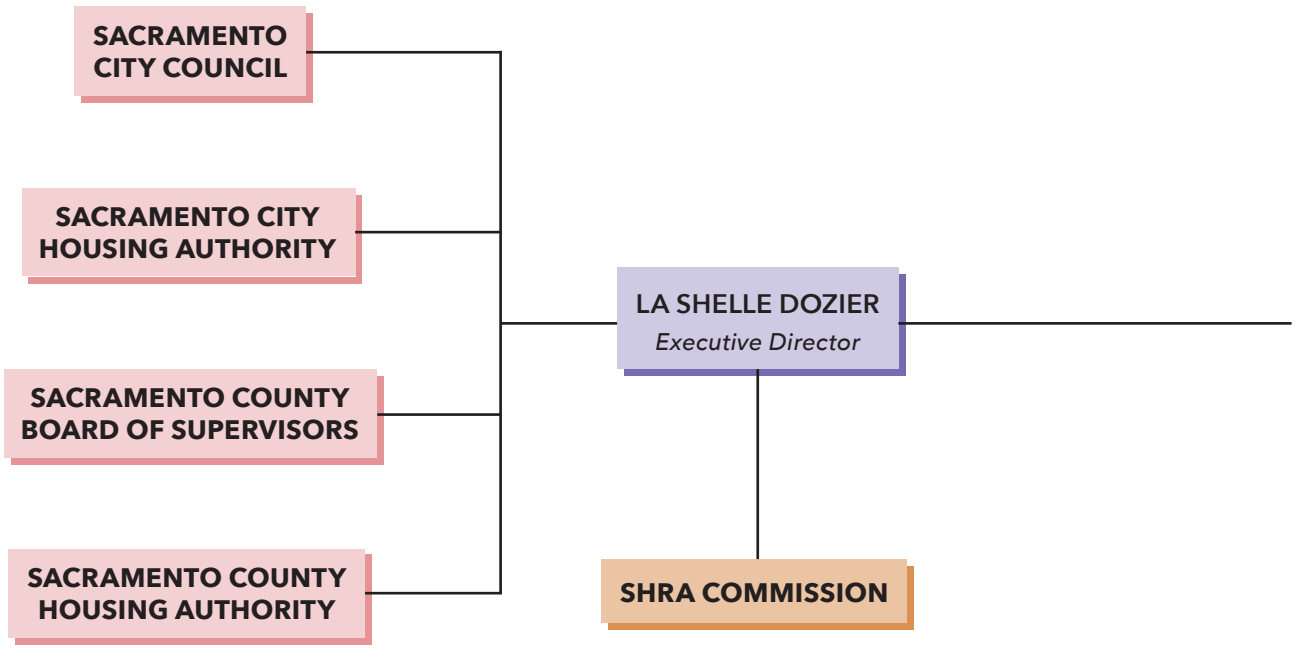
Certain officials (including city council members, planning commissioners, and members of the boards of supervisors) have a mandated manner in which they must disqualify from decisions made at a public meeting (including closed session decisions) and must publicly identify a conflict of interest and leave the room before the item is discussed.

While there are limited exceptions that allow a public official to participate as a member of the public and speak to the press, the exceptions are interpreted narrowly and may require advice from your agency's counsel or the FPPC.

For more information please go to **https://www.fppc.ca.gov/Form700.html**. The reference pamphlet for more information, as well as contact information for the FPPC, in case of additional questions.

SHRA ORGANIZATIONAL FUNCTIONS CHART

GOVERNING BOARDS AND COMMISSION



DEPARTMENTS AND FUNCTIONS

HOUSING

PROPERTY MANAGEMENT

WILMA WILSON
Deputy Executive Director

- Property management and capital planning
- Administration and PHA plans
- Site inspections
- Maintenance

HOUSING CHOICE VOUCHERS

MARYLIZ PAULSON
Director

- Housing Choice Voucher and Public Housing waitlist management and functions
- Owner participation
- Continued voucher coordination

HOMELESS INNOVATIONS

SARAH O'DANIEL
Director

- Homeless services
- Shelters
- Continued voucher coordination
- Outreach
- Service Provider coordination
- Resident Services

DEVELOPMENT

DEVELOPMENT

KECIA BOULWARE
Deputy Executive Director

- Project development
- Development Finance and housing policy
- Home Ownership services
- Compliance monitoring
- Portfolio Management
- Asset Management/Repositioning

ADMINISTRATION

BUSINESS ADMINISTRATION

JAMES SHIELDS
Deputy Executive Director

- Human Resources services
- Labor Relations
- Agency Clerk
- Information Technology
- Procurement services
- Real Estate/Construction
- Graphic design services

PUBLIC INFORMATION

ANGELA JONES
Public Information Officer

- Media and public relations
- Ombudsman office
- Brand identity
- Marketing and communications
- Social media information management

FINANCE

IRENE DE JONG
Director

- Accounting and financial services
- Cash management
- Debt management
- Audit
- Budget
- Rental Assistance Demonstration (RAD) compliance

LEGAL

BRAD NAKANO
General Counsel

- Document preparation
- Legal research and counseling
- Litigation management
- Environmental review
- Risk Management
- Employee Health and Safety

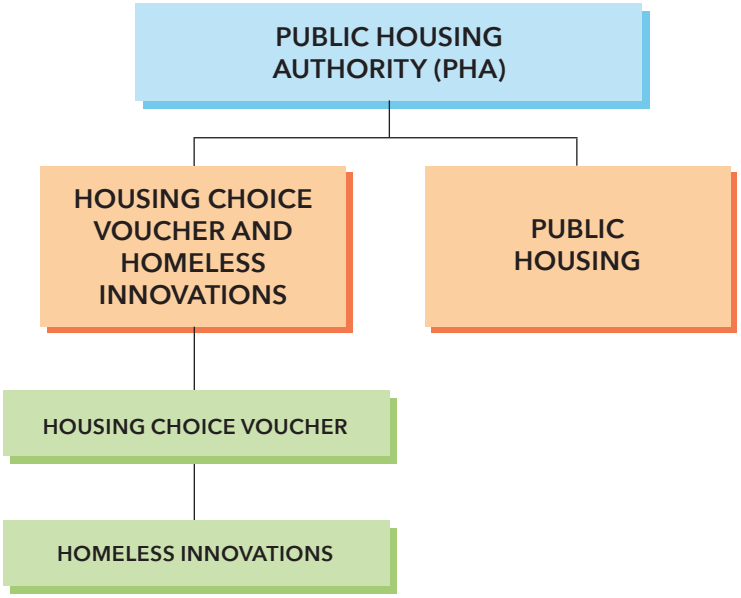
THE ROLE OF SHRA - WHAT WE DO

The role of SHRA is to provide safe, decent housing to Sacramento City and County residents.

PUBLIC HOUSING AUTHORITY (PHA)

The PHA comprises of the Housing Choice Voucher (HCV), Homeless Innovations (HI) and the Public Housing departments.

As staff serve the Housing Authority of both the City and County, your role on the Commission is as Commissioners to the Housing Authority of the City of Sacramento and the Housing Authority of the County of Sacramento.

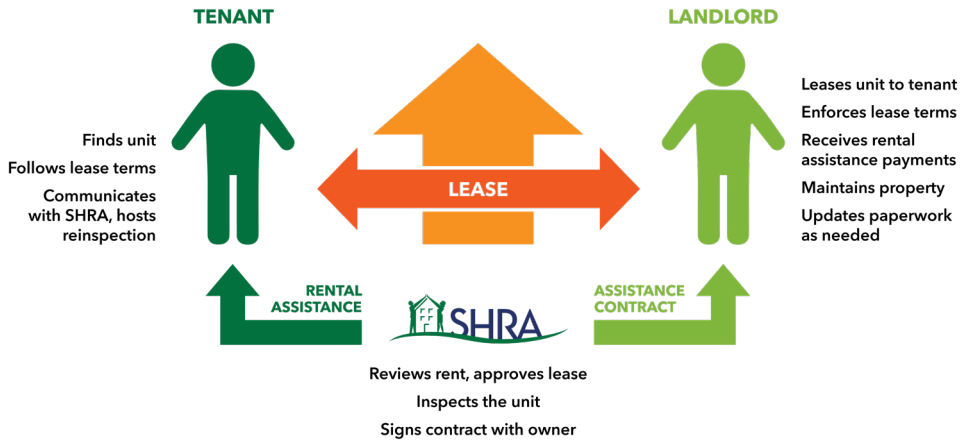


HOUSING CHOICE VOUCHER (HCV) PROGRAM

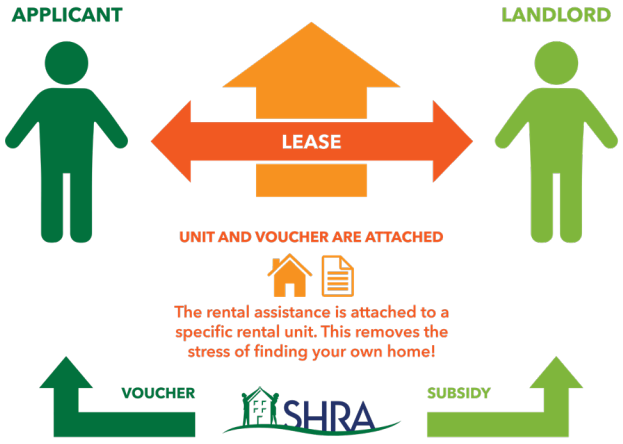
The Housing Choice Voucher program (formerly known as Section 8) is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. In Sacramento, the priority is to house homeless households. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments.

There are two types of vouchers: tenant based and project based.

TENANT-BASED VOUCHERS



PROJECT-BASED VOUCHERS



TENANT-BASED VOUCHERS

How does it work for voucher holders and landlords?

- A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family (a family can consist of one or more individuals). The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.
- The participant is free to choose any housing in Sacramento County that meets the requirements of the program and is not limited to units located in subsidized housing projects.
- A family that is issued a housing voucher is responsible for finding a suitable housing unit of the family's choice where the owner agrees to rent under the program. This unit may include the family's present residence. Rental units must meet minimum standards of health and safety, as determined by the U.S. Department of Housing and Urban Development (HUD).

PROJECT-BASED VOUCHERS

How does it work?

- Project-based vouchers, in contrast, are attached to a specific unit whose landlord contracts with the PHA to rent the unit to low-income families. Therefore, the subsidy is tied to the unit. Families can move after living in the project based unit (for one year) with a tenant based voucher without losing rental assistance if a tenant based voucher is available. If a family in a project-based voucher unit moves out, another low-income family moving in benefits from the rent subsidy it provides.

Who is eligible for a voucher?

Federal rules ensure that Housing Choice Vouchers – whether tenant- or project-based – are targeted at the families who need them most. Seventy-five percent of new households admitted each year to an agency's HCV program must be "extremely low income," with incomes not exceeding 30 percent of the local median or the poverty line, whichever is higher. Other new households may have incomes up to 80 percent of the area median.

How are they administered? How are they funded?

Housing Choice Vouchers are administered by the PHA who receives federal funds from HUD to administer the voucher program. All units are inspected to meet housing quality standards (HQS) prior to move in of the family.

How many vouchers does Sacramento have?

Between all rental assistance program in the HCV and HI departments, the PHA administers rental assistance to more than 13,900 families living in privately owned units. The PHA works with 4,500 landlords to house the families.

What determines how many vouchers we have to administer?

This is determined by HUD based on need and population for each PHA

Since the demand for housing assistance often exceeds the limited resources available to HUD and the local housing agencies, long waiting periods are common. In fact, a PHA may close its waiting list when it has more families on the list than can be assisted in the near future. Currently the PHA has over 35,000 households on various HCV tenant and project based wait lists.

HOMELESS INNOVATIONS

The PHA provides funding and staff resources for the administration of a variety of homeless services. The Homeless Innovations (HI) Department was established in Spring 2020 and oversees homeless initiatives and the rental assistance programs to house the homeless.

The table below captures the homeless programs the PHA oversees and administers.

PROGRAM AREA		PROGRAMS & DETAILS	FUNDING
HOMELESS INITIATIVES	Voucher Programs – Rental Assistance	• Performance Partnership Pilot (P3) • Veterans Affairs and Supportive Housing (VASH) • City/County Referrals • Emergency Housing Vouchers	• Department of Education (Pilot program) • Housing Choice Voucher (HCV) Funds
	Shelter Plus Care - All chronically homeless with multiple disabling conditions. Stably housed with service provider partnerships.	• Tenant-based (525 households) • Boulevard Court (18 individuals) • Shasta Hotel (18 individuals)	• HUD

PROGRAM AREA		PROGRAMS & DETAILS	FUNDING
HOMELESS INITIATIVES	Navigation Centers - Short term temporary shelter housing to homeless households.	• Capitol Park Hotel (adults) • Emergency Bridge Housing (youth) • Meadowview Navigation Center (women) • X Street Navigation Center (adults)	Combination of: • City Funds • State Funds • Federal Funds • Private Funds
RENTAL ASSISTANCE PROGRAM	Sacramento Emergency Rental Assistance (SERA)	• SERA 1 (Round 1) • SERA 2 (Round 2)	

RENTAL ASSISTANCE PROGRAMS

The following are a variety of rental assistance programs focused on housing homeless individuals and families:

- The **Performance Partnership Pilot** or commonly known as the **P3** program provides vouchers to homeless young adults between the ages of 18-24. These individuals are also linked to case management and other supportive services to stabilize in housing. Currently the P3 program is closed to new applicants due to the end of the grant program.
- The **Veteran's Affairs Supportive Housing (VASH)** Program Vouchers combines HCV rental assistance for homeless veterans with case management and supportive services provided by the Department of Veterans Affairs and their partners.
- The PHA also has a strong partnership with the City and County of Sacramento that administer their own homeless programs. With this partnership, households from their programs have case management and are given vouchers to find units in Sacramento County.
- In Summer 2021, HUD allocated 494 **Emergency Housing Vouchers** to the PHA to immediately house homeless households, taking referrals from the Sacramento Continuum of Care. Funds were provided to the PHA to hire housing locators and/or develop a landlord incentive program. The PHA is working diligently to provide vouchers to EHV households and partnering them with PHA housing locators to find units in Sacramento County. A local landlord incentive program was also developed.

- The PHA also administers the **Shelter Plus Care** program serving 575 disabled, homeless individuals and families. This is a budget based program so the total number of households assisted vary annually based on turnover and rental rates in Sacramento County. With this program the certificate is provided to the household and they are partnered with service provider agencies to provide case management services to the family.
- In addition, the Homeless Innovations department administers the **Sacramento Emergency Rental Assistance (SERA)** program with the utilization of Department of Treasury and State funds. This program pays past rent and utilities to landlords and utility companies on behalf of households impacted during the COVID-19 pandemic. $96 million is available in Round 1 and an additional $84 million is available until September 2025 in Round 2. To date, the PHA has disbursed over $73 million to assist approximately 10,000 households with rent and utility payments.

NAVIGATION CENTERS

The PHA also administers 3 navigation centers to temporarily house homeless individuals before transitioning them to stable housing.

EMERGENCY BRIDGE HOUSING
AT THE GROVE

Emergency Bridge Housing

The Emergency Bridge Housing initiative started in June, 2020 and houses youth ages 18-24 in tiny homes where they receive case management, youth related services, mental health assistance and links to employment. Restroom and showers are onsite, and they receive 3 meals a day. First Step Communities is the provider onsite 24 hours a day to provide resources to the youth. Reports on this initiative can be found at:

https://www.shra.org/emergency-housing-and-other-homeless-resources/

MEADOWVIEW
NAVIGATION CENTER

Meadowview Navigation Center

The Meadowview Navigation Center opened in October 2020 and temporarily houses up to 100 homeless women prior to being placed in stable housing. Volunteers of America are on site 24 hours a day and provide case management, health and stabilization services and links women to employment if applicable and housing. Restroom and showers are onsite, along with limited kennels. The women also receive 3 meals a day. Reports on this initiative can be found at:

https://www.shra.org/emergency-housing-and-other-homeless-resources/

X STREET
NAVIGATION CENTER

X Street Navigation Center

The X Street Navigation Center opened in September 2021 and temporarily houses up to 100 homeless adults prior to being placed in stable housing. Volunteers of America are on site 24 hours a day and provide case management, services and links them to employment if applicable and housing. Restroom and showers are onsite, along with limited kennels. The homeless adults receive 3 meals a day. Reports on this initiative can be found at:

https://www.shra.org/emergency-housing-and-other-homeless-resources/

Capitol Park Hotel

The PHA formerly operated a temporary shelter at the Capitol Park Hotel for a 15-month period in downtown Sacramento. This former hotel could house up to 115 guests at one time. Through the 15-month life cycle of the project (July 2019 – October 2020), 428 guests stayed at the shelter and 149 guests found permanent housing. This shelter is now closed and the hotel is currently undergoing significant rehabilitation by Mercy Housing to be converted into permanent supportive housing for the homeless.

PUBLIC HOUSING

Public Housing staff manage approximately 3,200 units of affordable housing. Of this total, about 2,700 are part of the Public Housing Program, approximately 270 are affordable units funded with tax credits and local funds, and approximately 230 are units owned by the Sacramento Housing Authority Repositioning Program Inc. (SHARP) and managed by Public Housing staff. Approximately 12,000 people are served by this program.

Our Public Housing Stock is a diverse portfolio across many neighborhoods with varying on-site amenities and target populations.

PUBLIC HOUSING SPOTLIGHTS

Alder Grove

Alder Grove is a large, single site community comprised of 360 multi-family units located within the Upper Land Park neighborhood in the historic New Helvetia district. Units range in size from 1 bedroom to 5 bedrooms, and from single to multi-story units. The community is home to one of the Agency's most innovative programs, the Community Car Share program. The Community Car Share program is the first in the nation! The program allows residents of the Alder Grove to utilize electric vehicles for up to 3 hours at a time, 3 times a week for free. Chargers for the vehicles are located on the property. It also has SETA Daycare and After-school activity facility, community rooms, playground area and a basketball court.

Gibson Oaks

Gibson Oaks is a quaint, senior/disabled community comprised of 80 one-bedroom units located near North Sacramento's Historic Del Paso Boulevard. With interior hallways, each of the four 2-story buildings has assessable elevator and walk-up access. Buildings encircle lush greenery and meandering walkways throughout the community. The heart of the community boasts a fragrant resident-nurtured rose garden and a clubhouse with lounge and pool table.

Walnut Grove

Walnut Grove is a quaint community comprised of 8 multi-family units located within the City of Walnut Grove. The City of Walnut Grove is located to the south of Elk Grove. Units are all 3-bedroom townhouse-style units. This scenic, remote community is located within the City of Walnut Grove, which is historically one of the oldest original settlements along the Sacramento River. Within walking distance of the local library, and the elementary school.

SUPPORTING OUR PUBLIC HOUSING RESIDENTS THROUGH OPPORTUNITIES FOR SELF-RELIANCE AND SUCCESS

As a part of our Public Housing Authority role, SHRA provides critical support for our Public Housing resident's that promotes **Resident Pathways to Self-Sufficiency. This includes:**

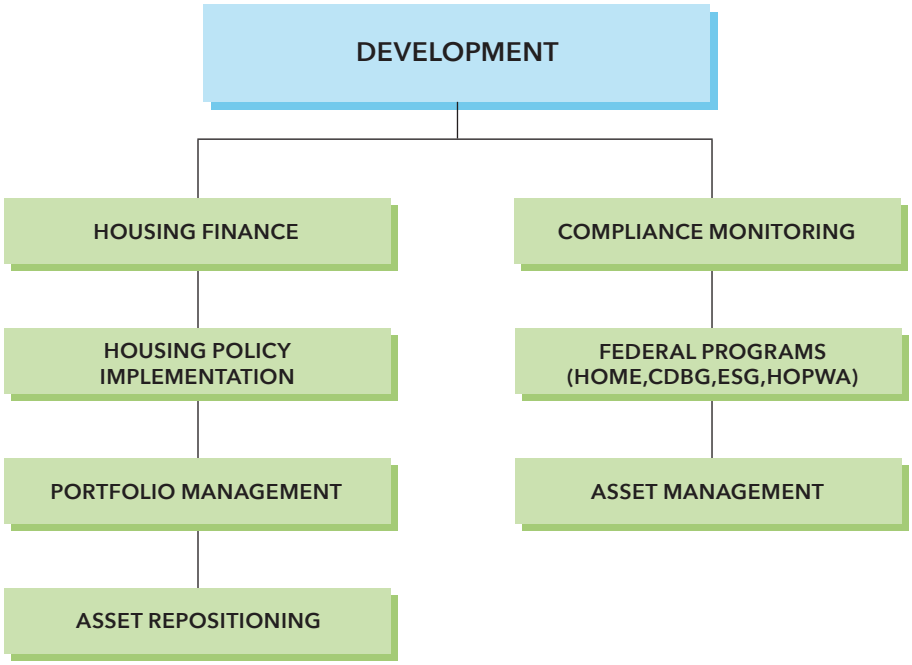
Supportive Service Programs - SHRA provides population-specific supportive services in our Public Housing communities. This can range from support for the elderly, mental health services, and other critical on-site support services.

Resident Training program - The Resident Training Program was designed as a resource for Public Housing residents to move towards self-sufficiency through on-the-job training in the clerical, janitorial and painting disciplines. The program emphasizes not only technical skills such as office skills, and proper ways to clean and paint, but how to become a reliable, productive employee that has a positive work ethic and is well positioned to function in a professional work environment.

Section 3 - Economic Opportunity Plan HUD requires that SHRA ensure that employment, recruitment, and training are directed to public housing residents and other low-income persons to the greatest extent feasible. SHRA Staff are implementing a long-term plan to provide job training, employment and contracting opportunities for residents.

Resident Opportunities for Self Sufficiency (ROSS) and Family Self-Sufficiency Program (FSS) - The Family Self-Sufficiency (FSS) Program is open to families participating in both the Public Housing Program and the HCV Program who are seeking to increase employment opportunities, education and financial stability. Program participants entering the FSS program work with a case manager to develop goals that will, over a 5-year period, lead to self-sufficiency. These goals may include education, specialized training, job readiness and job placement services, or career advancement objectives. Once goals are established, each participant signs a contract confirming their commitment to meeting these goals. Upon successful achievement of all goals outlined in the contract, the family becomes eligible to receive funds deposited into an escrow account on their behalf throughout the family's participation in the FSS program. The amount of escrow in the account is based on increases in the family's earned income during the term of the FSS contract. Participants have utilized these funds to purchase a home, fund additional educational activities, or other activities designed to facilitate their transition to full employment and financial self-sufficiency.

DEVELOPMENT



The **Development Department** is comprised of three divisions, Federal Programs, Development Finance (Compliance/Portfolio Management, Housing Finance & Policy Implementation), and Asset Repositioning/ Management. The Development Department is responsible for identifying real estate development opportunities that will increase the number of affordable housing units and the preservation/rehabilitation of the agency's existing housing stock. It also is responsible for coordinating funding from Federal programs, reviewing and funding mixed financing for development projects and new initiatives.

The **Federal Programs Division** works with various stakeholders to bring about positive change through investments in targeted neighborhoods. The primary responsibility of the division is to effectively manage U.S. Department of Housing and Urban Development grants on behalf of to the City and County of Sacramento including Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grant (ESG), and Housing Opportunities for Persons with AIDS (HOPWA).

The **Development Finance Division** invests public funds in construction and rehabilitation projects that expand and preserve the supply of affordable housing and home ownership opportunities. In addition, the department oversees the implementation of affordable housing ordinances for both the City and unincorporated County of Sacramento. The department ensures that investments maintain their value over time by monitoring the Agency's loan portfolio for fiscal performance and for regulatory compliance. Staff conduct annual on-site inspections of housing projects for quality standards.

The **Asset Management Division** consists of non-profit asset management and asset repositioning. The goal of non-profit asset management is to develop and implement long-term strategies for the preservation and operations of the nonprofit affiliate corporations respective real estate portfolio including the Sacramento Housing Authority Repositioning Program (SHARP) Inc, Norwood Avenue Housing Corporation (Norwood), Shasta Hotel Corporation (Shasta). This includes overseeing financial, compliance, and capital improvement plans. The overall objective is to maximize resources to provide a market leading rental experience for our residents.

The **Asset Repositioning Division** working with the Housing Authority has developed an asset repositioning strategy for long term operation, capital investment, rehabilitation, modernization, disposition, and other needs for its inventory. These projects were funded and built when housing and neighborhood conditions were far different from those today. Although they were built with expiring affordability restrictions, it was assumed that these developments would remain affordable housing resources for many future generations. Many of these projects are aging and have critical capital needs. The risk to the portfolio is significant without a comprehensive, sustained effort by the housing authority and its partners that is designed to ensure the preservation and affordability of these housing units.

PORTFOLIO MANAGEMENT AND COMPLIANCE

SHRA's job is not done just once a project is funded. SHRA also ensures that affordable units remain affordable and adequate for residents. We monitor units for compliance.

Managed	• 2024 - $845M portfolio of 845+ loans
Processed	• Provided calculations and prepared invoices for the Supplemental Annual Administrative Fee for 34 multifamily bond developments.
Completed	• Annual audit confirmations for 105 multifamily developments in 2024 • CA Debt Limit Advisory Committee (CDLAC) Certifications on 85 Mortgage Revenue Bond Projects in 2024
Monitored	• Resident services at multifamily properties • Compliance of over 953 single family home loans in 2024
Audited	• Approx. 2186 tenant files annually, ensuring compliance with income eligibility and property management procedures

Your onboarding training video provides a more in-depth overview of affordable housing financing programs. Please be sure to review that content to better understand affordable housing financing and SHRA's role.

FUND INC.

SHRC Board members also serve as the board members for Fund Inc.

What is FUND, Inc.?

FUND, Inc. stands for the Foundation Uniting Needs and Dollars. It was created in 1983 as a charitable organization which can receive donations to support SHRA activities. It is primarily funded through SHRA employee donations, but anyone is free to donate.

What kind of activities does FUND, Inc. support?

FUND, Inc. has a primary interest in funding activities that benefit public housing/housing choice voucher residents and clients of Agency sponsored programs. Preference is for activities which cannot be funded by other SHRA programs or funding sources. A few examples of how this fund was used in the past include:

- To provide educational scholarships for residents of public housing and participants in the Family Self-Sufficiency (FSS) program.
- To provide security deposits for homeless veterans through the Veteran's Affairs Supportive Housing (VASH).
- To provide materials associated with STEM learning for high school age students.
- To assist program participants with bus passes and gas vouchers to attend job interviews.
- To host workshops on self-sufficiency.

How are the funds distributed?

At least once a year, a Request for Proposals (RFP) is issued asking staff to submit proposals for activities which promote and support the activities and programs of the Sacramento Housing and Redevelopment Agency participants. The employees who contribute to this fund make up the committee that reviews the proposals and recommends how the funds are to be distributed each year. The recommendations are then brought before the Board of Directors (the Sacramento Housing and Redevelopment Commission) for approval at the end of the year.

The full list of Fund. Inc. materials can be found at the end of the **Appendix**.

CURRENT PROGRAMS AND INITIATIVES

BOOK OF PROJECTS

To view all of SHRA's current, upcoming, and completed projects, please review the **SHRA Book of Projects.** This is a great way to understand what SHRA is focusing on and building in our community. The complete Book can be found on the Agency's website.

https://www.shra.org/book-of-projects/

NOTABLE PROJECTS

MIRASOL VILLAGE COMMUNITY DEVELOPMENT PROJECT

Sacramento Housing and Redevelopment Agency (SHRA) is leading the transformation effort to redevelop the Twin Rivers public housing community and its surrounding River District neighborhood. When complete, this historically isolated area will be fully connected to new transit, employment centers, services, retail and cultural amenities creating a vibrant gateway to downtown Sacramento.

Twin Rivers, (formerly known as Dos Rios), was a 218-unit housing development on 22 acres that was first built in the 1940's on 12th Street just south of Richards Boulevard. The community was one of the first developments in the County of Sacramento's public housing inventory. The site was cut off from the surrounding area by railroad tracks, levees and rivers, with limited roads, transit or sidewalks to reach nearby neighborhoods. The infrastructure and buildings at Twin Rivers had also reached the end of their useful life.

In 2012, as part of a long-term strategic response to these issues, the Housing Authority of the County of Sacramento (HACOS) through SHRA was awarded a $300,000 Choice Neighborhoods Planning Grant from the U.S. Department of Housing and Urban Development (HUD) to develop a Neighborhood Transformation Plan for the larger River District/Railyards neighborhood. The Transformation Plan set forth a comprehensive blueprint of the neighborhood, housing, and people strategies essential to realize the collective vision for this community. In 2015, SHRA, in partnership with the City of Sacramento, was awarded a $30 million Choice Neighborhoods Initiatives (CNI) Implementation Grant to carry through on the vision of transformation.

In 2019, the development project was renamed Mirasol Village. The new name and theme were selected through a collaborative process that included Twin Rivers residents, River District business leaders, community members and city council staff. Collectively, it was decided that the new community would have strong references to nature. Mirasol is the Spanish word for sunflower. The streets are named for butterflies and in addition to a new 1.2 acre city park, there will also be a 2/3 acre community garden, fruit tree orchard and garden learning center and an Early Childhood Education Center.

ABOVE & RIGHT: Exterior and interior views of the newly completed units at Mirasol Village.

The key transit feature will be a new Sacramento Regional Transit Light Rail Blue Line Station made possible by a California Strategic Growth Council grant and complemented by sidewalks and bike lanes and physical connections across the American River to Downtown. The entire District will be bordered by parks and trails at the river's edge. SHRA also received grant funding through the California Department of Housing and Community Development, The Department of Developmental Services, and the California Natural Resources Agency.

The Mirasol Village neighborhood will include up to 489 affordable, workforce, and market-rate units, including one-for-one replacement of the previous public housing units. All units have been designed with resource efficient, high-quality features.

The River District is becoming the best of Sacramento urban living with access to natural settings and healthy activities and proximity and transportation to Downtown and employment centers.

Residents will also be able to take advantage of Mirasol Village's other mobility-friendly features, including:

- EV charging stations and car share program on site
- SacRt Smart Ride program offering scheduled curbside pick-up and drop off
- Close to a new bike lane connecting to downtown and the American River Trail
- New sidewalks, bus shelters and traffic signals

PROJECT TIMELINE

- **Summer 2020:** Building Construction begins
- **Winter 2021:** New Light Rail station construction begins
- **Spring 2022:** First Phase New Units ready for Occupancy
- **Spring 2022:** Mirasol Village Park and Community Garden open to the public
- **2024:** Final Project Completion

RENTAL ASSISTANCE DEMONSTRATION PROGRAM (RAD)

The Housing Authority of the City and County of Sacramento ("Housing Authority") is composed of 2712 public housing units throughout the City and County of Sacramento. These units are vital to providing critical housing to low and very low income residents. The housing stock is rapidly aging, the federal government has not adequately funded public housing programs over the last seventeen years, and the local demand for affordable housing continues to increase.

Sacramento will utilize the Rental Assistance Demonstration Program ("RAD") to convert all properties with five or more units to the RAD Program. The Agency will leverage private debt and equity in conjunction with its Capital Improvement funds to address over $58 million of deferred maintenance issues.

In September 2018, the Housing Authority submitted applications to the US Department of Housing and Urban Development (HUD) to initiate conversions under RAD. In December 2018, HUD approved the first component of the RAD conversion (RAD 1 Pilot Program) which includes 124 units in the City and County areas of the agency's portfolio.

What is RAD?

The RAD program was initiated in 2012 to help Public Housing Authorities (PHAs) convert its properties to more viable housing programs. HUD determined that the configuration of the Public Housing program was not sustainable; resulting in a capital needs backlog in the nation's public housing inventory of over $26 billion. RAD allows PHAs to convert public housing to long-term, Project-based Section 8 rental assistance developments.

What are the benefits of RAD Conversions?

Converting properties to RAD allows PHAs to access private debt and equity that is not permitted in traditional public housing to address immediate and long-term capital needs. RAD conversions also allow PHAs to improve resident living conditions while at the same time not increasing resident rents beyond 30% of a households' adjusted gross income. Residents' rights and basic public housing protections remain in place while they also have greater mobility as a result of being on the Project based Section 8 Voucher platform.

SACRAMENTO HOUSING AUTHORITY REPOSITIONING PROGRAM, (SHARP) INC.

SHARP

The Edge in Sustainable Communities

SHARP The Corporation was formed on June 2, 2009 to benefit and support the City of Sacramento, the County of Sacramento, the Housing Authority of the County of Sacramento (HACOS), and the Housing Authority of the City of Sacramento (HACS) and its purposes by (1) acquiring, providing, developing, financing, rehabilitating, owning and operating decent, safe and sanitary housing affordable to persons and households of low income and by (2) assisting HACOS and HACS in combating blight and promoting social welfare through community based development activities.

The Corporation serves as the general partner of entities that will own, rehabilitate and operate former public housing properties acquired through the Department of Housing and Urban Development's (HUD) asset disposition process. The purpose of the Corporation is to allow the HACS and HACOS to leverage private sector capital to make improvements to housing inventory removed from the federal Public Housing program through HUD's asset disposition process. Assets transferred to the Corporation will be rehabilitated through various financing structures including the use of limited partnerships that will be able to benefit from the use of tax credit financing.

The Corporation is governed by a five-member board of directors who are appointed by the Executive Director of the Agency. The board of directors approved the Corporation's annual budget and amendments to the Articles of Incorporation and Bylaws. Pursuant to the Corporation's Bylaws, the Executive Director of the Agency can remove members of the board of directors with or without cause.

LEFT: 2526 L Street, 1318 E Street, & 2300 K Street - downtown high-rises under SHARP

SACRAMENTO PROMISE ZONE (SPZ)

Sacramento Promise ZONE
Connecting partners and resources

On April 28, 2015, the U.S. Department of Housing and Urban Development announced that Sacramento received a Promise Zone designation. The Promise Zone designation creates a partnership between federal, state and local agencies to give local leaders proven tools to improve the quality of life in some of Sacramento's most vulnerable areas. SHRA leads the Promise Zone initiative for Sacramento. Sacramento is one of eight Promise Zones in the country announced in the second round of designations from 123 applicants in 36 states, including Washington DC and Puerto Rico, and the only recipient in Northern California.

As a Promise Zone, Sacramento receives significant benefits including priority access to federal investments that further local strategic plans, federal staff on the ground to help implement goals, and five full time AmeriCorps VISTA members to recruit and manage volunteers and strengthen the capacity of the Promise Zone partners.

8 YEARS
since federal designation

$181 MILLION +
awarded to organizations in the Promise Zone

150 +
partners

APPENDIX

APPENDIX

CONTACT INFORMATION & SOCIAL MEDIA LINKS

SHRA CONTACT INFORMATION

Executive Director's Office

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Lira Goff, Executive Director's Assistant, 916-440-1319, lgoff@shra.org

Agency Clerk's Office

Amber Alexander, Agency Clerk, 916-440-8544, aalexander@shra.org

Public Information Officer

Angela Jones, Public Information Officer, 916-440-1355, ajones@shra.org

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Housing Choice Voucher Program

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Homeless Innovations/Intergovernmental Affairs/SERA

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Stephanie Green, Program Manager - Federal Programs, 916-440-1302, sgreen@shra.org
Victoria Johnson, Assistant Director – Mirasol Village, 916-440-1388, vjohnson@shra.org

SHRA WEBSITE, SOCIAL MEDIA AND LIST SERVE ACCOUNTS

SHRA website: www.SHRA.org
Sacramento Promise Zone: https://www.sacramentopromisezone.org/
Facebook: Facebook.com/SacramentoHousingAndRedevelopmentAgency/
Twitter: @SHRAhousing
Instagram: Instgram.com/shrahome/
Youtube: https://www.youtube.com/channel/UCVJeKfDIfYIsp7q11onrhnQ
Linkedin: Linkedin.com/company/sacramento-housing-and-edevelopment-agency/
SHRA Listserve (to receive regular updates on SHRA housing activities – use link below to sign up)

https://visitor.r20.constantcontact.com/manage/optin?v=001HYpmOih6Jv_JIf8Wnt5IfN8w8eVHIagG1nYLqFjjxbR30QFm6PjnK69quzB1CndTg-4zBGbMCk0O6xTMDwBQLwHIXm_lIj0LiRP5ZGute5Y%3D

FREQUENTLY USED ACRONYMS AND TERMS

GLOSSARY OF AGENCY ACRONYMS

CRA = Community Reinvestment Act

CSBO = Community Services Block Grant

DBRA = Davis-Bacon and Related Acts

DDA = Disposition and Development Agreement

DEG = Drug Elimination Grant

DHA = County Department of Human Assistance

DRIPB = Design Review and Preservation Board

DOL = U.S. Department of Labor

DRFR= Disaster Recovery Grant Reporting

EDA = Economic Development Administration (U.S. Department of Commerce)

EDD = Employment Development Department (of the State of California)

EDI = HUD Economic Development Initiative

EIR = Environment Impact Report

EIS = Environmental Impact Statement

ENA = Exclusive Negotiations Agreement

ERN = Exclusive Right to Negotiate (Agreement)

ERP = Emergency Repair Program

ESG = HUD Emergency Solutions Grant (formerly Emergency Shelter Grant)

FHA = Federal Housing Administration

FHAP = Fair Housing Assistance Program

FHDP = Family Housing Demonstration Project

FHIP = Fair Housing Initiatives Program

FIC = Family Investment Centers

FMR = Fair Market Rent

FNMA = Federal National Mortgage Association

FSS = Family Self Sufficiency Program (public Housing/Section 8)

FTE = Full time equivalent

FUND, INC. = Foundation Uniting Needs & Dollars, Inc.

HACOS = Housing Authority of the County of Sacramento

HACS = Housing Authority of the City of Sacramento

HAPS = Housing Assistance Payments (Section 8)

HARP'S = Home Assistance and Repair Program for Seniors

HCD = (State Department of) Housing and Community Development

HCV = Housing Choice Vouchers

HEARTH = Homeless Emergency Assistance and Rapid Transition to Housing

HHS = (U.S.) Department of Health and Human Services

HOHAP = Home Ownership Home Assistance Program

HOME = Home Investment Partnership Program

HOPE = Home Ownership and Opportunity for People Everywhere

HOPWA = Housing Opportunities for Persons with Aids

HPRP = Homeless Prevention and Rapid Re-Housing

HQS = Housing Quality Standards (Section 8)

HTF = Housing Trust Fund

HUD = (U.S. Department of) Housing and Urban Development

IDB = Industrial Development Bond

IDIS = Integrated Disbursement and Information System

IFAS = Interactive Fund Accounting System (Financial Software)

IFB = Invitation for Bid

IPA = Individual Project Agreement

JPA = Joint Powers Agency

JTPA = Job Training Partnership Act

LIHPRHA = Low-Income Housing Preservation and Resident Homeownership Act

LIIHTC = Low-Income Housing Tax Credit

L/M = Low/Moderate

MCC = Mortgage Credit Certificate

MHSA= Mental Health Services Act

MOA = Memorandum of Agreement

MOU = Memorandum of Understanding

MPA = Master Project Agreement

MRB = Mortgage Revenue Bond

M/WBE = Minority/Womens' Business Enterprise

NAHA = National Affordable Housing Act

NAHRO = National Association of Housing and Redevelopment Officials

NCCT = Northern California Construction Training

NEPA = National Environmental Policy Act

NFTE = National Foundation for Teaching Entrepreneurship

NOFA = Notice of Funding Availability (usually from HUD)

NOI = Net Operating Income

NPO's = Neighborhood Police Officers

NSP = Neighborhood Stabilization Program

OEOC = Office of Equal Opportunity in Construction

OMB = (U.S.) Office of Management and Budget

OPA = Owner Participation Agreement

PBV = Project Based Vouchers

PBID = Property Based Improvement District

PDA = Predevelopment Agreement

PEPRA= Public Employees Pension Reform Act of 2013

PEMHCA= Public Employer Medical and Hospital Care Act

PFS = Performance Funding System

PHA = Public Housing Authority

PHAS = Public Housing Assessment Program

PHDEP = Public Housing Drug Elimination Program

PHMAP = Public Housing Management Assessment Program

PIC = Private Industry Council

PIDA = Public Improvements Development Agreement

PM/HQS = Preventive Maintenance/Housing Quality Standards Program

RCHC = Rural California Housing Corporation

REAC = Real Estate Assessment Center

RESPA = Real Estate Settlement Procedures Act

RFP = Request for Proposals

RFQ = Request for Qualifications

RFQ = Request for Quotes (Qualifications)

RHCP = Rental Housing Construction Program

RMDZ = Recycling Market Development Zone

ROP = Regional Occupation Program

ROPS = Recognized Obligations Payment Schedule

ROSS = Resident Opportunities and Self Sufficiency

SACTO = Sacramento Area Commerce and Trade Organization

SAEOC = Sacramento Area Emergency Housing Center

SEMAP = Section 8 Management Assessment Program

SETA = Sacramento Employment and Training Agency

SHLCC = Sacramento Home Loan Counseling Center

SHP = Supportive Housing Program

SHPO = State Historic Preservation Office

SHARP = Sacramento Housing Authority Repositioning Program

SHRA = Sacramento Housing and Redevelopment Agency

SHRAEA = Sacramento Housing and Redevelopment Agency Employees Association

SMUD = Sacramento Municipal Utility District

SRO = Single Room Occupancy

TABS = Redevelopment Agency Tax Allocation Bonds

TCAC = Tax Credit Allocation Committee (State of California)

TI = Tenant Improvements

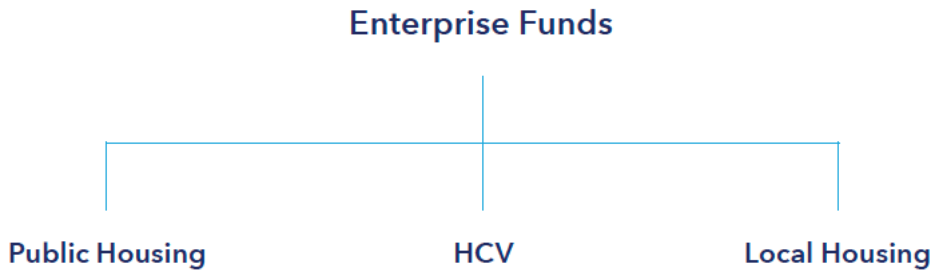
URP = Utility Reimbursement Payment

VASH = Veterans Affairs Supportive Housing

VE = Value Engineering

SHRA BUDGET

MAJOR REVENUES



Governmental Funds

CDBG

HOME

Capital Fund

Housing Trust Fund

Choice Neighborhoods Initiative

Shelter Plus Care

Riverview Plaza

ENTERPRISE FUNDS

Public Housing Operating Subsidy

The Housing Authority owns and/or manages a total of 3,371 units of affordable housing under its Public Housing Program for over 7,600 extremely low, very low, and low-income persons, including children, seniors, and disabled individuals.

The Public Housing Program provides 1,797 apartments, duplexes, and some single-family homes to qualified low-income families. There are 1,257 units in the City of Sacramento, and 647 units in the County of Sacramento. This housing is owned, managed, and maintained by the Housing Authority, making it one of the largest landlords in Sacramento County.

Local Housing Projects

The Housing Authority also owns and manages 271 affordable units comprising of tax credits funded projects, and other local and state funded projects.

Additionally, the non-profit arm, Sacramento Housing Authority Repositioning Program Inc. (SHARP), owns and manages three project-based voucher high-rise properties consisting of 231 elderly-only units, 274 scattered-site project-based units, and 603 Rental Assistance Demonstration (RAD) and/or project-based units, which are managed by Housing Authority staff.

Housing Choice Voucher Program (HCV)

The Housing Choice Voucher (formerly Section 8 Housing Assistance) program is funded by HUD through Annual Contribution Contracts (ACC). The Agency administers this program on behalf of the Housing Authority of the County of Sacramento. The HCV program permits the applicant to obtain housing in the private rental market using housing vouchers.

The program participants pay a portion of their income (typically approximately 30% of adjusted gross family income) to the owner and the remaining rental amount is paid by the Housing Authority. Participants can utilize their voucher anywhere in the City or County of Sacramento, or outside the County of Sacramento where there is a Housing Choice Voucher Program.

Revenue estimates are based on anticipated funding from HUD in the form of Housing Assistance Payments (HAP) and Administrative Fees (AF). Revenue is tied to the Leasing of Vouchers. Currently, the Housing Authority has 13,448 vouchers authorized for leasing each month. Despite the Agency being entitled to maximum funding for the program, HUD intentionally provides less funding than required to cover HAP costs in an effort to recapture accumulated HAP reserves from public housing authorities across the country.

HCV Administrative Fee

Funding eligibility is based upon the number of units leased within the Housing Authority's authorized voucher allocation. Once eligibility is determined, HUD uses a formula to determine administrative fees for the Agency. For 2019, the Agency received $113.95 per unit for the first 7,200-unit months leased and $106.35 per unit on all remaining unit months leased. HUD then applies a proration to the formula to reduce fees paid so that the administrative fees paid to the housing authorities match the appropriations provided by Congress. Currently, Congress has not approved a budget and so there is a Continuing Resolution in place to keep the government operating.

GOVERNMENTAL FUNDS

Community Development Block Grant (CDBG)

This is a federal entitlement program provided to communities annually for the benefit of low-income persons through housing improvement, public improvements, economic development, public service, and elimination of blight conditions. Areas of Sacramento which are low-income, and experience physical blight have been selected for targeted CDBG assistance in the areas of capital improvements, housing preservation and renovation, and economic development and commercial revitalization activities. These funds must be used to augment but not replace local funds and responsibilities. CDBG 2024 revenues are anticipated to be consistent with the prior year's allocations.

Home Investment Partnership Program (HOME)

The Agency administers the HOME program on behalf of the City and County of Sacramento as well as the City of Citrus Heights through a consortium agreement. This program provides for the preservation and expansion of affordable housing to very-low and low-income people. Housing developers and sponsors (both for-profit and non-profit) apply to SHRA for funding. HOME funds assist families in purchasing their first home, renovate deteriorating housing developments, and assist in special housing programs.

Capital Fund Program (CFP)

The Capital Fund Program (CFP) is a HUD program that provides funding specifically intended for the development, financing, modernization, and management of improvements for properties owned under the HUD public housing program. Funds are allocated annually via a formula. The Agency receives funding for the public housing properties owned by the City and County Housing Authorities.

Housing Trust Funds (HTF)

The Agency administers Housing Trust Funds on behalf of the City and County of Sacramento. The City and County of Sacramento adopted ordinances in 1989 and 1990 respectively, for the purposes of generating fees for the development of affordable housing near employment centers. Fees collected from non-residential developments are deposited into the Housing Trust Fund and are used to fund affordable housing projects that are intended to serve the low-income workforce employed by the commercial businesses in the surrounding area

Choice Neighborhoods Implementation Grant

In 2015, the Agency and the City of Sacramento received a $30 million Choice Neighborhoods Implementation Grant (CNI) to redevelop the distressed Twin Rivers public housing community and revitalize the Sacramento River District- Railyards neighborhood. Sacramento was one of five recipients. The proposal included the one-for-one replacement of the existing 218 units, additional workforce and market rate units in a mixed income housing development, and a public park off-site. The new development will be named Mirasol Village.

During 2016 and 2017, predevelopment planning and coordination activities began in earnest in preparation for breaking ground. Additional predevelopment activities included preparing entitlement application and environmental clearance documents for both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

In 2019, the Agency completed resident relocation and full demolition of the former Twin Rivers project. The Agency received multiple funding sources for Mirasol Village, which included funding for new infrastructure and construction of the development. Revenues will fluctuate annually since they are drawn based upon actual construction related expenditures.

Shelter Plus Care Program

This program is a rental assistance program that provides housing assistance to homeless disabled individuals and families. These families are also linked to supportive services with case management from local service providers to keep the families stable in housing. The McKinney Vento Homeless Assistance Act established the legislative authority to fund homeless programs nationwide. The Agency applies for the funding through a local competitive process to receive the funds from HUD.

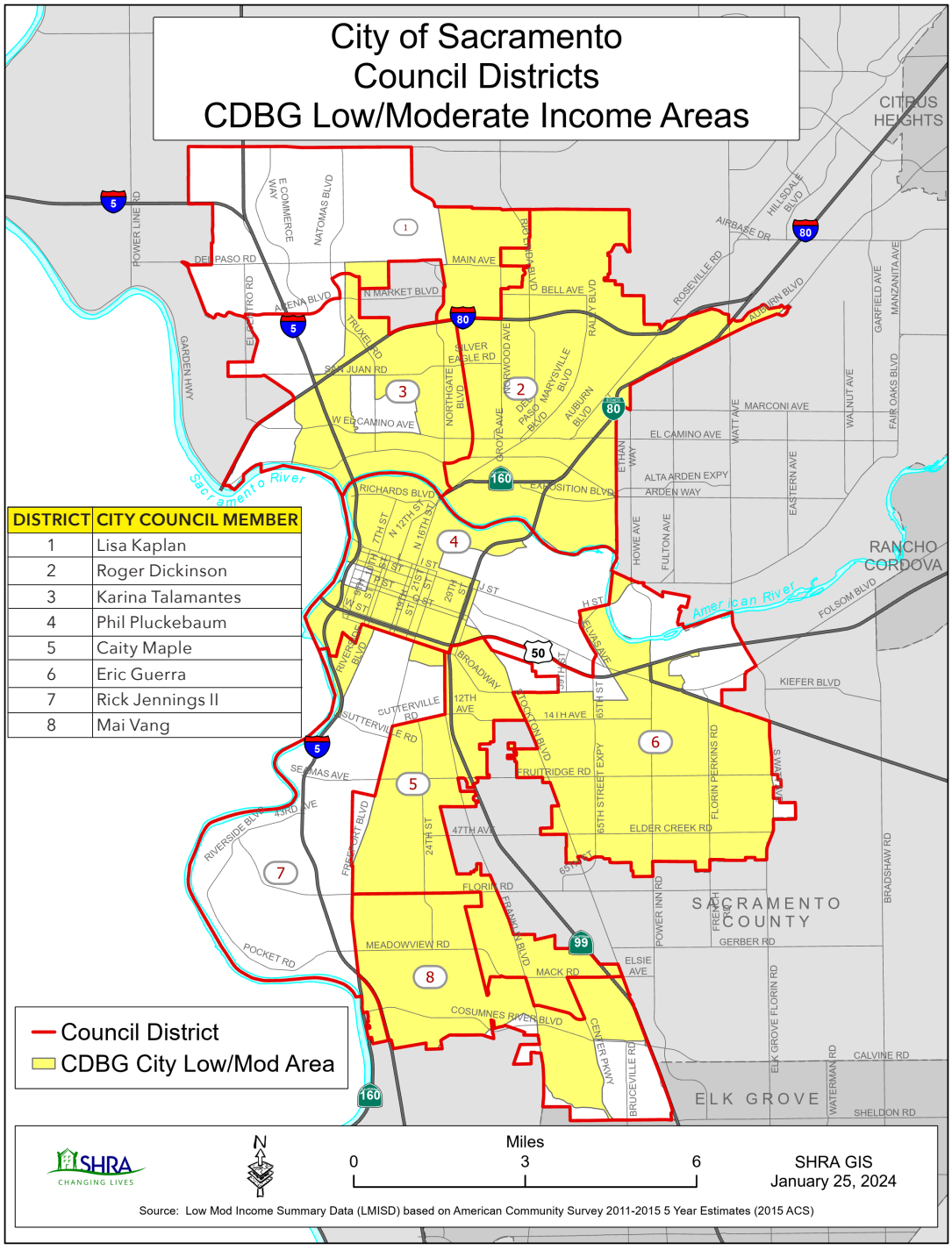
The Agency currently administers three Shelter Plus Care programs, one is a tenant-based program where families find a rental unit anywhere in Sacramento County, one is based at the Shasta Hotel, and the remaining is at Boulevard Court, a rehabilitated motel which was converted into one and two bedroom units.

Riverview Plaza

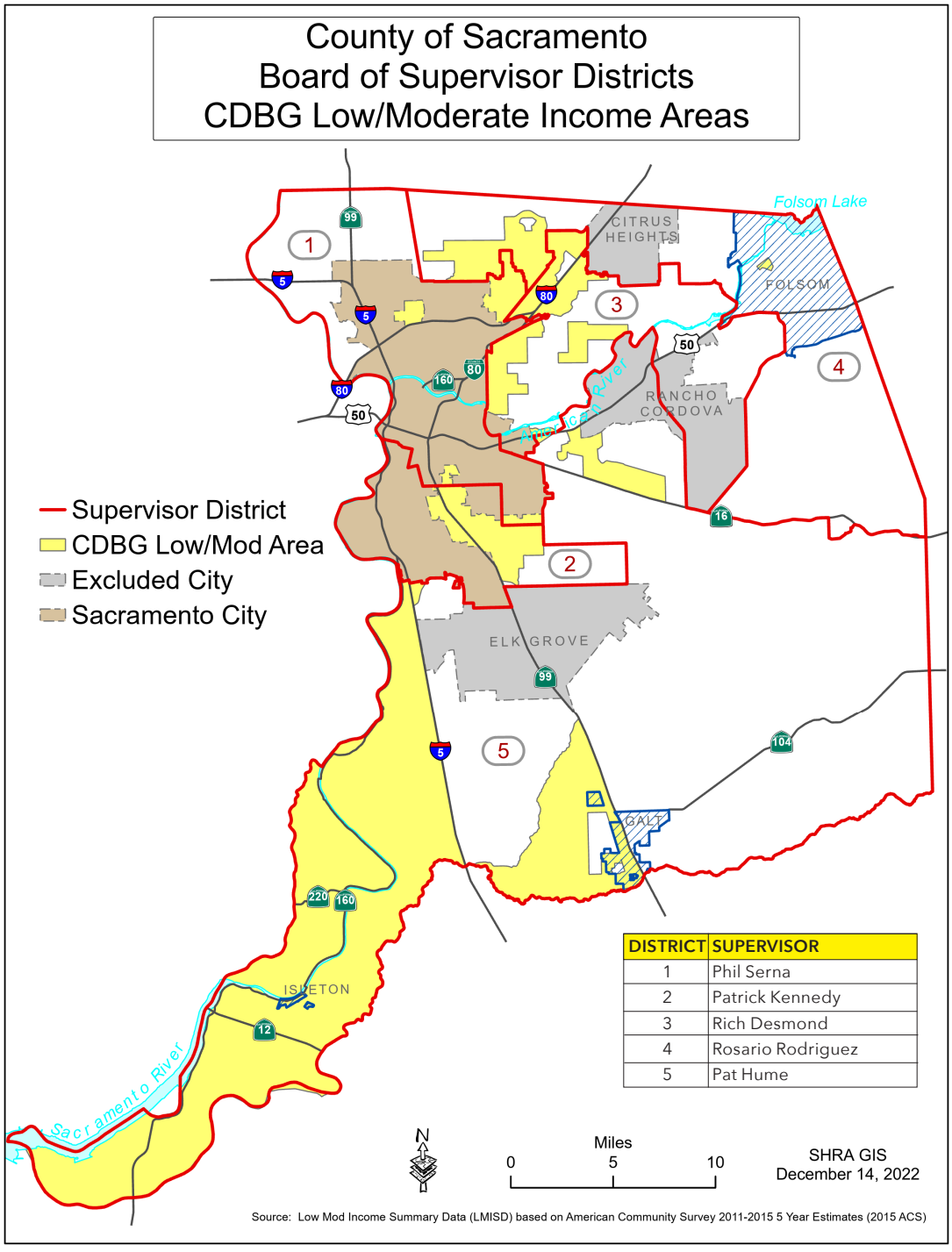
Riverview Plaza is a mixed-use development located at 600 I Street in downtown Sacramento. Office and retail tenants occupy approximately 24,800 square feet on the first two floors. Vacant office space occupies approximately 16,000 square feet, with the balance occupied by a day-care center, hair salon, and vacant retail space. The residential portion of the building (floors 3-16) consists of 123 affordable one-bedroom senior apartments, a two-bedroom manager's apartment, and common areas including a large commercial kitchen, dining area, and swimming pool.

The development was constructed in 1988 and placed in service as a nine percent Low Income Housing Tax Credit (LIHTC) project in 1989. The residential owner, Riverview Plaza Associates, a California Limited Partnership, is now comprised of the Housing Authority of the City of Sacramento (with a 99% interest), and a nonprofit general partner, Sacramento Housing Development Corporation (with a 1% interest), for which the Sacramento County Board of Supervisors serves as the Board of Directors.

CITY OF SACRAMENTO LOW AND MODERATE INCOME MAP



COUNTY OF SACRAMENTO LOW AND MODERATE INCOME MAP



Sacramento Housing and Redevelopment Commission

CODE OF CONDUCT, DUTY OF LOYALTY, AND ETHICS POLICY

TO: The Sacramento Housing and Redevelopment Commission

FROM: La Shelle Dozier, Executive Director

POLICY SUBJECT: Agency Code of Conduct, Duty of Loyalty, and Ethics Policy

EFFECTIVE: April 3, 2019

Scope - This policy applies to all members of the Sacramento Housing and Redevelopment Commission).

Purpose - The purpose of this Policy is to outline expectations for ethical and responsible behavior and related legal requirements.

Policy: As a public agency, we are committed to acting in the best interest of the communities and clients whom we serve. We have the same expectation of our Commissioners and employees. Therefore, the Sacramento Housing and Redevelopment Commission has established this Code of Conduct
Commissioners to make themselves aware of requirements related to the conduct of business at the Agency.

The Commission Members' Conduct and Role

The Commission and its members shall act in an ethical, businesslike, productive, and lawful manner. Commission members should avoid even the appearance of impropriety to ensure and maintain public confidence in the Agency.

Specifically:

a) Commission members shall conduct themselves in accordance with all laws.

b) Commission members shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public.

c) Commission members are expected to demonstrate loyalty to the interests of the Agency and its residents and programs. This supersedes any conflicting loyalty such as that to advocacy or interest groups and membership on other Commissions, boards, or staffs.

d) Commission members may not attempt to exercise individual authority over the organization except as explicitly set forth in Commission policies.

i) Commission members must recognize the lack of authority vested in them as individuals in their interactions with the Executive Director or with staff, except where explicitly authorized.

ii) Commission members must recognize that a Commissioner's responsibility is not to make the day to day management decisions of the Agency, but see that it is well run by carrying out policy making, planning, and appraisal functions, and by providing direction and taking formal action in support of these functions.

iii) In their interactions with the public, press or other entities, Commission members should recognize the same limitation and the inability of any Commission member to speak for the Commission or for other Commission members except to repeat explicitly stated Commission decisions.

e) Commission members shall at all times endeavor to express their individual opinions in a responsible manner, without causing harm to the Agency, to the Agency's governing boards, the public and residents, or to other Commission members and Agency staff.

i) Each member of the Commission is expected to support the legitimacy and authority of the decisions of the Commission concerning any matter, irrespective of the member's personal position.

ii) Commission members retain the right to criticize the decisions of the Agency, but in doing so shall make it clear that it is their opinion, and not the opinion of the Commission or other Commission members, and so long as it complies with the limitations set forth in these

policies. Commission members are encouraged to notify the Executive Director in advance when they plan to speak publicly in opposition to Agency decisions and policies.

iii) Commissioners must first refer all complaints, including any personal criticisms, to the Executive Director, and only after failure of administrative solution, then pursue such matters outside the Commission, recognizing the individual rights of a Commissioner as a citizen appointee and the responsibility such appointment implies.

f) Commission members should prepare themselves for Commission deliberations.

g) Commission members shall discourage former Commission members from attempting to influence the Commission, individual Commission members or staff, on behalf of any third party (other than a governmental entity) from whom the former Commission member is receiving compensation, on any matter that the former Commission member substantially participated in during his or her tenure with the Commission.

(h) Commission members are to make decisions in terms of the most economical and efficient method toward the best interests of all citizens, particularly those of low-and moderate income. Decisions will provide an equal opportunity to all citizens regardless of race, creed, religion, sex, gender orientation or identification, national origin, age, disability, or English language proficiency.

(i) Commission members are not to meet one-on-one with potential developers, contractors, funding or program applicants once a proposal, application, or other similar submission has been made to the Agency. Such one-on-one contact while the contract is pending by applicants, third parties, or higher level officials has the appearance of bias and unduly influencing the decision-maker. If there is such one-on-one contact, the communication must be made a part of the record and shared with all of the applicants.

(j) Commission members should seek and maintain an equitable, honorable, and cooperative association with fellow public housing officials and all others who are concerned with the proper and professional management of public housing developments.

Ethical Conduct

The Sacramento Housing and Redevelopment Commission will comply with all federal, California and local Conflict of Interest, Duty of Loyalty, and Ethics laws.

(a) California. Two California laws must be considered in analyzing a potential conflict of interest: the Political Reform Act and Section 1090. Additionally, the California Public Contract Code has prohibitions against self-dealing and conflict of interests in procurement activities.

i) More specifically, California Health and Safety Code Section 34328.2 prohibits members of any housing authority governing board or commission to have any direct or indirect interest in any housing project or property (including maintenance, materials, supplies, etc.).

(b) Federal. In addition to the various California ethical and conflict of interest statutes and regulations, HUD addresses conflicts of interests in each of its programs. For example, the Housing Choice Voucher Program conflict provisions may be found at 24 CFR 982.161; the HOME program, 24 CFR 92.356; and, for CDBG at 24 CFR 570.611.

i) Federal procurement as it applies to housing authorities and non-federal program grantees is now consolidated in the Uniform Administrative Requirements for State and Local Governments (2 CFR 200): Conflicts of Interest- The Agency, including its Commissioners, must disclose in writing any potential conflict of interest in violation.

HUD's Annual Contribution Contracts.

All Commissioners and Housing Authority staff shall be bound by the following Ethical Standards which are from the U.S. Department and Urban Development's (HUD) Public Housing Annual Contributions Contract (ACC):

(a) In addition to any other applicable conflict of interest requirements, neither the housing authority nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under this ACC in which any of the following classes of people that housing authority has an interest, direct or indirect, during his or her tenure or for one year thereafter:

i) Any present or former member or officer of the governing body of a housing authority, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant Commissioner who does not serve on the governing body of a resident corporation, and

who otherwise does not occupy a policymaking position with the resident corporation, the housing authority, or a business entity.

ii) Any employee of the housing authority who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

iii) Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the housing authority.

(b) Any member of these classes of persons must disclose the member's interest or prospective interest to the housing authority and HUD.

(c) The requirements of this may be waived by HUD for good cause, if permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract to which the waiver pertains.

(d) The provisions of this subsection shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

(e) Nothing in this section shall prohibit a tenant of housing authority from serving on the governing body of the housing authority.

(f) The Agency may not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

i) Any present or former member or officer of the governing body of the Agency. There shall be excepted from this prohibition any former tenant Commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the Agency.

ii) Any employee of the Agency who formulates policy or who influences decisions with respect to the project(s).

iii) Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the Agency.

(g) The prohibition shall remain in effect throughout the class member's tenure and for one year thereafter.

(h) The class member shall disclose to the Agency and HUD the member's familial relationship to the prospective employee. The requirements of this subsection may be waived by the Commission for good cause, provided that such waiver is permitted by State and local law.

(j) For purposes of this section, the term "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative or as a "half" or "step" relative, e.g., a half-brother or stepchild).

Annual Certification and Form 700 Disclosure.

Separate and apart from this Code of Conduct, Duty of Loyalty and Ethics Policy, the Agency has a separate Conflict of Interest Code as required by the California Policy Political Reform Act (California Government Code §81000 et seq.).

Commission members are required to certify and acknowledge their understanding of and their compliance with these policies and codes. In addition, Commission members must submit disclosures as specified in Form 700 each April 1 for the prior calendar year.

BY-LAWS OF THE SACRAMENTO HOUSING AND REDEVELOPMENT COMMISSION

AS AMENDED ON APRIL 5, 2023

Article I

THE COMMISSION

Section 1.1 Name of the Commission

The name of the commission shall be the Sacramento Housing and Redevelopment Commission in accordance with Sacramento City Ordinance No. 3444, adopted September 30, 1974, and Sacramento County Ordinance No. 184, adopted September 30, 1974.

Section 1.2 Functions of the Commission

The general functions of the Sacramento Housing and Redevelopment Commission include, but are not limited to, the following:

a. Investigate living, dwelling, and housing conditions and the means and methods of improving such conditions;
b. Determine where deteriorated conditions exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income;
c. Make studies and recommendations relating to the problems of clearing, replanning, and reconstruction of deteriorated areas and of providing dwelling accommodations for persons of low income;
d. Cooperate with the City, the County, the State, the Federal government, or any of the political subdivisions of the State inaction taken in connection with such problems;
e. Engage in research, studies, and experimentation on the subject of housing;
f. Make recommendations to the Housing Authority for changes or revisions in policies of the Housing Authority;
g. Review and recommend contracts for site selections, improvements, construction, and property appraisals or leases for any proposed Housing Authority projects or programs;
h. Review and recommend revisions to personnel policies and procedures;
i. Review and recommend action on annual administrative and operating budgets;
j. Prepare and make recommendations on applications to the Federal and State Governments for funds for housing and other programs;
k. Recommend urban renewal and redevelopment and contemplated actions for necessary improvements;
l. Screen and recommend purchasers and developers for land to be disposed of by the Agency;

m. Review and approve developer's plans for construction on such land and make recommendations thereon to this Agency;
n. Review and recommend contracts for services;
o. Review and recommend contracts for site improvements, construction, and property appraisals;
p. Review and recommend annual Community Development Block Grant program, HOME (Home Investment Partnership Program), HOPWA (Housing Opportunities for Persons With Aids), Sacramento Steps Forward, SRO Collaborative, Homeless Prevention & Rapid Re-Housing, Senior Nutrition Program, Emergency Shelter Program, and all amendments, modifications and other administrative requirements of these programs;
q. Perform such other advisory and appellate functions as may be delegated from time to time to the Commission by the Agency, Housing Authority of the City of Sacramento, Housing Authority of the County of Sacramento, City Council and Board of Supervisors.
r. The following items will be noticed and placed on the agenda at the Commission for final action. All other items will move on to the appropriate governing board. The items that will be heard at the Commission for final action include The Housing Choice Voucher Administrative Plan, the Public Housing Admissions and Continued Occupancy Plan (ACOP), The Public Housing Five Year and Annual Plans, the Capital Fund Five Year Plan and subsequent annual updates, purchasing policies, annual procurement solicitation report, and other matters as may be assigned from time to time by the Agency governing boards.

Section 1.3 Governing Board

The Commission, in addition to its advisory duties as set forth in Section 1.2 hereof, shall also serve as the governing board of the "Sacramento Housing and Redevelopment Agency", a joint powers agency created by and between the City of Sacramento, the County of Sacramento, the Housing Authority of the County of Sacramento, the Housing Authority of the City of Sacramento, and the Redevelopment Agency Successor Agency of the City and County of Sacramento pursuant to that certain Joint Powers Agreement dated April 20, 1982, as it now exists and from time to time may be amended. All meetings of the Commission shall be concurrent meetings of the Commission in its advisory role and the Commission as governing board of the joint powers agency. Any action of the Commission which is memorialized by resolution shall be deemed to be an action of the Commission as governing board of the joint powers agency to the extent necessary to give effect to the intents and purposes of the action so taken.

Section 1.4 Main Office

The main office of the Commission shall be known as the Sacramento Housing and Redevelopment Agency, 801 12th Street, Sacramento, California 95814.

Section 1.5 Commission Members

Appointment

With the exception noted below, the Commission shall consist of eleven (11)members who shall be appointed as follows:

a. Five (5) members shall be appointed by the Mayor with the approval of the City Council; one of the five members appointed by the Mayor shall be selected from the resident population of the Housing Authority of the City of Sacramento. The resident commissioner shall be 62 years of age or older.

b. Six (6) members shall be appointed by the Board of Supervisors of the County; one of the six members appointed by the Board of Supervisors shall be selected from the resident population of the Housing Authority of the County of Sacramento.

Term of Office

The term of office of each member shall be four (4) years.

Vacancies

Vacancies occurring during a term shall be filled for the unexpired term by the appointing authority or authorities. A member shall hold office until his successor has been appointed and qualified.

Compensation

Each member shall receive compensation in an amount determined by the governing authorities for each Commission meeting attended. The term "compensation" as used herein shall mean compensation received by said member from both the City of Sacramento and the County of Sacramento for services as a member of the Commission. Any member may waive compensation by filing a written waiver of compensation form with the controller for the Agency.

Section 1.6 Seal

The Seal of the Commission shall be in the form of a circle and shall bear the name of the Commission and the year of its organization.

Article II

OFFICERS

Section 2.1 Officers

a. The Chairperson and Vice Chairperson shall be elected each year by the Commission at the first regular meeting in the month of January. They shall take office immediately and serve until their successors have been elected.

b. Whenever there is a vacancy during the term of the Chairperson or Vice Chairperson, notice shall be given to the members of the Commission that an election shall be held within thirty (30) days from the date of such vacancy. The newly elected Officer shall serve for the remainder of the unexpired term.

Section 3.1 Regular Meetings

Commencing April 19, 2023, regular meetings of the Commission shall be held on the 1st and 3rd Wednesdays of each month (as needed) at 4:30 p.m. at 801 12th Street, Sacramento, California. The time, place, and agenda of the meetings will be posted on the public bulletin board in the Agency's offices at 801 12th Street, Sacramento, seventy-two (72) hours prior to the meeting date and time.

Section 3.2 Special Meetings

A special meeting shall be called when necessary to review items that are non-routine and may require substantial review. Final action may be taken or recommendations made on any item scheduled for this meeting. Special meetings may be called by the Chairperson or a majority of the members of the Commission, and notice and agenda shall be posted 24 hours in advance.

Section 3.3 Change in Meeting Time or Place

The meeting time and/or place of a regular or special meeting may be changed by a majority vote of the members of the Commission at any duly noticed regular or special meeting. Any such change will be posted on the public bulletin board in the Agency's office at 801 12th Street, Sacramento, California, 24 hours prior to the meeting date.

Section 3.4 Annual Meeting

This first regular meeting of the month of January of each year shall be the Annual meeting ofthe Commission and shall be for the purpose of electing officers and conducting other necessary business.

Section 3.5 Quorum

A majority of all members appointed to the Commission shall constitute a quorum. When there is no quorum at a regular or special meeting, after 30 minutes from the notice meeting time,the Chairperson, Vice Chairperson, any member of said body, or in their absence, the Executive Director, shall adjourn said meeting until the next regular or special meeting.

Section 3.6 Session

The Chairperson, or in their absence, the Vice Chairperson, shall take the Chair at the hour appointed for the meeting and shall call the Commission to order. In the absence of the Chairperson and Vice Chairperson, the Executive Director, or their appointee, shall call the Commission to order, whereupon a temporary Chairperson shall be elected from among the members present. Upon the arrival of the Chairperson or Vice Chairperson, the Temporary Chairperson shall relinquish the chair upon the conclusion of the item before the Commission.

Section 3.7 Absences

If any Commission member has three (3) or more consecutive unexcused absences from regular meetings, a majority of the remaining members of the Commission may recommend to the governing body, having appointed said member, that the member be removed from the Commission for neglect of duty. An absence shall be considered excused if the Commission member notifies the Chair that they were unable to attend a meeting due to illness or another unavoidable circumstance and the Chair, or upon submittal of the matter to the Commission, makes a determination that such absence shall be excused.

Section 3.8 Record of Meetings

The Agency Clerk shall compile the records of any regular or special meeting of the Commission, including a tally of the vote taken on any matter of business transacted.

Section 3.9 Vote Required

All action of the Commission shall require an affirmative vote of a majority of the members present.

Section 3.10 Minutes

The Agency Clerk, or a person designated by the Clerk, shall record in the minutes the time and place of each meeting of the Commission, the names of the Commissioners present, all official acts of the Commission, and the voting record. The Agency Clerk, or designee, shall cause the minutes to be written up forthwith and presented for approval or amendment at the next regular meeting. Minutes shall be presented as “action minutes” rather than a summary of the entire meeting.

Section 3.11 The Ralph M. Brown Act

To ensure that the deliberations, as well as the actions, of the Commission, are performed at meetings open to the public and as to which the public has been given adequate notice, the provisions of the Ralph M. Brown Act (Government Code Sections 54950-54961) apply.

Section 3.12 Rosenberg's Rules of Order

All rules of order not herein provided for shall be determined in accordance with "Rosenberg's Rules of Order."

Article IV

COMMITTEES

Section 4.1 Standing Committees

The Executive Committee shall be a standing committee of the Commission andshall consist of five (5) members of the Commission. The Committee members shall be appointed from time to time by the Chairperson of the Commission. The Chairperson of the Committee shall be designated by the Chairperson of theCommission. The Committee shall meet at such time and such intervals and shall have such duties as the Commission shall from time to time establish.

The Engagement Committee shall be a standing Committee of the Commission and consist of up to five (5) members of the Commission. The Committee members shall be appointed from time to time by the Chairperson of the Commission. The Chairperson of the Committee shall be designated by the Chairperson of the Commission. The Committee shall meet at such time and such intervals and shall have such duties as the Commission shall from time to time establish.

These By-laws shall be amended whenever any standing committee is established.

Section 4.2 Special Committees

An ad hoc Grievance Appeals Committee shall be created to meet if a grievance hearing should become necessary. The Committee members shall be appointed from time to time by the Chairperson of the Commission.

The Chairperson may, from time to time, create other special committees, with the concurrence of the Commission, as appear reasonably necessary to accomplish the aims and purposes of the commission, provided that no special committee shall exist for any consecutive period of more than forty-five (45) days from the date of its first meeting.

Section 4.3 Appointment of Committees

The Chairperson shall make all committee appointments.

Article V

AMENDMENT

Section 5.1 Amendments to the By-Laws

These By-Laws may be amended by the unanimous vote of all of the duly appointed and qualified members of the Commission, at any regular or special meeting, without previous notice, or upon a vote of the majority of all the duly appointed and qualified members of the Commission at any regular or special meeting when at least seven days' written notice thereof has been previously given to all the members of the Commission.

Adopted:

January 20, 1974

Amended:

1. April 21, 1975
2. April 19, 1976
3. December 1, 1980
4. June 21, 1982
5. October 17, 1983
6. July 15, 1985
7. August 4, 1986
8. February 2, 1987
9. September 19, 1988
10. October 1, 1990
11. October 19, 1994
12. April 5, 1995
13. March 1, 2000
14. September 5, 2001
15. February 20, 2002
16. September 21, 2005
17. January 15, 2014
18. September 17, 2014
19. April 18, 2018
20. October 20, 2021
21. April 5, 2023

Understanding the Basics of

PUBLIC SERVICE *ETHICS* LAWS

INSTITUTE FOR LOCAL GOVERNMENT

The Institute for Local Government is the nonprofit research affiliate of the League of California Cities, the California State Association of Counties, and the California Special Districts Association. Its mission is to promote good government at the local level.

The Institute's current program areas include:

- Sustainable Communities
- Public Engagement
- Ethics and Transparency
- Local Government Basics
- Collaboration and Partnerships

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

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All final decisions about the content, tone and formatting of this publication were made by the Institute for Local Government.

Understanding the Basics of Public Service Ethics

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Understanding the Basics of

Public Service Ethics Laws

CONTENTS

CHAPTER 1:

Introduction

What Is an Ethics Law?

The notion that one should enter into public service to benefit the public and not one's own personal financial interests is almost axiomatic in American politics. News coverage of elected and appointed officials who break either the written or unwritten rules (or both) against self-interested actions in their official capacities dominate at every level of public discourse, from cable and national network news to the neighborhood newsletter and local internet blog.

Ethics laws are designed to preserve the public's trust in its public institutions and those who serve in them by setting a framework to guide conduct and behavior.[1]

This guide discusses several types of ethics laws and principles and their important role in public service.

For more information on these principles, see www.ca-ilg.org/ethics.

Understanding California Ethics Laws

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

Keeping four core principles in mind helps:

- Public officials may not use their offices for **personal financial gain**.
- Holding public office does not entitle one to **personal advantages or perks**.
- **Transparency** promotes public trust and confidence.
- Merit-based decision-making based on **fair processes** produces the best results for the public.

Each chapter of this guide is organized around one of these four principles and will discuss a variety of specific topics and penalties associated with violation of the laws.

- **Chapter 2: Personal Financial Gain Laws.**
  This chapter covers the prohibitions against receiving favors or money for official actions, stepping aside from the decision-making process when there is an economic interest in the outcome, and restrictions on employment in certain capacities after leaving public office.
- **Chapter 3: Gifts and Other Perks.**
  This chapter focuses on laws and regulations related to compensation, reimbursement of expenses, restrictions on the use of public resources, gifts to public officials, and the use of campaign funds.

TYPES OF ETHICS LAWS

Prohibitions

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

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

Transparency Requirements

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

Fairness

Other ethics laws require that public agency decision-making processes meet minimum standards of fairness.[3]

» **Chapter 4: Transparency Laws.** This chapter focuses on various disclosure requirements, including campaign contributions, economic interests, and charitable fundraising. Other topics include conducting public business in a public manner, the public's right to participate in meetings, and the right to access public records.

» **Chapter 5: Fair Processes and Merit-Based Decision-Making.** This chapter focuses on prohibitions against vote-trading, restrictions on personal loans, and disqualifications based on the receipt of campaign contributions and benefits to the official's family. It also covers the competitive bidding process for public contracts, bias, separating agency staff from politics, and prohibitions on holding multiple offices. The chapter concludes with a discussion of the whistleblower protections available to protect public employees from retaliation for reporting unlawful behavior.

A key goal of this guide is to alert local officials on when to ask for legal advice on how ethics laws apply in a particular situation.

The Key Laws to Know

While there are innumerable statutes, regulations, policies and court decisions that shape California ethics and transparency laws, there are a handful of specific, fundamental laws that embody many of the issues commonly encountered by local officials and employees, and that often directly govern their actions. These key laws include:

» **Brown Act:** Requires the governing bodies of local agencies to conduct open and public meetings, subject to limited exceptions, and to post meeting agendas beforehand. See Chapter 4 for more information.

» **Government Code section 1090:** Prohibits public officials and employees from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members. See Chapter 2 for more information.

» **Political Reform Act:** Governs campaign financing and prohibits local agency officials and employees from participating in governmental decisions affecting their financial interests. See Chapter 2 for more information.

» **California Public Records Act:** Subject to specified exemptions, requires public agencies to make writings created, used or possessed by the agency available to the public, upon request. See Chapter 4 for more information.

It is not necessary for local agency officials and employees to have a thorough understanding of all the nuances and intricacies of each of these laws but they should be aware of the purpose and general requirements of each. Along with numerous other bodies of law, each of these key laws will be comprehensively discussed in this guide.

Laws as Minimum Standards

Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct. Even though public officials may feel at times that some of these high standards of conduct are unduly burdensome or intrusive of their private lives, they must accept that adhering to these standards, including broad financial disclosure rules for gifts and income, is simply part of the process of public service.

Even so, it is important to keep in mind that these standards are only minimum standards; it is simply not possible or practical to write laws that prevent all actions that might diminish the public's trust.

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

This means that public officials facing ethical issues are well-advised to engage in a three-step analysis:

» **Step One:** What, if anything, does the law say about a given course of action?

» **Step Two:** Is the given course of action consistent with one's own values and analysis of what would constitute "ethical" conduct?

» **Step Three:** What will the public's perception be of the conduct, given the information the public is likely to have available?

A helpful tool for analyzing the third question is whether one would like to see the course of conduct reported on the front page of the local newspaper.

The Limits of this Information

Although the Institute endeavors to help local officials understand technical and legal concepts that apply to their public service, this publication is not technical nor is it intended to provide legal advice. Officials are encouraged to consult technical experts, attorneys and/or relevant regulatory authorities for up-to-date information and advice on specific situations.

FOR MORE INFORMATION

On ethics laws and principles, see:

» www.ca-ilg.org/ppoe.

» www.fppc.ca.gov/learn/public-officials-and-employees-rules-/ethics-training.html.

Endnotes

1 Rushworth M. Kidder, How Good People Make Tough Choices (Simon and Schuster, 1995).

2 Id.

3 Id.

CHAPTER 2:

Personal Financial Gain Laws

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Chapter 2: Personal Financial Gain Laws

CONTENTS

Receiving Special Favors or Money for Official Actions

BASIC RULES

Perhaps the most blatant and extreme form of using one's public position for financial gain is graft. Graft involves using one's public position to get money or anything else of value. Examples of graft include bribery and extortion.

A bribe involves conferring a benefit on a public official to influence a person's vote, opinion, action or in-action.[1] Asking for that bribe is illegal, of course, but so is receiving one or agreeing to receive one.[2] Under California's criminal laws, a "bribe" includes anything of value; it also includes receiving "advantages." The advantage can be a future one and need not involve the payment of money.[3] The federal law definition of bribery is even broader.[4]

Extortion involves, among other things, getting something from someone by wrongfully using one's public position.[5] For example, a public official may not demand money in return for the performance of his or her official duties.[6] This includes demanding campaign contributions in return for action in one's official capacity.

Public officials are also forbidden from receiving a reward for appointing someone to public office or per- mitting someone to perform the duties of their offices.[7]

PENALTIES

California Law Penalties

Bribery

Receiving or agreeing to receive a bribe is a crime, punishable by a combination of prison time, fines and forfeiting and being forever disqualified from holding public office.[8]

Fines vary according to whether the bribe was actually received. If it was, the fine is a minimum of $2,000 up to either $10,000 or double the amount of the bribe, whichever is greater. If a bribe was not actually received, there still is a fine between $2,000 and $10,000. The specified prison sentence is two to four years in state prison.

Those who offer bribes also face penalties. Those who bribe a member of a legislative body of a city, county, school district or other special district face two to four years in state prison.[9]

Extortion

Extortion by public officials is a misdemeanor.[10] Misdemeanors are punishable by up to six months in county jail, a fine of up to $1,000 or both.[11] Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings (also known as "quo warranto") for official misconduct.[12]

Appointing Someone to Office

An official who receives payment or favors for making an appointment faces the following punishments: forfeiture of office, disqualification from ever holding public office again and a fine of up to $10,000.[13]

DON'T COUNT ON A CODE OF SILENCE

Faced with the temptation of receiving a bribe, it can be easy to underestimate the chances of being caught, let alone successfully prosecuted. Fortunately, briberyis fairly rare, which may lead one to mistakenly assume prosecutors never find out about bribery.

In some instances, prosecutors learn about illicit activities from informants from within an agency. In other instances, those who believe they have been asked for a bribe will turn the asking officials in. Sometimes, observers will notice that a public official seems to have more resources than before and start asking questions.

The media views itself as a key watchdog on such issues, of course. Unfortunately, some officials discount the likelihood of getting caught and prosecuted. They figure that everyone involved in illicit activities will have a strong incentive to keep quiet. What they don't realize is that prosecutors can offer powerful incentives to those involved to testify against others in exchange for reduced penalties, and that the prospect of successfully prosecuting an elected official provides prosecutors a high-visibility opportunity to make an example of an offender, perhaps reasoning that such an example will serve as a deterrent to others.

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

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

1. The criminal action or proceeding is brought on account of an act or omission in the official's service to the public entity;
2. Such defense would be in the best interests of the public entity; and
3. The individual's actions were in good faith, without actual malice and in the apparent interests of the public entity.[14]

If the issue is whether a public official misused his or her office for personal gain, it may be particularly difficult for the agency to make the third finding, which is that the actions were in the apparent interests of the public entity. Moreover, even if the agency could make these findings, it is not required to. Indeed, there may be strong political pressures not to.

Similarly, an agency may refuse to provide a defense in a civil action if it finds the actions in question related to corruption or fraud.[15] Also, public agencies are not responsible for damage awards designed to punish or make an example of someone (known as "punitive" or "exemplary" damages).[16]

Note that, in these situations, the agency's attorney is not the public official's personal attorney, with attendant protections for attorney-client confidences. The agency attorney's legal and ethical obligations are to the agency itself– not to any one official in that agency.[17]

FEDERAL PENALTIES

If an agency receives more than $10,000 in federal funding, an official of that agency could find him or herself subject to federal prosecution if the amount involved in an ethical violation (for example, a bribe) exceeds $5,000.[18] The penalty for bribery under federal law is a fine of up to twice the amount of the bribe or $250,000 (whichever is greater), up to 10 years imprisonment, or both.[19]

Bribery, extortion, or embezzlement can also be basis of a federal income tax evasion charge. Federal prosecutors may treat money that an official receives through illicit means as income to the official. If the official fails to report this income at tax time (which of course, most don't), the official becomes subject to an action for income tax evasion.

Income tax evasion carries with it a possible five-year prison term and a fine of up to $100,000.[20] In addition, prosecutors can require the defendant to pay for the costs of prosecution (in addition to one's own defense costs).[21]

The sometimes-related crime of filing a false tax return is punishable by a maximum three-year prison term and a fine of up to $100,000 (along with the costs of prosecution).[22]

A court can also order a convicted official to pay restitution to the agency in the amount of the money or advantage received (or lost to the agency) as the result of criminal misuse of the official's position.[23]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

MAKING A FEDERAL CASE OUT OF CORRUPTION

Honest Services Fraud
Under federal wire and mail fraud laws, the public has the right to the "honest services" of public officials.[24]

The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary.[25] That duty is violated when a public official makes a decision that is not motivated by the public's interests but instead by his or her personal interests.[26]

A clear example is when an official receives a personal financial gain as the result of his or her public service. Examples include bribes and kickbacks (for example, receiving money back from proceeds paid to a company that does business with a public entity).[27]

Sometimes violation of a state law is the basis of an "honest services" fraud claim (in addition to other charges, like income tax evasion). However, the courts have also held that such claims can also be based on common or judge-made law concepts relating to a public official's fiduciary duties to his or her constituents.

The potential penalties for federal fraud are steep. The maximum penalty for being guilty of wire and/or mail fraud includes a jail term of up to 20 years and a $250,000 fine.[28]

For more information, see "Making a Federal Case Out of Corruption," available at www.ca-ilg.org/fedcase.

Disqualification Based on Financial Interests Under the Political Reform Act

BASIC RULES

In the statewide general election of 1974, voters passed the Political Reform Act, creating an independent authority, the Fair Political Practices Commission (FPPC), to, among other things, administer and enforce an across-the-board, bright line rule: public officials may not participate in governmental decisions affecting their financial interests.

The rule is designed to have public officials avoid putting themselves in the position of choosing between advancing the public's interest or their own financial interests. That would be a potential conflict of interest.

This does not mean there is anything corrupt or dishonest about having a disqualifying conflict of interest; nor is it against the law to have a disqualifying conflict of interest. It typically means that a public official has a personal life, with all the financial realities that life can involve. The key is to be aware when one's economic interests are implicated by a public agency decision, so one can stay clear of and avoid the decision-making process. This way, there is no question about whether one's personal interests affected the decision-making process in any way.

The rule is that a public official may not make, participate in, or influence a governmental decision that will have a reasonably foreseeable and material financial effect on the official, the official's immediate family, or any of the official's economic interests.[29]

Economic interests include real property, sources of income, business entities in which a public official has an investment or holds a management position, and donors of gifts.

Note the breadth of the disqualification requirement: one must not only step aside from voting, but the entire process leading up to a governmental decision....

Note the breadth of the disqualification requirement: one must not only step aside from voting, but the entire process leading up to a governmental decision, whether a vote of a legislative body or an action or decision by an employee vested with the authority to act on behalf of the agency. This means conversations with fellow officials and staff are also against the law if one has a conflict of interest. Also, there may be even more restrictive local requirements.

Note that disqualified officials do not count toward the establishment of a quorum.[30]

Updates to the Political Reform Act Conflict of Interest Regulations

The FPPC has updated conflict of interest regulations under the Political Reform Act. These changes are significant and have changed several key parts of the conflict of interest analysis, including: material business interests, what is "reasonably foreseeable," the 500 foot real property rule, the public generally exception and overall streamlining of the 8-step conflict of interest analysis.

For more information on these updates to the conflict of interest regulations, see the FPPC webpage for newly adopted, amended or repealed regulations at: www.fppc.ca.gov/the-law/fppc-regulations/newly-adopted-amended-or-repealed-regulations.html. Also seek professional guidance when facing a potential conflict of interest issue as the rules and regulations can be complicated.

Imprecise Terminology: Abstentions, and Disqualifications

The terms "abstention," and "disqualification" are sometimes used interchangeably when describing an official's decision to step aside from the decision-making process, and the applicable laws do not necessarily mandate the use of any particular term. The important thing is to be clear on *why* a decision-maker is stepping aside.

Voluntary Abstention
There are instances in which a public official voluntarily chooses not to participate in a decision by "abstaining" from the vote. The official may know it will be difficult to put personal interests aside and make a decision based solely on the public's interest. Or, the official may worry the public will perceive the official cannot put personal interests aside even if the official knows the he or she can.

The decision to voluntarily refrain from participating in the decision-making process can involve two conflicting values:

1. One's responsibility to perform the duties of his or her office; and
2. One's responsibility to honor one's own ethical standards or the public's trust in the decision-making process.

Both responsibilities are important, of course. Because of this, deciding not to participate should not be viewed as a way of avoiding difficult decisions.

Mandatory Disqualification
By contrast, when someone has a disqualifying conflict of interest, there is no choice. The law prohibits that individual from participating in or seeking to influence a decision—even if the official believes he or she can be fair. The law presumes the public will doubt a person's ability to be fair. This is an example of avoiding the appearance of impropriety as well as the potential for actual impropriety.

Political Reform Act – The Four Step Conflict of Interest Test

The process of determining when an official is disqualified from participating in a decision can be a very complex one, depending on the interests involved and the governmental decision contemplated. There are statutes, regulations, and interpretive opinions that flesh out each aspect of the basic prohibition.

To organize the analysis, the FPPC has adopted a new four-step procedure (trimmed down from an eight-step analysis that had been used for many years) for identifying when one must disqualify oneself from participating in a matter. Although it is useful to be aware of the general outlines of the process, the analysis is probably best undertaken with the assistance of agency attorneys and/or the FPPC staff—particularly since the rules are not necessarily logical or intuitive.

1. Is it reasonably foreseeable that a governmental decision will have a financial effect on any of the public official's financial interests?
2. Will the reasonably foreseeable financial effect be material?
3. Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?
4. If, after applying the three steps above the public official determines they have a conflict of interest, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision, unless some exception applies.

Evaluating each of these four steps involves fact-specific inquiries that must be guided by the standards and definitions laid out in the regulations.[31]

ETHICS CODE VERSUS LOCAL CONFLICT OF INTEREST CODES

California's Political Reform Act requires local agencies to adopt local conflict of interest codes.[32] These codes supplement state law, by specifying which positions in the agency are subject to disclosure under the Act.

For more information, see "About Local Conflict of Interest Codes" (available at www.ca-ilg.org/local- conflict-of-interest-codes) and the FPPC's materials on adopting local conflict of interest codes (see http://www.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes/local-government-agencies-adopting-amending-coi.html).

FOR MORE INFORMATION

See the following resources:

- "Deciding When Not to Participate in an Agency Decision: Abstentions and Disqualifications," available at www.ca-ilg.org/abstentions.
- "Property Ownership in Your Jurisdiction," available at www.ca-ilg.org/owningproperty.

For specific questions, please contact agency counsel or the FPPC at 1-866-ASK-FPPC (866-275-3772 *2) or Advice@fppc.ca.gov.

GETTING ADVICE AND STAYING OUT OF TROUBLE ON POLITICAL REFORM ACT ISSUES

Public officials should seek advice on how these laws apply as early in the process as possible — as soon as a disqualifying conflict of interest is even a possibility. This means taking an active and attentive role by asking questions when items are placed on an agency agenda or mentioned or discussed as part of an agency's business. For example, when a city manager or other executive previews items or programs during a report, or when staff responds to a question from a constituent, if it becomes evident that a governmental decision within the meaning of the law is contemplated, the public official should immediately ask themselves whether any of their financial interests might be affected, and, if so, seek advice about whether they have an actual conflict.

Early consultation allows an attorney to analyze all of the facts involved and the relevant law. Even though the analysis is laid out in four specific steps, each step has various rules and FPPC regulations associated with it, which can be complex. As one seasoned local agency attorney has observed, the later in the process the consultation occurs, the more likely the advice will be that disqualification must occur to make sure the official stays out of trouble.

Does advice from agency counsel protect an official against a FPPC enforcement action? No. Only a formal opinion or formal advice letter from the FPPC will protect a public official if someone argues that a violation of the Political Reform Act has occurred. Receiving such advice from the Commission takes time — another good reason to raise the conflict issue as early as possible.

Identifying Economic Issues

WHAT KINDS OF ECONOMIC INTERESTS ARE A CONCERN?

There are a number of ways to have a financial interest in a decision:

» **Sources of Income.** Receiving $500 or more in income from one source (including any income received from a business, nonprofit organization, government agency, or individual) within twelve months prior to the decision creates an economic interest. "Sources of income" includes a community property interest in a spouse or domestic partner's[33] income, but not separate property income.[34] Additionally, if someone promises an official $500 or more twelve months prior to the decision, the person or entity promising the money is a source of income, even if the income has yet to be received by the official, as long as the official has a legally-enforceable right to the promised income.[35]

» **Investments.** An economic interest is created if the official, the official's spouse or domestic partner[41] (even as separate property), or dependent children (or anyone acting on their behalf) has an investment worth $2,000 or more in a business entity (even if the official does not receive income from the business).[42] Investments include stocks and corporate (though not government) bonds.

» **Business Employment or Management.** If the official serves as a director, officer, partner, trustee, employee or otherwise serves in a management position in a company, an economic interest is created.[43] Note this does not apply to a member of the board of a nonprofit entity.

» **Related Businesses.** The official has an economic interest in a business that is the parent, subsidiary or is otherwise related to a business where the official:

- Has a direct or indirect investment worth $2000 or more; or
- Is a director, officer, partner, trustee, employee, or manager.[44]

» **Personal Finances.** An official has an economic interest in their own expenses, income, assets, or liabilities and those of the official's immediate family (spouse or domestic partner[36] and dependent children).[37]

» **Real Property.** An interest in real property worth $2,000 or more creates an economic interest.[38] The interest may be held by the official, the official's spouse or domestic partner[39] (even as separate property) and children (or anyone acting on their behalf). Real property interests can also be created through leases, loans, mortgage, or security interests in property.[40]

» **Business-Owned Property.** A direct or indirect ownership interest in a business entity or trust that owns real property is another form of economic interest.[45]

» **Loans.** A loan from someone (or guarantee on a loan) can create an economic interest unless the loan is from a commercial institution, made in the regular course of business and is on the same terms as are available to members of the public.[46]

» **Gifts.** Receiving gifts totaling $460 (2015-16) or more in a twelve-month period prior to the decision from any one person or organization may create an economic interest depending on the type of public official involved and whether the gift-giver is in the agency's jurisdiction.[47] Being promised a gift of $460 (2015-16) or more within a twelve- month period prior to the decision can also create a disqualifying financial interest.[48] The limit is adjusted every two years to reflect changes in the cost of living.[49] For more discussion of the gift issue, please see Chapter 3, and www.ca-ilg.org/ GiftCenter.

The timeline for determining whether an official has a potentially disqualifying economic interest is **twelve months before the decision** in question—not the calendar year.[50]

If a public official thinks he or she has one of the economic interests described above, the next step is to consult with the agency attorney about the situation and how the FPPC's four-step conflict of interest analysis applies. One of the key purposes of the disclosure requirements is to enable the public to assess whether an official's financial interests may affect his or her decision-making. The disclosure requirements are discussed in further detail in Chapter 4.

DISCLOSURE OF CONFIDENTIAL INFORMATION

California law also makes disclosure of certain kinds of confidential information for personal financial gain (as defined) a misdemeanor.[51] This restriction applies to public officers and employees.[52] Confidential information means information not subject to disclosure under the Public Records Act and information that may not be disclosed by statute, regulation, or rule.[53]

REAL PROPERTY INTERESTS

The previous FPPC regulations analyzed real property conflicts in a two-step process. The first step was to determine if the official's property was "directly" or "indirectly" involved in the decision and then to determine if the decision would have a "material" effect on the official's property. The old regulations described a number of different types of decisions, and provided that if the official's property was the subject of one of those types of decisions, the property was deemed to be "directly" involved in the decision. In addition, there was a rule based upon the proximity of the official's property in relation to other property that was the subject of the decision. If the official's property was within 500 feet of the subject property, the official's property was deemed to be "directly" involved in the decision. If the official's property did not fall within any of the circumstances described in the old rule, the official's property was considered to be "indirectly" involved in the decision.

In 2014, the FPPC amended its regulations to simplify the property interests analysis by dispensing with the "directly" versus "indirectly involved" dichotomy. Now, a real property interest is examined in light of its "materiality" only.[54]

Before the change, if the official's property was located within 500 feet of property that was the subject of a governmental decision, the financial impacts of the decision on the official's property were **presumed** to be material. The presumption could be rebutted, however, by showing that the decision would not have **any** impact on the value of the official's property.

Now, the 500 foot rule is still a part of the new regulation but the presumption of materiality can only be rebutted by written advice from the FPPC finding that the decision will have no measureable impact on the value of the official's property.

Additionally, the recent changes to the regulation ushered in a new **"Reasonably Prudent Person"** standard, which serves as a sort of "catch-all" exemption. Specifically, even if an official's property is not the subject of the decision, or is located well beyond 500 feet from the subject property, the official must consider whether "...a reasonably prudent person, using due care and consideration under the circumstances, [would] believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property."

For interests in common areas, such as in a residential condominium complex or an industrial lease that includes areas in common with other tenants, the new regulations redefine "real property in which an official has an interest" to exclude an official's undivided interest in common area, thus offering another simplification of the real property interest analysis.

For interests in business properties, under the updated regulations, the effects of the decision on the official's real property interest do not have to be considered when the decision involves the issuance of a permit or entitlement, or when one is considering the impact of the decision on the income producing potential of the property. When applying those factors, only the impacts on the official's business entity interest are to be considered.[55]

THE "PUBLIC GENERALLY" ANALYSIS

Under the FPPC's Four-Step Test, if the effect of a decision on the public official's interests is indistinguishable from the effect on the public generally, the public official may participate in the decision even if the decision would otherwise materially affect the official's economic interests.

In 2015, the FPPC revised the analysis to simplify the previous general rule and various exceptions; the former nine separate regulations were consolidated into a single regulation,[56] which now provides that an official may participate in a decision "if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment." A "significant segment is defined as at least 25% of:

- All businesses or nonprofit entities in the jurisdiction;
- All real property (commercial or residential) in the jurisdiction; or
- All individuals in the jurisdiction.

The effect of a decision on an official's interest is considered unique if it results in a **disproportionate effect** on:

- The development potential, use, or income-producing potential of real property or a business entity in which the public official has an interest;
- The official's business entity or real property because of how close business or the property is to the project that is the subject of the decision;
- The official's business entity or real property interests as a result of the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;
- The official's business entity or real property interests as a result of the public official's substantially greater business volume or larger real property the size when the decision will affect all interests by the same or similar rate or percentage;
- A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; or
- The official's personal finances or those of his or her immediate family.[57]

WHAT HAPPENS IF AN OFFICIAL IS DISQUALIFIED?

General Rule

If an official is disqualified from participating on a specific agenda item under the conflict of interest rules established by the Political Reform Act, the official must:

- If the decision is being voted on at a public meeting, verbally identify the financial interest or potential conflict of interest in sufficient detail to be understood by the public; and
- Not attempt to influence the decision in any way, which includes talking with colleagues or staff about the matter at any time, including before, during, or after any meeting at which the item may be taken up.

At the meeting, elected and appointed officials, and top staff members who have conflicts of interest must leave the room when that matter is up for decision (unless the matter is on consent, in which case the official must declare the conflict and have the clerk record an abstention on that particular item).[58] This may be a good practice for comparable officials at other local agencies as well.

Officials subject to the leave-the-room requirement will also need to explain why they are disqualified from participating, based on the nature of the financial interest.[59] For example:

- **Investment.** If the interest relates to an investment, provide the name of the business in which the investment is held.
- **Business Position.** If the interest relates to a business position, give a general description of the activity in which the business is engaged as well as the name of the business.
- **Real Property.** If the interest relates to real property, supply the address or another indication of the location of the property (unless the property is the public official's principal or personal residence, in which case explain the property is a residence and do not give the address or location).
- **Income or Gifts.** If the interest relates to the receipt of income or gifts, then describe the source.
- **Personal Finances.** If the interest relates to a personal financial interest in the decision, then describe the expense, liability, asset or income affected.

Exceptions to the Leave-the-Room Requirement

There are limited exceptions that allow a disqualified official to remain in the room and provide input as a member of the public to represent himself or herself on matters related solely to the official's "personal interests."[60]

These include when the subject of the discussion is:

- Interests in real property wholly owned by the official or his or her immediate family;[61]
- Interests in a business entity wholly owned by the official or his or her immediate family;[62] and
- Interests in a business entity over which the official (or the official and his or her spouse or domestic partner[63]) exercises sole direction and control.[64]

Even though the law allows the public official to remain in the room when these interests are at stake, the public official may still wish to balance that option with the potential that the public may nonetheless perceive the official is improperly trying to influence his or her colleagues. Many officials balance their rights as individuals with their responsibility to maintain the public's trust in both their leadership and the agency that they serve by leaving the room after having provided their input related to their personal interest.

Note on Closed Sessions

If a decision will be made or discussed in a closed session, an official with a conflict may not be present. Nor may the official obtain non-public information about the closed session.[65]

Effect of Disqualification

The general rule is a majority of the membership of a body must be present in order for the decision-making body to conduct business—a concept known as a quorum.[66]

For some kinds of agencies, a majority of the quorum is necessary for an item to pass, although there are special rules that apply to certain kinds of actions. Note, however, the rule is different for county boards of supervisors, community college boards and school boards, which generally require a majority vote of the entire membership of the board to act.[67]

Those who are disqualified from participating in the decision are not counted toward the quorum.[68]

However, those who abstain because of a pending question concerning a conflict of interest (for example, an elected official is waiting to receive an advice letter from the FPPC) may be counted toward the quorum. This is because they have not yet been disqualified (typically their agency attorneys will recommend they abstain pending resolution of the conflict issue).[69]

FOR MORE INFORMATION

See the following resources:

- The FPPC has produced "Recognizing Conflicts of Interest: A Guide to the Conflict of Interest Rules of the Political Reform Act" (2015), available at www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Conflicts%20of%20Interest/Conflicts-Guide-August-2015-Jan-2016-Edits.pdf.
- "Using Public Office to Promote One's Business Interests," available at www.ca-ilg.org/publicoffice.
- Conflicts of Interest (2010). Explains California's conflict-of-interest laws available at http://ag.ca.gov/publications/coi.pdf.

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

PENALTIES

Political Reform Act Penalties

A refusal to disqualify oneself is a violation of the Political Reform Act. Violations of these laws are punishable by a variety of civil, criminal, and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[70]

These penalties can include any or all of the following:

- Immediate loss of office;[71]
- Prohibition from seeking elected office in the future;[72]
- Fines of up to $10,000 or more depending on the circumstances;[73] and
- Jail time of up to six months.[74]

Effect on Agency and Those Affected by Agency's Decision

When a disqualified official participates in a decision, a court can void the decision.[75] This can have serious consequences for those affected by the decision as well as the public agency itself. If someone is encouraging an official to participate in spite of a disqualifying interest, consider pointing out the costs that would occur if the agency's decision has to be undone—not to mention the legal consequences for the official.

Typically it is wise to err on the side of caution when there is a question regarding the appropriateness of an official's participation in a matter. When in doubt, sit a decision out.

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/ consequences.

Interests in Agency Contracts Barred

BASIC RULES

California law strictly forbids public officials from having an economic interest in their agencies' contracts. In essence, this is a prohibition against self-dealing. Now codified in section 1090 of the Government Code, this particular law has been traced back to the earliest days of California's statehood—to 1851.[76]

This prohibition applies to elected and appointed officials as well as public agency employees and consultants.[77]

This means that, if an official has an interest in a contract being contemplated by their agency, the agency may not enter into the contract. If a staff member has an interest in the contract, the staff member may not participate in any way in the contract negotiations or in any part of the development of the contract. Contracts are broadly defined and include employment and a variety of other relationships, including independent contractors.[78]

Key things to keep in mind include the following.

» **Making a Contract.** The prohibition applies to preliminary discussions, negotiations, planning and solicitation of bids, as well as voting on the contract itself. This means the affected official can't be involved in those as well.

» **Disqualification Doesn't Fix the Problem.** When the prohibition applies, the agency may not enter into the contract in question. Members of the governing board of a local agency (including a board of supervisors, board of directors, city council or school board members) are deemed to have made any contract executed by the board, or any person or agency under its jurisdiction, even if officials disqualify themselves from participating in the contract.

» **Financial Interest.** A "financial interest" in a contract includes a direct or indirect financial interest. A direct financial interest is present when the official is the party contracting with the agency. An indirect financial interest involves an official who has a financial relationship with the contracting party or will receive some benefit from the making of the contract with the contracting party. For example, the Attorney General has concluded that a trustee of a community college district cannot become employed in any capacity by the district because the trustee would have a financial interest in the employment contract. It does not matter if the official's financial interest is positively or negatively affected. This provision covers financial relationships that go beyond the official's immediate family.

Officials will sometimes hear their agency counsel refer to this issue as a "section 1090 problem," in reference to the Government Code section containing this prohibition. These restrictions on contracts are *in addition to* the restrictions of the Political Reform Act.

A key question to ask oneself in evaluating an agency's contracts is: "will this contract affect my economic interests in any way?" If the answer is "yes," speak with agency counsel immediately.

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FPPC JURISDICTION OVER SECTION 1090 QUESTIONS

The Legislature empowered the FPPC in 2013 to enforce the provisions of section 1090 through either administrative proceedings similar to those it uses for violations of the Political Reform Act or civil actions imposing fines. Prior to commencing such an action, however, the FPPC must obtain permission from the district attorney of the county in which the alleged violation occurred, and the FPPC may not issue opinions related to past conduct. Further, before providing advice, the FPPC must send a copy of the request for advice to the Attorney General and the local district attorney.[79]

The FPPC has developed a six-step analysis to determine whether a violation of section 1090 might occur based on the facts and circumstances presented to the FPPC prior to the action being taken. Those steps are as follows:

- Step 1: Is the public official in question subject to the provisions of section 1090?
- Step 2: Does the decision at issue involve a contract?
- Step 3: Is the official making or participating in making a contract?
- Step 4: Does the official have a financial interest in the contract?
- Step 5: Does either a remote interest or a noninterest exception apply?
- Step 6: Does the "Rule of Necessity" apply?

WHAT IS THE THEORY OF NOT ALLOWING DISQUALIFICATION?

When the prohibition against interests in contracts under section 1090 applies, the agency may not enter into the contract, even if the official with the interest recuses or disqualifies him- or herself. Why? The theory seems to be decision-makers may be favorably influenced to award a contract that benefits a colleague—perhaps with the expectation the favor may be returned in the future. The courts have made clear that the law will assume that undue influence was exerted, and that the risk to the public from self-dealing by public officials is too great to allow anything other than a bright-line, absolute prohibition. The absolute prohibition guards against such a tendency toward what might be described as "you-scratch-my-back-I'll-scratch-yours" dynamics within the agency.

EXCEPTIONS TO RULES

There are limited exceptions to the general prohibition against interests in contracts.

Non-Interest Exception
Some potential interests in a contract are so small California law classifies them as "non-interests" in a contract. One is when an official receives public services provided by the official's agency on the same terms that the services are provided to the general public. For example, a member of a water district board may receive water service. In such cases, the official and the official's agency may participate in the contract. California law provides a full list of exceptions.[80]

Remote Interest Exception
A local agency may enter into a contract when an official has a "remote" interest so long as the official does not attempt to influence another member of the board or council.[81] Government Code section 1091 lists more than a dozen types of remote interests, including:

- Being an employee of the contracting party, if the contracting party has ten or more employees, the employee began his or her employment at least three years prior to initially assuming office, and certain other requirements are met; [82] or
- Being a supplier of goods or services to the party contracting with the agency, when those goods or services have been supplied to the contracting party by the public official for at least five years prior to assuming office.[83]

Moreover, in 2015, the Legislature passed Senate Bill 704 which added a remote interest exception stating that an official is not financially interested in a contract if he or she is an owner or partner of a firm serving on an advisory board to the contracting agency and the owner or partner recuses himself or herself from reviewing a project that results from a contract between the firm and agency.[84]

If the decision-maker qualifies as having a remote interest, the agency must then take these steps to stay on the right side of the law:

- The board or council member must disclose the financial interest to the board or council, and disqualify himself or herself from participating in all aspects of the decision;
- The disclosure must be noted in the official records of the board or council; and
- The board or council, after such disclosure, must approve, ratify or authorize the contract by a good faith vote of the remaining qualified members of the board or council.[85]

It is important to note that this exception applies only to members of multi-member bodies (not to individual decision-makers and employees).[86]

LIMITED RULE OF NECESSITY

Even if there is not an exception from the prohibition, the agency may still enter into a contract if the rule of necessity applies.[87] In general, this allows an agency to acquire an essential supply or service. The rule also allows a public official to carry out essential duties of his or her office where he or she is the only one who may legally act. Consult with agency counsel whether the intricacies of this rule may apply in any given situation.

Types of Ethics Laws

SPECIAL RULE FOR SCHOOL DISTRICT BOARDS

California's Education Code specifically allows school board members to vote on collective bargaining agreements and personnel matters that affect a class of employees to which a relative belongs.[88] Whether this rule also applies to domestic partners is not clear under the statute.

FOR MORE INFORMATION

See the following resources:

- "How Your Agency Counsel Should Advise You When Agency Contracts Represent a Conflict of Interest," available at www.ca-ilg.org/coi.
- "Let's Make a Deal: Securing Goods and Services For Your Agency," available at www.ca-ilg.org/procurement.

For specific questions, please contact agency counsel.

PENALTIES

The penalties for violating the prohibition against interests in contracts are severe.

Criminal Penalties

Willful violations are a felony and may be punished by fines of up to $1,000, imprisonment, and being disqualified from ever holding public office again.[91]

Effect on Contract

The contract also is "void," which means the local agency does not have to pay for goods or services received under the contract.[92] The agency may also seek repayment of amounts already paid.[93]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Types of Ethics Laws

GETTING ADVICE AND STAYING OUT OF TROUBLE ON CONTRACT ISSUES

As with issues under the Political Reform Act, advice of counsel *does not* provide a defense or immunity in a criminal prosecution relating to unlawful interests in contracts.[89]

As discussed above, the FPPC now has authority to issue advice and opinions on questions involving contracts under section 1090.

The Attorney General will also provide such advice, but only certain kinds of officials are entitled to request an Attorney General opinion.[90] In addition, the process can take months.

Employment-Related Restrictions

BASIC RULES

Another kind of "personal financial gain" law prohibits elected officials and top-level managers from trading on the relationships developed in public service for their own benefit.

For example, elected officials and chief executives who leave government service must not represent people for pay before their former agencies for one year after leaving their agency.[94] This is known as a "revolving door" restriction.

In addition, under California's conflict of interest disqualification rules, a public official may not make or influence agency decisions when the interests of a prospective employer are at stake.[95] The situation arises when an official is negotiating or has "any arrangement" concerning prospective employment with someone with business before the agency.

FOR MORE INFORMATION

On employment restrictions, see "Revolving Door Restrictions for Local Officials," available at www.ca-ilg.org/revolvingdoor.

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

WHEN AN EMPLOYEE RUNS FOR A SEAT ON THE GOVERNING BOARD

California law says that, with a few exceptions, local agency employees must resign their employment before taking a seat on the governing board of their local agency.[96] However, running for an office is not prohibited while employed by a local agency.

This restriction applies to cities, counties, special districts, and other public agencies and corporations.[97]

There are parallel restrictions for employees who run for school boards[98] and community college district governing boards.[99] All of the sections note that, if an employee refuses to resign, his or her position will automatically terminate upon being sworn into office on the governing board.[100]

These restrictions prevent the dual role conflicts associated with being both in the role of employee and employer.[101]

PENALTIES

These employment-related restrictions are part of the Political Reform Act. As discussed above, violations of the Act are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[102]

These penalties can include any or all of the following:

- Immediate loss of office;[103]
- Prohibition from seeking elected office in the future;[104]
- Fines of up to $10,000 or more depending on the circumstances;[105] and
- Jail time of up to six months.[106]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Endnotes and Additional Information

Note: The California Codes are accessible at http://leginfo.legislature.ca.gov/. Fair Political Practices Commission regulations are accessible atwww.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html. A source for case law information is www.findlaw.com/cacases/ (requires registration).

1 Cal. Penal Code §§ 7 (definition number 6), 68(a).

2 *See* Cal. Penal Code §§ 68(a), 86.

3 *Id.*; See also People v. Anderson, 75 Cal. App. 365, 242 P.2d 906 (1925).

4 *See* 18 U.S.C. § 201.

5 *See* Cal. Penal Code § 518.

6 *In re Shepard*, 161 Cal. 171 (1911) (in the context of removal- from-office proceedings for misconduct).

7 Cal. Penal Code § 74.

8 *See generally* Cal. Penal Code § 68(a). *See also* Cal. Elect. Code § 20 (making those convicted of making or receiving a bribe ineligible for public office).

9 *See* Cal. Penal Code § 85.

10 Cal. Penal Code § 521.

11 Cal. Penal Code § 19.

12 Cal. Gov't Code §§ 3060-3074.

13 Cal. Penal Code § 74.

14 *See* Cal. Gov't Code § 995.8. *See also Los Angeles Police Protective League v. City of Los Angeles,* 27 Cal. App. 4th 168, 32 Cal. Rptr. 2d 574 (1994) (finding city was not required to provide the defense of police officers accused of vandalism and conspiracy to commit vandalism).

15 *See* Cal. Gov't Code § 995.2(a)(2) (public agency may refuse defense of civil action if, among other reasons, the agency finds the official acted because of "actual fraud, corruption or actual malice.") *See also* Cal. Gov't Code § 822.2 (immunity from liability for misrepresentation does not apply in instances of corruption).

16 *See* Cal. Gov't Code § 818.

17 California Rules of Professional Conduct for Lawyers, Rule 3-600(A); *Ward v. Superior Court,* 70 Cal. App. 3d 23, 138 Cal. Rptr. 532 (1977) (county counsel's client is county, not assessor in his individual capacity).

18 18 U.S.C. § 666.

19 *See* 18 U.S.C. §§ 666 (specifying maximum 10-year prison term and fine "under this title"), 3571 (general fine for violating federal criminal laws).

20 26 U.S.C. § 7201.

21 *Id.*

22 26 U.S.C. § 7206(1).

23 *U.S. v. Gaytan*, 342 F.3d 1010 (9th Cir. 2003).

24 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).

25 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).

26 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision- making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350, 362-63 (1987) (Justice Stevens, dissenting).

27 *See Skilling v. U.S.*, 130 S.Ct. 2896, 2931(2010) (holding that in order to avoid unconstitutional vagueness, 18 USC § 1346 only criminalizes bribes and kick-back schemes).

28 18 U.S.C. §§ 1341 (". . . shall be fined under this title or imprisoned not more than 20 years, or both."), 1343 ("shall be fined under this title or imprisoned not more than 20 years, or both.").

29 *See* Cal. Gov't Code §§ 87100-87105.

30 2 Cal. Code Regs. § 18707(a)(1)(C).

31 2 Cal. Code Regs. § 18700(d).

32 Cal. Gov't Code § 87300.

33 2 Cal. Code Regs. § 18229.

34 Cal. Gov't Code §§ 82030, 87103(c); 2 Cal. Code Regs. §§ 18700, 18700.1.

35 Cal. Gov't Code § 87103(c). *See also Larsen Advice Letter*, No. A-82-192 (1982).

36 2 Cal. Code Regs. § 18229 (referring to Cal. Gov't Code § 82029 defining "immediate family").

37 2 Cal. Code Regs. § 18700.

38 Cal. Gov't Code § 87103(b); 2 Cal. Code Regs. § 18700(c)(6)(B).

39 2 Cal. Code Regs. § 18229.

40 *See* Cal. Gov't Code §§ 82033, 87103(b).

41 2 Cal. Code Regs. § 18229.

42 Cal. Gov't Code §§ 82034, 87103(a); 2 Cal. Code Regs. § 18700(c)(6)(A).

43 Cal. Gov't Code § 87103(d); 2 Cal. Code Regs. § 18700(c)(6)(D).

44 2 Cal. Code Regs. §§ 18700(c)(6)(D), 18700.2(b).

45 Cal. Gov't Code § 82033 (pro rata interest, if own 10 percent interest or greater).

46 Cal. Gov't Code § 82030(b)(8), (10).

47 Cal. Gov't Code§ § 82028, 87103(e); 2 Cal. Code Regs. §§ 18940(c), 18940.2(a)..

48 Cal. Gov't Code § 87103(e); 2 Cal. Code Regs. §§ 18940(c), 18940.2(a).

49 Cal. Gov't Code § 89503(f).

50 *See generally* Cal. Gov't Code § 87103. *See also* 2 Cal. Code Regs. § 418700(c)(6)(C), (E).

51 *See* Cal. Gov't Code § 1098(a).

52 *Id.*

53 *See* Cal. Gov't Code § 1098(b)

54 *See generally,* 2 Cal. Code Regs. § 18702.2.

55 2 Cal. Code Regs. § 18702.2(a)(5).

56 2 Cal. Code Regs. § 18703.

57 2 Cal. Code Regs. § 18703(b),(c).

58 *See* 2 Cal. Code Regs. § 18707.

59 2 Cal. Code Regs. §18707(a)(1)(A).

60 2 Cal. Code Regs. §18707(a)(3)(C).

61 2 Cal. Code Regs. § 18704(d)(2)(A).

62 2 Cal. Code Regs. § 18704(d)(2)(B).

63 2 Cal. Code Regs. § 18229.

64 2 Cal. Code Regs. § 18704(d)(2)(C).

65 *See* 2 Cal. Code Regs. § 18707(a)(2). *See also Hamilton v. Town of Los Gatos*, 213 Cal. App. 3d 1050, 261 Cal. Rptr. 888 (1989).

66 *See* Cal. Gov't Code § 36810 (for general law cities). *See also* Cal. Civ. Code § 12; Cal. Civ. Proc. Code § 15.

67 *See* Cal. Gov't Code § 25005; Cal. Educ. Code §§ 35164 (K-12 districts), 72000(d)(3) (community college districts).

68 2 Cal. Code Regs. § 18707(a)(1)(C); *Farwell v. Town of Los Gatos*, 222 Cal. App. 3d 711, 271 Cal. Rptr. 825 (1990) (subsequently ordered not published). *See also* 62 Cal. Op. Att'y Gen. 698, 700 (1979).

69 *Farwell v. Town of Los Gatos*, 222 Cal. App. 3d 711, 271 Cal. Rptr. 825 (1990) (subsequently ordered not published). *See also* 62 Cal. Op. Att'y Gen. 698, 700 (1979).

70 *See generally* Cal. Gov't Code §§ 91000-14.

71 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

72 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

73 Cal. Gov't Code § 91000(b). *See also* Cal. Gov't Code § 83116(c) (providing that the FPPC may impose administrative penalties of up to $5,000 per violation of the Political Reform Act).

74 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

75 *See* Cal. Gov't Code § 91003(b).

76 California Attorney General, Conflicts of Interest, 55 (2010), available at http://ag.ca.gov/publications/coi.pdf.

77 *Id.*

78 *See California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc.* (2007) 148 Cal.App.4th 682.

79 Cal. Gov't Code § 1097.1.

80 *See* Cal. Gov't Code § 1091.5.

81 *See* Cal. Gov't Code § 1091(a), (c).

82 *See* Cal. Gov't Code § 1091(b)(2).

83 *See* Cal. Gov't Code § 1091(b)(8).

84 2015 Cal. Stat. ch. 495, § 1 (amending Cal. Gov't Code § 1091).

85 *See* Cal. Gov't. Code § 1091.

86 California Attorney General, Conflicts of Interest, 67(2010), available at http://ag.ca.gov/publications/coi.pdf.

87 *See* 70 Cal. Op. Att'y Gen. 45 (1987).

88 *See* Cal. Educ. Code § 35107(e).

89 *People v. Chacon*, 40 Cal. 4th 558, 53 Cal. Rptr. 3d 876 (2007).

90 *See* Cal. Gov't Code § 12519.

91 *See* Cal. Gov't Code § 1097.

92 *Thomson v. Call*, 38 Cal. 3d 633, 214 Cal. Rptr. 139 (1985).

93 *See* Cal. Gov't Code § 1092.

94 Cal. Gov't Code § 87406.3; 2 Cal. Code Regs. § 18746.3.

95 Cal. Gov't Code § 87407.

96 Cal. Gov't Code § 53227(a).

97 Cal. Gov't Code § 53227.2(a).

98 Cal. Educ. Code § 35107(b)(1).

99 Cal. Educ. Code § 72103(b)(1).

100 Cal. Gov't Code § 53227(a); Cal. Educ. Code §§ 35107(b)(1), 72103(b)(1).

101 *Bd. of Retirement of Kern County Employees' Retirement Ass'n v. Bellino*, 126 Cal. App. 4th 781, 24 Cal. Rptr. 3d 384 (2005).

102 *See generally* Cal. Gov't Code §§ 91000-14.

103 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

104 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

105 Cal. Gov't Code § 91000(b). *See also* Cal. Gov't Code § 83116(c) (providing that the FPPC may impose administrative penalties of up to $5,000 per violation of the Political Reform Act).

106 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

CHAPTER 3:

Perk Issues, Including Compensation, Use of Public Resources, and Gift Laws

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CONTENTS

Compensation Issues

BASIC RULES

Typically there is a legal limit on public official compensation levels, either in state or local statutes. Public officials, particularly elected ones, may only receive such compensation that the law allows.[1] Any extra compensation must be refunded.[2] Moreover, as protectors of the public purse, courts generally take a strict approach to public official compensation limits.[3]

COUNTIES

County boards of supervisors set their salaries; supervisors' salaries are subject to referendum.[5]

SPECIAL DISTRICTS

California law sets the salaries for members of special district governing boards—typically in the law that creates the particular kind of special district.[6] Salaries usually are tied to the days a public official spends participating in meetings or other district-related work, with a maximum number of compensated days per month. The chart on the next page contains examples from some of the numerous types of special districts throughout the state.

WITH MONEY COMES EDUCATION

If a local agency provides any type of compensation or payment of expenses to members of a legislative body, then all of the members must have two hours of ethics training within one year of entering public service. Subsequent trainings must occur every two years after that.[4]

For more information on these requirements, see www.ca-ilg.org/AB1234compliance.

Special Districts		
Type of District	**Per Day/Meeting Maximum**	**Maximums**
Airport districts	$100 for attending each board meeting	Not to exceed four meetings in a calendar month[7]
Cemetery districts	$100 for attending each board meeting	Not to exceed four meetings in a calendar month[8]
Community Services districts	$100 per day	Not to exceed six days of compensated service per month[9]
Fire Protection districts	$100 for attending each board meeting	Not to exceed four meetings in a calendar month[10]
Harbor districts	No per day salary	$600 per month[11]
Hospital districts	$100 for attending each board meeting	Not to exceed five meetings in a calendar month[12]
Park and Recreation districts	$100 for attending each board meeting	$500 per month[13]
Sanitation districts	$100 per day for board meetings or service provided at the request of the board	Not to exceed six days per month[14]
Utility districts	$100 per day	$600 per month[15]
Vector Control districts	Trustees serve without compensation	Trustees serve without compensation[16]
Irrigation Districts		
Irrigation districts of less than 500,000 acres	$100 per day	Not to exceed six days of compensated service[17]
Irrigation districts of less than 500,000 acres that produce or deliver electricity	$100 per day OR $600 per month	An annual cap of $15,000[18]
Irrigation districts of 500,000 acres or more	No per day salary	Salary to be fixed by ordinance and subject to referendum but cannot exceed the salary of a member of the Imperial County Board of Supervisors[19]

Water Districts		
Type of District	**Per Day Maximum**	**Maximums**
Water district directors (as defined)	$100 per day	Not to exceed 10 days of compensated service per month[20]
California water district officials (as defined)	$100 per day	No maximum[21]
County water district directors (as defined)	$100 per day	Not to exceed 6 days of compensated service per month[22]
Contra Costa County Water District directors (as defined)	$100 per day	Not to exceed 10 days of compensated service per month[23]
Municipal water district directors (as defined)	$100 per day	Not to exceed 6 days of compensated service per month[24]

What kinds of meetings and days of work may a district official be compensated for? Typically:

- A meeting of any "legislative body" as defined by California's open meeting laws;
- A meeting of an advisory body; and
- Conference attendance or educational activities, including ethics training.[25]

Agencies may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.[26] Note that these parameters don't apply when the district does not pay compensation based on number of days doing district business, but instead pays a more salary-like form of compensation.[27]

CITIES

Charter Cities

For charter cities, elected official compensation is a matter of local concern which may be addressed in the city's charter.[28]

General Law Cities

Broadly speaking in general law cities, city council members' baseline compensation is set by ordinance; such compensation is tied to parameters established in California law in the 1980s.[29] The starting points are:[30]

General Law Cities	
City Size by Population	**Baseline Per Month Salary**
Up to and Including 35,000	$300
Over 35,000 Up to and Including 50,000	$400
Over 50,000 Up to and Including 75,000	$500
Over 75,000 Up to and Including 150,000	$600
Over 150,000 Up to and Including 250,000	$800
Over 250,000 Population	$1000

General law cities may increase these amounts by up to five percent per year from the date of any prior adjustments.[31] When a city council votes to increase compensation, the increase takes effect in the future—not during the deciding council members' current terms.[32]

Elected mayors may receive additional compensation.[33]

These amounts compensate city council members for their service on the council, including any commission, committee, board, authority, or similar body on which

the city council member serves, unless California law authorizes additional compensation.[34] If California law provides for additional council member compensation for serving on a commission—but that statute does not specify an amount of compensation—the compensation is $150 per month.[35]

DISCLOSURE REQUIREMENTS WHEN MAKING COMPENSATED APPOINTMENTS

From time to time, a decision-making body will be asked to appoint one or more of its members to certain positions. If that appointment involves additional compensation, the agency must make a special disclosure.[36]

The disclosure is on a form provided by the Fair Political Practices Commission and must be posted on the agency's website.[37]

LOCAL AGENCY CHIEF EXECUTIVES AND STAFF

Governing bodies must approve all contracts with local agency chief executives (as defined) in open session, which must be reflected in the minutes.[38] In addition, salaries, salary schedules and fringe benefits must be approved at a regular (as opposed to a special) meeting of the body.[39] Senate Bill 1436, signed into law on August 22, 2016, also requires a governing body to orally report a summary of its recommendation for a final action regarding local agency executive compensation during the open meeting in which that final action is to be taken and prior to the body actually taking that final action.[40]

Copies of contracts are public documents that must be made available on request.[41] Moreover, local agencies must report the annual compensation of its elected officials, officers and employees to the State Controller and, if the agency maintains one, post such information on the agency's website.[42]

The California Constitution provides that "[a] local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been into and performed in whole or in part, or pay a claim under an agreement made without authority of law."[43] Thus, even if a public employee's compensation is later deemed to be inadequate, it is not legal for a local agency to compensate the employee over and above the amount fixed by contract or law.

Beginning in 2012, California law prohibits local agencies[44] from approving contracts for chief executives or department heads (as defined[45]) that contain automatic renewal clauses that provide for automatic compensation adjustments that exceed the cost of living.[46]

Contracts must also comply with California law restrictions on the amount of severance an agency pays if it becomes necessary to terminate a contract with a local agency employee.[47] Copies of severance agreements are public documents.[48]

If an employee is subsequently convicted of abuse of position (as defined[49]), the employee must reimburse:

- 1) any severance payments paid,[50] and
- 2) any paid leave provided pending charges.[51]

FOR MORE INFORMATION

On executive compensation issues, see www.ca-ilg.org/post/executive-compensation-issues.

For specific questions, please contact agency counsel.

SPECIAL ISSUE: SPEAKING AND OTHER FEES

Basic No-Honoraria Rule

California law also regulates the degree to which public officials may receive payments for giving a speech, writing an article or attending a public or private conference, convention, meeting, social event, meal or similar gathering.[52] No local elected office holder, candidate for local elected office, or designated employee may accept such payments—which are known as honoraria.[53] The notion is such communications are part of a public official's service.

If one receives an honorarium from someone who is unaware of the rules, there is a 30-day time limit for returning it.[54]

Exceptions to No-Honoraria Rules

Some gestures in connection with speaking or writing engagements are allowed. These include:

- **Payments Voluntarily Made to Charitable and Similar Organizations.** An organization may recognize a public official's speech, article or meeting attendance by making a direct contribution to a bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organization.[55] A public official may not make such donations a condition for the speech, article or meeting attendance.[56] In addition, the official may not claim the donation as a deduction for income tax purposes.[57] Nor may the donation have a reasonably foreseeable financial effect on the public official or on any member of the official's immediate family.[58] The official may not be identified to the nonprofit organization in connection with the donation.[59]

- **Payments Deposited in Local Agency General Fund.** An honorarium given to an official that is unused may be deposited into the local agency's general fund within 30 days of receipt, so long as it is not claimed by an official as a deduction from income for income tax purposes.[60]

- **Income from Bona Fide Occupation.** An official may be paid income for personal services if the services are provided in connection with a bona fide business, trade, or profession (such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting) and the services are routinely provided in connection with the trade, business or profession.[61] This exception does not apply, however, when the main activity of the business or profession is making speeches.[62]

- **Some Gestures in Connection with a Speech or Panel Discussion.** An official may accept certain gestures when the official gives a speech, participates in a panel or seminar, or provides a similar service. These are exempt from the honoraria ban and are not considered "gifts" by the Political Reform Act. These include free admission to the event, refreshments and similar non-cash nominal benefits received at the event, necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, and transportation (within California) to the event.[63]

PENALTIES

The restrictions against accepting fees are part of the Political Reform Act. Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[64]

These penalties can include any or all of the following:

- Immediate loss of office;[65]
- Prohibition from seeking elected office in the future;[66]
- Fines of up to $10,000 or more depending on the circumstances;[67] and
- Jail time of up to six months.[68]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Reimbursement of Expenses

BASIC RULES

California law contains certain requirements and restrictions on local agency practices relating to reimbursing local elected and appointed officials' expenses.

When May Expenses Be Reimbursed?
The core test on whether an expense is reimbursable is whether the expense was "actual and necessary" in the official's performance of official duties.[69] Local agencies must adopt expense reimbursement policies that specify which kinds of activities are reimbursable for decision-making body members.[70] Many also have policies that govern employee reimbursements. Such policies are an opportunity for a local agency to make findings on why reimbursable activities are necessary to the individual's performance of their duties.[71]

Of course, if one has already received a cash advance or other form of payment for an expense, one may not request reimbursement. Double-charging a public agency for expenses misappropriates public resources and is a crime.[72]

Process Requirements
For decision-making body member reimbursements, local agencies must:

- Use expense report forms;[73]
- Identify a "reasonable time" within which these forms must be submitted;[74] and
- Require that all expenses be documented with receipts.[75]

Those requesting reimbursement must show their request falls within the agency's parameters for use of public resources.[76] Many local agencies have also adopted similar policies for employee reimbursements.

All expense reimbursement requests and supporting documentation are public records.[77]

Amounts
Local reimbursement policies may specify what constitutes reasonable rates for travel, meals, lodging and other expenses. For decision-making body reimbursements, if a local policy does not specify reimbursement rates, then the reimbursable rates default to Internal Revenue Service guidelines.[78]

If a public official wants to seek reimbursement for levels of expenses not otherwise authorized under the agency's reimbursement policy, then the official may seek prior approval for such reimbursement from the governing body (before incurring the expense).[79]

Officials who spend more than allowed under their agencies' reimbursement policies have the option of simply paying the extra costs themselves.[80]

California law requirements relating to expense reimbursement policies and restrictions on reimbursement rates only apply to reimbursements of members of a legislative body.[81] Although charter cities may not be subject to this requirement given their home rule authority, many charter cities have such policies as a matter of good practice.[82]

Again, many local agencies have adopted policies that govern reimbursements for staff as well as elected and appointed officials. Another option is to have the policies address expenses other than those are, strictly speaking, "reimbursed" (for example, those expenses that are paid by the agency in the first instance).

FOR MORE INFORMATION

See the following resources:

- "Buying Meals for Others on the Public's Dime," available at www.ca-ilg.org/dime.
- "Expense Reimbursement Frequently Asked Questions," available at www.ca-ilg.org/ExpenseReimbursementFAQs.
- Sample reimbursement policies available at www.ca-ilg.org/SampleReimbursementPolicies.

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

PENALTIES

California Law Penalties
Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies include:

- Loss of reimbursement privileges;[83]
- Restitution to the local agency;[84]
- Civil penalties of up to $1,000 per day and three times the value of the resource used;[85] and
- Criminal prosecution and a lifetime bar from public office.[86]

At some point, personal use of public resources becomes embezzlement—a form of theft.[87]

Embezzlement may constitute "willful misconduct" which warrants the removal from office of a public officer, or it may be prosecuted as a felony violation. A public officer convicted of embezzlement is guilty of a felony punishable by imprisonment; in addition, that person is ineligible thereafter to hold public office within California.[88]

Federal Law Penalties
Federal prosecutors have been known to treat the receipt of illegitimate expense reimbursements or advances as income to the official. Because the official has not typically reported these payments as such on the official's tax returns, the official then becomes subject to an action for income tax evasion.

The Internal Revenue Code is notoriously complex and its penalty sections are no exception. The general penalty for willful income tax evasion is a fine of up to $100,000 and up to five years in prison, or both. Those convicted are also responsible for paying the costs of prosecution.[89] Failure to report information to the tax authorities is punishable by fines of up to $25,000 and/or a year in federal prison, plus the costs of prosecution.[90]

If the postal service was used in any way, such use can also become the basis for a charge of mail fraud.[91] Mail fraud is punishable by up to five years in federal prison per violation and/or a fine of the greater of 1) twice the gain to the violator or 2) $250,000 per violation.[92]

If the program has any degree of federal funding, the federal criminal laws against corruption and embezzlement will also apply.[93]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Restrictions on Use of Public Resources

BASIC RULES

No Personal or Political Use of Public Resources

Under California law, using public resources for either personal or political purposes is illegal.[94] "Public resources" include such things as:

- Money (for example, charges made on an agency credit card or account);[95]
- Staff time;
- Equipment (for example, machinery, vehicles, technology, tools, telephones, furniture and computers); and
- Supplies (for example, items one would otherwise purchase at office supply or hardware stores).

"Use" means the use of public resources that is substantial enough to result in a gain in advantage for the user and a loss to the local agency that can be estimated as a monetary value.[96] Using a public agency vehicle for personal errands is an example, as is using office equipment and supplies for one's political campaign, business or family purposes (for example, the office photocopier).

There are very narrow exceptions for "incidental and minimal" use of resources. The purpose of these exceptions appears to be more to prevent traps for the unwary; they do not constitute an affirmative authorization for personal use of public resources. An "occasional telephone call" is an example of an incidental and minimal use of public resources.[97]

In addition, subsequent reimbursement or payment for resources misused is not a defense.[98]

No Use of Public Resources on Ballot Measure Related Activities

Local agencies may take positions on ballot measures, as long as they do so in an open meeting where all points of view can be heard.[99] They generally may not, however, use public resources to engage in campaign- type advocacy with respect to the agency's position. Materials that urge voters to either "vote yes" or "vote no" on a measure constitute campaign advocacy,[100] so are materials whose style, tone and timing indicate that their purpose is advocacy as opposed to informational.[101]

FOR MORE INFORMATION

On ballot measure activities, see www.ca-ilg.org/ballot-measure-activities.

Prohibition Against Mass Mailings at Public Expense

The law reflects the notion it is unfair for public officials to use public resources to enhance their visibility and name identification with potential voters. For this reason, California law forbids sending mass mailings at public expense.[102] The FPPC has defined "mass mailings" as sending more than 200 substantially similar pieces that contain the name, office or pictures of elected officials except as part of a standard letterhead using the official's name and office.[103]

The rules on what constitute a mass mailing are quite complex. Make sure to consult with agency counsel whenever sending out materials that contain elected officials' names, offices or pictures (for example, newsletters). Also, there are some exceptions to the prohibition (for example, legal notices and directories).

FOR MORE INFORMATION

On mass mailings, see the following resources:

- "Career-Saving Tips on Mass Mailings," available at www.ca-ilg.org/massmailing.
- The Fair Political Practices Commission fact sheet on prohibited mass mailings available at www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html.

PENALTIES

Public officials face both criminal and civil penalties for using public resources for personal or political benefit.[104]

Criminal penalties include:

- Two- to four-years in state prison;[105] and
- Permanent disqualification from public office.[106]

Civil penalties include fines of up to:

- $1,000 for each day the violation occurs;
- Three times the value of the resource used;[107] and
- Possible reimbursement for the costs of any litigation initiated by private individuals, including reasonable attorney's fees.[108]

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

Additionally, the FPPC may impose an administrative fine of up to $5,000 per violation.[109]

Misuse of public resources is also punishable under laws prohibiting misappropriation of public resources and embezzlement.[110]

Both intentional and negligent violations of the law are punishable.[111]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

ETHICS CODES VERSUS LOCAL CONFLICT OF INTEREST CODES

The Political Reform Act requires local agencies to adopt local conflict of interest codes.[112]

These codes supplement state law, by specifying which positions in the agency are subject to which ethics laws.

For more information, see "About Local Conflict of Interest Codes" (see http://www.ca-ilg.org/local- conflict-of-interest-codes) and the FPPC's materials on adopting local conflict of interest codes (see www.fppc.ca.gov/index. php?id=228).

Gifts to Public Officials

BASIC RULES

Receiving gifts can present a host of issues for public officials. Of course, making demands for gifts in exchange for official action violates California and federal laws prohibiting bribery and extortion.[113] Such demands also deprive the public of its right to honest services from public officials.[114]

Gifts that are not requested present other issues. California law puts an annual limit on the aggregate value of gifts a public official can receive from a single source; gifts over a certain amount also must be reported on a public official's Statement of Economic Interests.

Generally speaking, California public officials must:

- Report gifts worth $50 or more on their Statement of Economic Interests.[115] Gifts from a single source must be added up over the course of a calendar year. An official's reporting obligation is triggered when the combined value of a series of gestures from a single gift-giver reaches $50 or more.

- Not receive gifts that exceed $460 (2015-16) from a single source per calendar year.[116] This limit can be exceeded by accepting a single large gesture or a series of gestures over the course of a calendar year from the same gift-giver that total more than $460 (2015-16).[117]

- Having accepted gifts may keep a public official from participating in the decision-making process. If a public official accepts gestures with a value of more than $460 (2015-16) from a single gift- giver in the twelve months preceding the official's involvement in a decision affecting that gift giver, the official may have to disqualify himself from participating in that decision-making process.[118]

More detail on these rules is available at www.ca-ilg. org/GiftCenter. These rules apply to elected officials, top level managers and others who are covered in the agency's local conflict of interest code or make governmental decisions.[119]

Putting aside what the rules allow, public officials are well-advised to look beyond what the law allows in any situation involving a nice gesture. This includes considering how residents will view a public official's actions.

COMPLIANCE STRATEGY:

Questions for Public Officials to Ask About Nice Gestures

One way to analyze one's likely obligations under California's gift rules is to ask:

1. Did I or my family receive something of value?
2. What's its value?
3. Who gave it to me?
4. Did I do something in exchange for what I received?
5. What kind of gift is it and do special rules apply as a result?
6. Which of the permitted courses of action do I want to take with respect to the gift?

Explanations of each of questions are available at www.ca-ilg.org/GiftCenter.

Unless one of the exceptions applies[120] (see the chart on the following page), a public official receives a gift for purposes of California's gift rules any time the official receives anything that:

- Has a monetary value;
- Provides the official with a personal benefit, and
- For which the official doesn't pay full value.[121]

EXCEPTIONS/GIFTS SUBJECT TO SPECIAL RULES

Certain kinds of gestures either are exempt from California's gift rules or are subject to special treatment. More information on each of these is available at www.ca-ilg.org/GiftCenter.

Special Rules Relating to Who Receives the Gift
(Question 1 at www.ca-ilg.org/GiftCenter)

- ☐ Gifts to family members[122]

Gifts Subject to Special Valuation Rules
(Question 2 at www.ca-ilg.org/GiftCenter)

- ☐ Air transportation[123]
- ☐ Nonprofit or political fundraiser tickets [124]
- ☐ Other tickets and passes[125]
- ☐ Invitation only events[126]

Special Rules for Certain Sources of Gifts
(Question 3 at www.ca-ilg.org/GiftCenter)

- ☐ Someone who is an intermediary for another[127]
- ☐ Group gifts[128]
- ☐ Family gifts[129]
- ☐ Gestures received in the context of certain relationships:
  - Bona fide dating relationships[130]
  - Existing personal or business relationship[131]
  - Long term relationships[132]
- ☐ Acts of neighborliness[133]
- ☐ Agency gifts[134]
  - Gifts from public agencies to agency officials[135]
  - Agency provided tickets or passes136
  - Agency raffles or gift exchanges137

Gestures that Are Part of An Exchange
(Question 4 at www.ca-ilg.org/GiftCenter)

- ☐ Gifts paid for (reimbursed) in full[138] or in part[139]
- ☐ Gifts exchanged on occasions like birthdays or holidays[140]
- ☐ Trading off who pays for meals or activities ("reciprocal exchanges")[141]
- ☐ Employee gift exchanges[142]
- ☐ Barter transactions[143]
- ☐ Presentations, event attendance and articles written[144]
- ☐ Ceremonial functions[145]
- ☐ Employment-related gestures[146]
- ☐ Business gestures[147]
- ☐ Gestures in connection with volunteer nonprofit service[148]
- ☐ Prizes in bona fide competitions[149]

Additional Special Rules Based on Type of Gift
(Question 5 at www.ca-ilg.org/GiftCenter)

- ☐ Home hospitality[150]
- ☐ Informational material[151]
- ☐ Inheritances[152]
- ☐ Leave credits[153]
- ☐ Disaster relief payments[154]
- ☐ Personalized plaques or trophies[155]
- ☐ Wedding gifts[156]
- ☐ Travel[157] and free transportation from transportation companies[158]
- ☐ Tickets /free admissions[159]
- ☐ Payments to worthy causes made at an official's request (behested payments)[160]
- ☐ Wedding guest benefits[161]
- ☐ Bereavement offerings[162]
- ☐ Acts of compassion[163]
- ☐ Gift made because of existing personal or business relationship unrelated to the official's position where there is no evidence the official makes decisions that affect the gift giver.[164]

Gifts can be:

» Tangible or intangible

» Real property or personal property

» Goods or services[165]

Under some circumstances, gifts that an official's family receives are considered gifts to the official for purposes of California's gift rules.[166]

TRAVEL PASSES FROM TRANSPORTATION COMPANIES

When an official is offered free or discounted transportation, the official is well-advised to ask, "Who is offering the travel?" Different rules may apply to gifts of travel depending on who is the source of the gift.

If the gift of travel is from a transportation carrier, a public official should be especially careful. California law forbids elected and appointed public officials from accepting free passes or discounted travel from transportation companies.[167]

This prohibition applies to any kind of travel — personal, business or on behalf of one's public agency — to any location, near or far. The rule applies both to elected and appointed public officers but not to employees.[168]

However, sometimes the rule doesn't apply. The chief exception is when the free or discounted travel is available to the general public and is given for reasons unrelated to the person's status as a public official.[169]

For example, the prohibition against accepting free travel from transportation companies did not apply when:

- The elected official received a first-class airline upgrade because he was going on his honeymoon and the upgrade was given to all honeymooners.[170]
- An elected official received free airline travel because he was the spouse of a flight attendant.[171]
- An elected official exchanged frequent flier miles for an airline ticket because the earning of frequent-flier miles is done without regard to the person's status as an officeholder.[172]

FOR MORE INFORMATION

On gift laws, see the following resources:

- The Institute Gift Resource Center, see www.ca-ilg. org/GiftCenter.
- The Fair Political Practices Commission fact sheet titled "Limitations and Restrictions on Gifts, Honoraria, Travel and Loans," available at www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/LocalGiftFactSheet.pdf.

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

WHAT TO DO ABOUT UNWANTED GIFTS?

Some officials have a no-gifts policy or may be concerned about the public perceptions associated with receiving gifts from certain sources (or certain kinds of gifts). They may also just not want the gift.

Under such circumstances, an official has the following options:

- Decline the gift in the first place or return the gift unused to the gift giver within 30 days of receiving it.[173] Documenting one's actions (for example, with a thanks-but-no-thanks note), can be helpful.
- If the item is a pass or ticket, simply not use the pass or ticket and not let anyone else do so.[174]
- Donate the gift, unused, within thirty days of receipt to a 501(c)(3) tax-exempt nonprofit organization or to a government agency, without claiming a tax deduction for the donation. (Note the donation must be made within 30 days of the gift's receipt and the gift must be unused. Note too that for gifts to nonprofits, the nonprofit must be one which neither the official nor a family member holds a position.)[175]
- Reimburse the donor for the fair market value of the gift within 30 days of receiving it.[176] Keeping documentation (for example, a cancelled check) of the reimbursement is a good practice.

For gifts that are over the annual limit or would put the official over the annual limit for that gift giver, some officials also "buy down" the value of a gift (or the most recent gift in a series) to keep the value of the gift(s) from that gift giver below the annual limit.

The official then reports the fact that they received gift(s), what the gift(s) was/were, and the source of the gift(s) on their Statement of Economic Interests. Again, when paying down the gift, it is best to do so by check and then make sure the donor cashes the check.

PENALTIES

California Law Penalties

These gift limit and reporting requirements are part of the Political Reform Act. Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[177]

These penalties can include any or all of the following:

- Immediate loss of office;[178]
- Prohibition from seeking elected office in the future;[179]
- Fines of up to $10,000 or more depending on the circumstances;[180] and
- Jail time of up to six months.[181]

Federal Law Penalties

Honest Services Fraud

Under federal wire and mail fraud laws, the public has the right to the "honest services" of public officials.[182]

The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary.[183] That duty is violated when a public official makes a decision that is not motivated by his or her constituents' interests but instead by his or her personal interests.[184] Specifically, honest services fraud refers to actions that constitute bribery and kickback schemes.[185] In one instance, federal authorities prosecuted a city treasurer whose decisions to award contracts were motivated in part by gifts.[186]

The maximum penalty for being guilty of wire and/or mail fraud includes a jail term of up to 20 years and a $250,000 fine.[187]

Extortion

A demand for gifts or other benefits in exchange for official action could also constitute extortion. Extortion occurs when someone obtains money through threat of harm or under color of official right.[188] To be chargeable as a federal offense, the act must affect interstate commerce. The maximum penalty for extortion under federal law is 20 years in prison and a $250,000 fine.[189] A person convicted of a felony involving extortion is forever disqualified from seeking elected office in California.[190]

INCOME TAX VIOLATIONS

Income tax problems arise when officials receive money and other kinds of valuable items and don't report them on their income tax forms. Prosecutors don't need to show that the money or gifts were received in exchange for improper purposes—only that they were not reported on the official's income tax form.

Income tax evasion carries with it a possible five-year prison term and a fine of up to $100,000.[191] In addition, prosecutors can require the defendant to pay for the costs of prosecution (in addition to one's own costs associated with defending against the prosecution).[192]

The sometimes-related crime of filing a false tax return is punishable by a maximum three-year prison term and a fine of up to $100,000 (along with the costs of prosecution).[193]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Use of Campaign Funds

BASIC RULE

In general, money raised to support a person's election to office may only be used for political, legislative, or governmental purposes. It's not okay to spend these monies is a way that confers a personal benefit on the candidate.[194] Any expenditure that confers a substantial personal benefit on an individual must be directly related to a political, legislative, or governmental purpose.[195] For example, using campaign funds to repair your car so you can travel to and from campaign events confers a personal benefit and is not a proper expenditure of those funds.

FOR MORE INFORMATION

On the permissible use of campaign funds, see Campaign Disclosure Manual 2: Information for Local Candidates, Superior Court Judges, Their Controlled Committees and Primarily Formed Committees for Local Candidates, 2007, available online at www.fppc.ca.gov.

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

PENALTIES

These restrictions are part of the Political Reform Act. Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[196]

These penalties can include any or all of the following:

- Immediate loss of office;[197]
- Prohibition from seeking elected office in the future;[198]
- Fines of up to $10,000 or more depending on the circumstances;[199] and
- Jail time of up to six months.[200]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Endnotes and Additional Information

Note: The California Codes are accessible at http://leginfo.legislature.ca.gov/. Fair Political Practices Commission regulations are accessible atwww.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html. A source for case law information is www.findlaw.com/cacases/ (requires registration).

1 For example, the salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary. Cal. Gov't Code § 36516(b). A council member appointed or elected to fill a vacancy is compensated in the same amount as his or her predecessor. A directly-elected mayor may receive additional compensation with the consent of the electorate or by ordinance of the city council. Cal. Gov't Code § 36516.1.

2 *County of San Diego v. Milotz*, 46 Cal. 2d 761, 767, 300 P. 2d 1, 4 (1956) (action to recover fees from court reporter for faulty work).

3 *Id.*

4 Cal. Gov't Code §§ 53234-35. *See* www.ca-ilg.org/ab1234compliance.

5 Cal. Const. art. XI, § 1(b).

6 *See, e.g.*, Cal. Pub. Res. Code § 5784.15(a), (b) (park and recreation district board members may be compensated a maximum of $100 per day for board meetings and $500 per month); Cal. Health & Safety Code § 6489 (sanitation district board members may receive $100 per day for board meetings or service rendered at request of board, not to exceed six days per month); Cal. Water Code §§ 20201, 20202 (water district officials—as defined—may, by ordinance, provide for compensation of $100 per day for each day's attendance at board meetings or each day's service rendered at the board's request; not to exceed 10 days service/ meetings per month); Cal. Water Code §§ 34740-41 (California water districts must adopt bylaws fixing compensation paid to officers, but may not exceed $100 per day for attendance at board meetings and for each day's service at the request of the board); Cal. Water Code § 30507 (county water district directors receive compensation not to exceed $100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed six days service/meetings per month); Cal. Water Code § 30507.1 (Contra Costa County Water District directors receive compensation not to exceed $100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed 10 days service/ meetings per month); Cal. Water Code § 21166 (irrigation district directors in districts of less than 500,000 acres receive 1) compensation of up to $100 per day, not to exceed six days, 2) irrigation district directors in districts that produce or deliver electricity receive one of the following: up to $100 per day or $600 per month, with an annual cap of $15,000); Cal. Water Code § 22840 (irrigation districts of 500,000 acres or more receive a salary to be fixed by ordinance and subject to referendum but cannot exceed the salary of a member of the Imperial County Board of Supervisors); Cal. Water Code § 71255 (municipal water district directors receive compensation not to exceed $100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed six days service/ meetings per month).

7 Cal. Pub. Util. Code § 22407.

8 Cal. Health & Safety Code § 9031(a).

9 Cal. Gov't Code § 61047(a).

10 Cal. Health & Safety Code § 13857(a).

11 Cal. Harb. & Nav. Code § 6060.

12 Cal. Health & Safety Code § 32103.

13 Cal. Pub. Res. Code §§ 5784.15(a), (b).

14 Cal. Health & Safety Code § 6489(a).

15 Cal. Pub. Util. Code § 11908.1(a).

16 Cal. Health & Safety Code § 2030(a).

17 Cal. Water Code § 21166.

18 *Id.*

19 Cal. Water Code § 22840.

20 Cal. Water Code §§ 20201, 20202.

21 Cal. Water Code §§ 34740-41.

22 Cal. Water Code § 30507.

23 Cal. Water Code § 30507.1.

24 Cal. Water Code § 71255.

25 Cal. Gov't Code § 53232.1(a).

26 Cal. Gov't Code § 53232.1(b).

27 Cal. Gov't Code § 53232.1(c).

28 Cal. Const. art. XI, § 5(b)(4).

29 *See* Cal. Gov't Code § 36516.

30 *See* Cal. Gov't Code § 36516(a).

31 Cal. Gov't Code § 36516(a)(4).

32 *See* Cal. Gov't Code § 36516.5 (providing a change of compensation does not apply during the same term but allowing adjustment when one or more members serving staggered terms begin new terms).

33 *See* Cal. Gov't Code § 36516.1.

34 *See* Cal. Gov't Code § 36516(c).

35 *Id.*

36 2 Cal. Code Regs. § 18702.5(b)(3).

37 *Id.* The form is called "Form 806." More information regarding Form 806 is available from the Fair Political Practices Commission website at: http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/agency-report-of-public-official-appointments-form-806.html.

38 Cal. Gov't Code § 53262 (a) ("All contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.").

39 Cal. Gov't Code §54956(b) ("Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.").

40 2016 Cal. Stat. ch. 175, § 1 (amending Cal. Gov't Code § 54953).

41 Cal. Gov't Code § 53262(b) ("Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.").

42 Cal. Gov't Code §§ 53891, 53892, 53908.

43 Cal. Const. art. XI, § 10(a).

44 Cal. Gov't Code § 3511.1(c) (defining local agency as "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency").

45 Cal. Gov't Code § 3511.1(d) (defining "local agency executive" as "any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements: (1) the person is the chief executive officer of the local agency, or (2) the person is the head of a department of a local agency).

46 Cal. Gov't Code § 3511.2 ("On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following: (a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment....").

47 Cal. Gov't Code § 3511.2 ("On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:... (b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.") *See* also Cal. Gov't Code § 53260(a) ("All contracts of employment between an employee and a local agency employer shall include a provision that provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract...").

48 Cal. Gov't Code § 53262(b) ("Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.").

49 Cal. Gov't Code § 53243.4 ("For purposes of this article, 'abuse of office or position' means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.").

50 Cal. Gov't Code §§ 53243.2 ("On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position."), 53243.3 ("On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.").

51 Cal. Gov't Code §§ 53243 ("On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position."), 53243.3 ("On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.").

52 *See* Cal. Gov't Code § 89501 (definition of honorarium).

53 *See* Cal. Gov't Code § 89502 (general prohibition).

54 *See* Cal. Gov't Code § 89501(b)(2).

55 *See* 2 Cal. Code Regs. §18932.5(a)(1) (direct charitable contributions excluded from honorarium definition).

56 *See* 2 Cal. Code Regs. §18932.5(a)(2).

57 *See* 2 Cal. Code Regs. §18932.5(a)(3).

58 *See* 2 Cal. Code Regs. §18932.5(a)(4).

59 *See* 2 Cal. Code Regs. §18932.5(a)(5).

60 *See* Cal. Gov't Code § 89501(b)(2).

61 *See* Cal. Gov't Code § 89501(b)(1).

62 *Id.*

63 2 Cal. Code Regs. § 18932.4(e).

64 *See generally* Cal. Gov't Code §§ 91000-14.

65 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

66 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

67 Cal. Gov't Code § 91000(b).

68 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

69 Cal. Gov't Code § 53232.2(a).

70 Cal. Gov't Code § 53232.2(b).

71 65 Cal. Op. Att'y Gen. 516, 522 (1982) (citing *Collins v. Riley*, 24 Cal. 2d 912, 918, 152 P.2d 169 (1944) and determining that the expenses of a handicapped council member met this standard); 61 Cal. Op. Att'y Gen. 303 (1978) (citing *Gibson v. Sacramento County*, 37 Cal. App. 523, 174 P. 935 (1918)); *Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).

72 *See People v. Bradley*, 208 Cal. App. 4th 64 (2012), reh'g denied (2012), rev. denied (2012) (upholding the conviction of city manager and council member of misappropriating public funds Penal Code section 424-when they made charges on city credit card for expenses that they had also received cash advances for).

73 Cal. Gov't Code § 53232.3(a).

74 Cal. Gov't Code § 53232.3(c).

75 *Id*.

76 Cal. Gov't Code § 53232.3(b).

77 Cal. Gov't Code § 53232.3(e).

78 Cal. Gov't Code § 53232.2(c).

79 Cal. Gov't Code § 53232.2(f).

80 Cal. Gov't Code § 53232.2(g).

81 *See* Cal. Gov't Code § 53232.2(b).

82 *See* Cal. Const. art. XI, § 5. *County of Sonoma v. Comm'n on State Mandates*, 84 Cal. App. 4th 1264, 101 Cal. Rptr. 784 (2000).

83 Cal. Gov't Code § 53232.4(a).

84 Cal. Gov't Code § 53232.4(b).

85 Cal. Gov't Code § 53232.4(c). *See also* Cal. Gov't Code § 8314.

86 Cal. Gov't Code § 53232.4(d). *See* Cal. Penal Code § 424. *See also* Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).

87 Cal. Penal Code § 504.

88 Cal. Penal Code § 514. *See also* Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).

89 *See* 26 U.S.C. § 7201.

90 *See* 26 U.S.C. § 7203.

91 *See* generally 18 U.S.C. §§ 1341-46.

92 *See* generally 18 U.S.C. § 3571(b), (d).

93 *See, e.g*, 18 U.S.C. §§ 641 (crime of embezzlement against the United States), 648 (misuse of public funds).

94 *See* Cal. Penal Code § 424; Cal. Gov't Code § 8314.

95 *See People v. Bradley*, 208 Cal. App. 4th 64 (2012) (upholding the conviction of city manager and council member of misappropriating public funds— Penal Code section 424— when they made personal charges on city credit card).

96 Cal. Gov't Code § 8314(b)(4).

97 Cal. Gov't Code § 8314(b)(1).

98 *See People v. Bradley*, 208 Cal. App. 4th at 81-82 (holding restitution was not a defense because misappropriation occurs as soon as credit card was use for personal purpose or unused cash advances were not promptly returned; this is particularly the case when restitution is prompted by a criminal investigation).

99 *Vargas v. City of Salinas*, 46 Cal. 4th 1, 35-37, 92 Cal. Rptr. 3d 286, (2009). *See also Choice-in-Education League v. Los Angeles Unified School Dist.*, 17 Cal. App. 4th 415, 429-431, 21 Cal. Rptr. 3d 303 (1993) (school district did not illegally expend public funds by holding and broadcasting school board meeting at which the board took position opposing a statewide ballot initiative); *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee*, 203 Cal. App. 3d 529, 560, 250 Cal. Rptr. 3d 161 (1988). *See also* Cal. Elect. Code § 9282.

100 Cal. Gov't Code § 54964(b)(3).

101 *Vargas*, 46 Cal. 4th at 40, citing *Stanson v. Mott*, 17 Cal. 3d 206, 130 Cal. Rptr. 697 (1976).

102 *See* Cal. Gov't Code § 89001.

103 *See* 2 Cal. Code Regs. § 18901.

104 *See* Cal. Penal Code § 424; Cal. Gov't Code § 8314.

105 Cal. Penal Code § 424

106 *See* Cal. Penal Code § 424. *See also* Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).

107 Cal. Gov't Code § 8314(c)(1).

108 Cal. Gov't Code § 91012.

109 Cal. Gov't Code § 83116.

110 Cal. Penal Code § 424 ("(a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,

2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law . . .").

111 Cal. Gov't Code § 8314(c)(1).

112 Cal. Gov't Code § 87300.

113 Cal. Penal Code §§ 68(a), 518; 18 U.S.C. §§ 201, 872-880.

114 Under federal wire and mail fraud laws, the public has the right to the "honest services" of public officials. 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services). The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary. *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law). That duty is violated when a public official makes a decision that is not motivated by his or her constituents' interests but instead by his or her personal interests. *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).

115 Cal.Gov't Code § 87207(a)(1). For more information, see http://www.ca-ilg.org/StatementofEconomicInterests.

116 Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2 (the FPPC adjusts the limit biennially).

117 If the limit is exceeded one has several options, any of which must be exercised within 30 days of receiving the gift. One may return the gift unused to the donor, reimburse the donor for all or a portion of the value of the gift or donate the gift, without claiming a tax deduction, to a 501(c)(3) charitable organization or government agency. 2 Cal. Code Regs. §18941(c).

118 Cal. Gov't Code § 87103(e); 2 Cal. Code Regs. § 18700(c)(6)(E). This is because public officials may not make, participate in making, or influence governmental decisions which affect their personal financial interests. Cal. Gov't Code § 87100. The law makes a judgment that one is financially self-interested in a decision when one accepts gifts exceeding the $460 (2015-16) gift limit from someone affected by that decision. Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2(a).

119 2 Cal. Code Regs. §§ 18940(d), 18730(b)(8.1)(A) (application of the gift disclosure rules). *See also* 2 Cal. Code Regs. §§ 18701(a), 18730(b)(9) (application of the disqualification/conflict of interest rules). *See also* 2 Cal. Code Regs. § 18940.1(b) (definition of "official").

120 *See generally* 2 Cal. Code Regs. § 18942 (list of exceptions in the regulations).

121 *See generally* 2 Cal. Code Regs. § 18940(a).

122 2 Cal. Code Regs. § 18943.

123 2 Cal. Code Regs. § 18946.5.

124 2 Cal. Code Regs. § 18946.4.

125 2 Cal. Code Regs. §18946.1.

126 2 Cal. Code Regs. §18946.2.

127 Cal. Gov't Code §§ 87210, 87313; 2 Cal. Code Regs. § 18945(b) (the source of the payment is the source of the gift).

128 2 Cal. Code Regs. §18945.2.

129 2 Cal. Code Regs. § 18942(a)(3).

130 2 Cal. Code Regs. § 18942(a)(18)(A).

131 2 Cal. Code Regs. § 18942(a)(19).

132 2 Cal. Code Regs. § 18942(a)(17)(C).

133 2 Cal. Code Regs. § 18942(a)(17).

134 2 Cal. Code Regs. § 18944.

135 2 Cal. Code Regs. § 18944.3.

136 2 Cal. Code Regs. § 18944.1.

137 2 Cal. Code Regs. § 18944.2.

138 *See* Cal. Gov't Code § 82028(a).

139 2 Cal. Code Regs. § 18941(c)(3).

140 2 Cal. Code Regs. § 18942(a)(8)(A).

141 2 Cal. Code Regs. § 18942(a)(8)(B).

142 2 Cal. Code Regs. § 18944.2(d) (does not apply to tickets or passes that come from someone outside the agency).

143 *See* Cal. Gov't Code § 82028(a).

144 Cal. Gov't Code §§ 89501, 89502.

145 2 Cal. Code Regs. §§ 18942(a)(13), 18942.3.

146 *See* Cal. Gov't Code §§ 82030, 82030.5, 87207.

147 *See* Cal. Gov't Code §§ 82005, 87207, 87209.

148 *See* Cal. Gov't Code § 82028(a); Institute for Local Government, Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder, at 7 (2008). Available at www.ca-ilg.org/document/commitment-nonprofit-causes- and-public-service-some-issues-ponder.

149 2 Cal. Code Regs. § 18942(a)(14).

150 2 Cal. Code Regs. § 18942(a)(7).

151 2 Cal. Code Regs. §§ 18942(a)(1), 18942.1.

152 2 Cal. Code Regs. § 18942(a)(5).

153 2 Cal. Code Regs. § 18942(a)(9).

154 2 Cal. Code Regs. § 18942(a)(10).

155 2 Cal. Code Regs. § 18942(a)(6).

156 2 Cal. Code Regs. §§ 18946.3, 18942(b)(2).

157 2 Cal. Code Regs. §§ 18950-18950.3.

158 *See* Cal. Const. art. XII, § 7 ("A transportation company may not grant free passes or discounts to anyone holding an office in this state . . .").

159 2 Cal. Code Regs. §§ 18492(a)(13), 18942.1(c), 18946.1, 18946.2, 18946.4.

160 *See* Cal. Gov't Code § 82015 (note the behested payment reporting requirement also applies to candidates). For more information, see www.ca-ilg.org/BehestedPayments.

161 2 Cal. Code Regs. § 18942(a)(15).

162 2 Cal. Code Regs. § 18942(a)(16).

163 2 Cal. Code Regs. § 18942(a)(18)(B).

164 2 Cal. Code Regs. § 18942(a)(19).

165 2 Cal. Code Regs. § 18940(a).

166 *See generally* 2 Cal. Code Regs. § 18943.

167 *See* Cal. Const. art. XII, § 7 ("A transportation company may not grant free passes or discounts to anyone holding an office in this state . . .").

168 *See* 3 Cal. Op. Att'y Gen. 318 (1944).

169 74 Cal. Op. Att'y Gen. 26 (1991).

170 *Id.*

171 67 Cal. Op. Att'y Gen. 81 (1984).

172 80 Cal. Op. Att'y Gen. 146 (1997).

173 2 Cal. Code Regs. § 18941(c)(1).

174 2 Cal. Code Regs. § 18946.1 (b)(3) ("A pass or ticket has no reportable value unless it is ultimately used or transferred to another person.").

175 2 Cal. Code Regs. § 18941(c)(2).

176 2 Cal. Code Regs. § 18941(c)(3).

177 *See generally* Cal. Gov't Code §§ 91000-14.

178 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

179 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

180 Cal. Gov't Code § 91000(b).

181 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

182 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).

183 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).

184 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision- making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).

185 *See Skilling v. U.S.*, 130 S.Ct. 2896, 2931(2010) (holding that in order to avoid unconstitutional vagueness, 18 USC §1346, defining "scheme or artifice to defraud," only criminalizes bribes and kick-back schemes).

186 *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005).

187 18 U.S.C. §§ 1341 ("...shall be fined under this title or imprisoned not more than 20 years, or both."). 1343 ("shall be fined under this title or imprisoned not more than 20 years, or both."). *See generally* 18 U.S.C. § 3571(b), (d).

188 18 U.S.C. § 1951.

189 18 U.S.C. § 1951(a). *See generally* 18 U.S.C. § 3571(b).

190 *See* Cal. Elect. Code § 20 (making those convicted of a felony involving bribery, embezzlement, extortion or theft of public money ineligible for public office).

191 26 U.S.C. § 7201.

192 *Id.*

193 26 U.S.C. § 7206(1).

194 *See* Cal. Gov't Code §§ 89510-22. Campaign funds include "any contributions, cash, cash equivalents, and other assets received or possessed" by a campaign committee. Cal. Gov't Code § 89511(b)(1).

195 Cal. Gov't Code § 89512 (an expenditure of campaign funds must be reasonably related to a legislative or governmental purpose, unless the expenditure confers a substantial personal benefit, in which case such expenditures must be directly related to a political, legislative or governmental purpose). "Substantial personal benefit" means a campaign expenditure which results in a direct personal benefit with a value of more than $200. Cal. Gov't Code § 89511(b)(3).

196 *See generally* Cal. Gov't Code §§ 91000-14.

197 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

198 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

199 Cal. Gov't Code § 91000(b).

200 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

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CHAPTER 4:

Transparency Laws

Chapter 4: Transparency Laws

CONTENTS

Economic Interest Disclosure

BASIC RULES

There is an adage about one's life being an open book. Nowhere is this truer than for public officials and their financial situations. When people become public servants, the public gets to learn a great deal about their financial lives. California voters established some of these disclosure requirements when they approved the Political Reform Act (PRA) in 1974.[1] Those entering public service sacrifice a degree of their privacy.

The disclosure requirements of the PRA apply to all "designated employees" of an agency.[2] "Designated employees" is broadly defined to include local elected officials (e.g., members of city councils, county boards of supervisors, and district boards), executive level agency employees (e.g., General Managers and Superintendents), and consultants and appointed members of councils, commissions, boards, committees and other local agency bodies with significant decision-making authority that exceeds a solely advisory function. "Designated employees" also includes persons in staff positions required to disclose their economic interests under the agency's local conflict of interest code because the position entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest of the employee.

This disclosure is made on a form called a "Statement of Economic Interests." It may also be referred to by the acronym "SEI" or its number, "Form 700." A web-based version of the form is available from the Fair Political Practices Commission (FPPC) website: www.fppc.ca.gov. Local agencies may adopt electronic filing procedures with FPPC oversight.[3] One's local agency usually provides paper copies of the form as well.

This form is filed upon assuming office, on an annual basis while in office and upon leaving office.[4] Local rules may impose more stringent requirements.

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

- Sources of income;
- Interests in real property;
- Investments;
- Business positions; and
- Sources of gifts. See the table on the following page.

ETHICS CODES VERSUS LOCAL CONFLICT OF INTEREST CODES

The PRA requires local agencies to adopt local conflict of interest codes, which supplement California law by specifying which positions in the agency are subject to which ethics laws.[5]

For more information, see "About Local Conflict of Interest Codes" (available atwww.ca-ilg.org/sites/main/files/file-attachments/about_local_conflict_of_interest_codes.pdf) and FPPC materials on adopting local conflict of interest codes (seewww.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes/local-government-agencies-adopting-amending-coi.html).

TYPES OF ECONOMIC INTERESTS THAT MUST BE DISCLOSED

» **Sources of Income.** Disclosure is required for income of $500 or more provided or promised to an official from one source (including any income received from a business, nonprofit organization, government agency, or individual) for the previous calendar year (for annual disclosures) or the previous 12 months (for assuming office statements).[6] "Income" includes a community property interest in a spouse or domestic partner's[7] income.[8]

» **Personal Finances.** An official has an economic interest in that official's expenses, income, assets or liabilities and those of his or her immediate family (spouse or domestic partner[9] or dependent children).[10]

» **Real Property.** An interest in real property must be disclosed where the interest is worth $2,000 or more. The interest may be held by the official, the official's spouse or domestic partner[11] (even as separate property) or children, or anyone acting on their behalf. Real property interests can also be created through leaseholds, options and security or mortgage interests in property.[12]

» **Investments.** Another disclosable interest is created when the official, the official's spouse or domestic partner[13] (even as separate property), or dependent children or anyone acting on their behalf, has an investment worth $2,000 or more in a business entity that has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior, even if the official does not receive income from the business.[14]

» **Business Employment or Management.** If the official serves in a director, officer, partner, trustee, employee, or other management position in a business entity, an economic interest is created.[15] Note that this does not apply to a member of the board of a nonprofit entity.[16]

» **Related Businesses.** The official must disclose an interest in a business that is the parent, subsidiary or is otherwise related to a business in which the official:

- Has a direct or indirect investment worth $2000 or more; or
- Is a director, officer, partner, trustee, employee, or manager.[17]

» **Business-Owned Property.** A direct or indirect ownership interest in a business entity or trust that owns real property is another disclosable interest.[18]

» **Loans.** Another type of potentially disclosable interest is created by the receipt of a loan, unless the loan is from a commercial lending Institution or indebtness created as part of a retail installment or credit card transaction, issued on the same terms as available to anyone in the public.[19]

» **Gifts.** Gifts from a single source must be totaled up over the course of a calendar year. An official's reporting obligation is triggered when the combined value of gifts from one source totals $50 or more.[20] For more information about gifts, please see Chapter 3, and www.ca-ilg.org/GiftCenter.[23]

PENALTIES

Economic interest disclosure requirements are part of the PRA. Failure to report or incomplete reporting are punishable by a variety of civil, criminal and administrative penalties depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[21]

Penalties for violation of the PRA can include one or more of the following:

- Immediate loss of office;[22]
- Prohibition from seeking elected office in the future;[23]
- Fines of up to $10,000 or more depending on the circumstances;[24] and
- Jail time of up to six months.[25]

In addition to the above penalties, failure to file a Statement of Economic Interests on time will result in late fees of $10 per day, up to a maximum of $100.[26]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Campaign Contribution Disclosure

BASIC RULES

California has an extensive framework for transparency with respect to campaign contributions.[27] The basic reasoning behind these laws is that the public has a right to know who gives money and other forms of support to candidates for public office. Another stated justification is that the prospect of public disclosure will discourage improper influences.[28]

These transparency requirements apply not only to candidates, but also to groups which organize to participate in the election process (known as "committees").[29] Transparency requirements also apply to those who make large contributions, ten thousand dollars ($10,000) or more in a calendar year, to influence elections.[30] Those who participate in campaigns to pass or defeat ballot measures are also subject to these requirements.[31]

Cities and counties may have additional campaign finance disclosure laws for candidates for offices within their jurisdiction or committees focused on local ballot measures.[32] Copies of these local ordinances must be filed with the FPPC.[33]

In addition, certain categories of local officials are subject to restrictions on campaign contributions received from people with business pending before the agency. Chapter 5 (pages _-_) explains these restrictions.

Chapter 3 explains the restrictions on how campaign funds may be spent.

FOR MORE INFORMATION

On campaign contribution disclosure, see the following resources:

- The FPPC has extensive information to guide candidates and ballot measure committees on these requirements. Visit the FPPC website at www.fppc.ca.gov or call the FPPC's toll-free number: 1-866-ASK-FPPC (1-866-275-3772).
- The Political Reform Division of the California Secretary of State's office issues identification numbers to campaigns and committees, provides technical assistance to filers, and maintains disclosure reports for public access. Visit the Secretary of State's website at www.sos.ca.gov/prd or call 916-653-6224.
- For federal elections (Presidential, U.S. Senate, House of Representatives), consult the Federal Election Commission at 1-800-424-9530 or on the web at www.fec.gov.

For specific questions, please contact the Fair Political Practices Commission.

PENALTIES

The PRA includes campaign contribution disclosure requirements. Violations of the PRA are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[34]

These penalties can include any or all of the following:

- Immediate loss of office;[35]
- Prohibition from seeking elected office in the future;[36]
- Fines of up to $10,000 or more depending on the circumstances;[37] and
- Jail time of up to six months.[38]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

OTHER DISCLOSURE REQUIREMENTS

The California Public Records Act is the main source of authority providing public access to documents in the possession of public agencies in California. There are specific disclosure requirements that are useful to note that are discussed in more detail online and in other chapters of this guide:

- General gifts to public agencies must be disclosed on a special form and posted on the agency website. For more information, see www.ca-ilg.org/GiftsQuestion3 and www.fppc.ca.gov/learn/public-officials-and-employees-rules-/gifts-and-honoraria.html.
- Gifts of event tickets to public agencies must be disclosed on a special form and submitted to the FPPC for posting on its website. For more information, see www.ca-ilg. org/GiftsQuestion3 and www.fppc.ca.gov/learn/public-officials-and-employees-rules-/reporting-ceremonial-role-events-and-ticket-admission.html.
- Campaign contributions in excess of $250 received during the preceding 12 months from any party or participant in a pending permit or license application are discussed on chapter 5.

There are of course other disclosure and notice requirements that are not listed here; these are just some that often raise issues concerning public confidence and ethics.

Charitable Fundraising Disclosure

BASIC RULES

A frequently overlooked disclosure obligation relates to an official or candidate's charitable or other fundraising activities. This obligation is referred to as the "behested payments" requirement. The reasoning behind these laws is that the public has a right to know who is contributing to an elected official's favorite charities and other causes.

The disclosure requirement is triggered when:

- A person or entity donates $5,000 or more in a calendar year;
- The donation is for a legislative, governmental or charitable purpose; and
- The donation is made at the behest of the a public official. This means the official or candidate (or their employee or agent):
  - Has requested or suggested the donation;
  - Controls or directs the donation; or
  - Plays a cooperating, consulting, or coordinating role with respect to the donation.[39]

The report must contain the following information:

- The contributor's name and address;
- The dollar amount or fair market value of the contribution;
- The date or dates on which the contributions were made;
- The name and address of the recipient of the contribution;
- If goods or services were contributed, a description of those goods and services; and
- A description of the purpose or event for which the contribution was used.[40]

The official must make this report once contributions from a single donor (whether an individual or an organization) have reached the $5,000 aggregate threshold for any calendar year. Once this occurs, all contributions the donor makes or made for the calendar year must be disclosed within 30 days after: 1) the date the $5,000 threshold was reached, or 2) the date the payment was made, whichever occurs later.[41]

Within 30 days of the donor reaching the $5,000 threshold, the elected official must file a report with his or her agency (typically through the agency's filing officer)[42]. The FPPC's "Form 803 - Behested Payments Report" should be used to make this disclosure.[43]

What is a "legislative, governmental or charitable" purpose? The law does not define these words, but charitable causes typically involve Internal Revenue Code section 501(c)(3) organizations. A "governmental" cause might include such things as fundraising for a new public library. The reference to a "legislative" cause apparently has its roots in a 1996 FPPC advice letter which addressed a situation in which a State Senator asked a private party to pay the airfare and expenses for a witness to come testify at a legislative hearing.[44]

Of course, when a public servant conditions his or her official actions on a contribution to a worthy cause it is criminal extortion under both state and federal law.[45]

See discussion in the next section.

FOR MORE INFORMATION

On charitable fundraising, see the following resources:

- "Raising Funds for Favorite Causes," available at www.ca-ilg.org/fundraising.
- "Using Public Resources for Gifts and Charitable Purposes," available at www.ca-ilg.org/PublicResourcesforGifts.
- "Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder," available at www.ca-ilg.org/nonprofits.
- "Understanding the 'Behested Payments' Issue," available at www.ca-ilg.org/BehestedPayments.

For specific questions, contact the FPPC or agency counsel.

PENALTIES

These disclosure requirements are part of the PRA. PRA violations are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[46]

Penalties for Extortion under State and Federal Law

California Law

If an official demands, solicits, or otherwise compels a contribution to a charitable organization in exchange for performing an official act favorable to the person making the contribution, the official's act of compelling the contribution could be prosecuted as extortion. Extortion under color of official right is a misdemeanor under California law.[47] Misdemeanors are punishable by up to six months in county jail, a fine of up to $1,000, or both.[48] Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings for official misconduct.[49]

Federal Law

If the official's extortion affects interstate commerce, it is chargeable as a federal offense, which, under federal law, has a maximum penalty of 20 years in prison and a $250,000 fine.[50]

Honest Services Fraud

Under federal wire and mail fraud laws, the public has the right to the "honest services" of public officials.[51]

The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to that owed by a trustee or fiduciary.[52] That duty is violated when a public official makes a decision that is not motivated by his or her constituents' interests but instead by his or her personal interests.[53]

In one instance, federal authorities prosecuted a city treasurer whose decisions to award contracts were motivated in part by whether the firm contributedto political and charitable causes favored by the treasurer.[54]

The maximum penalty for wire and/or mail fraud includes a jail term of up to 20 years and a $250,000 fine.[55]

FOR MORE INFORMATION

On penalties for violations of ethics laws, see www.ca-ilg.org/consequences.

The Public's Right to Access Records

BASIC RULES

There are two sets of laws and regulations that govern public records in California. One set governs the public's right to access public records.[56] The other set governs which records an agency must retain and for how long.[57]

Pursuant to the California Public Records Act ("CPRA"), the public has the right to access materials that are created in the course of conducting the people's business.[58] These materials include any writing prepared, owned, used or retained by a public agency, with some exceptions.[59] "Writings" include, among other things, documents, computer data, e-mails, facsimiles and photographs.[60]

Public agency records are generally subject to public disclosure unless a specific exemption applies.[61] A few of the exemptions worth noting are:

- The "pending litigation" exemption, which exempts from disclosure documents prepared in support of ongoing litigation (but for this protection, lawyers suing an agency could obtain all documents containing the agency's legal strategy just by asking for them).[62]
- The "drafts" exemption, which exempts from disclosure preliminary drafts, notes or other interagency or intra-agency memoranda not retained in the agency's ordinary course of business. The public agency also must be able to demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure.[63]
- The "personal privacy" exemption, which exempts from disclosure personnel files, medical records or other such files, the disclosure of which would constitute an unwarranted invasion of personal privacy.[64]

Despite these exceptions, the safe assumption is that most materials used, prepared, or simply maintained by a public agency—including e-mails—are records subject to disclosure.

A person may make a request for records in any manner, whether orally in person or over the phone, or in a writing mailed, emailed, faxed or personally delivered to the agency.[65] There are two ways for a person to gain access to requested records, and the requester may choose either or both: 1) inspecting the records at the local agency's office during regular business hours; and 2) receiving copies of the requested records.[66]

A request for records must be specific and clear enough for the local agency to be able to determine what records the requester seeks.[67] However, if the request is overly broad or unclear, the local agency must assist the requester with revising the request so that it seeks more easily identifiable records; for instance, the local agency can describe the kind of records it possesses that may be relevant given the purpose of the request and how those records are maintained.[68]

Within ten calendar days of receiving a CPRA request, a local agency must respond to the requester notifying them of whether there are records responsive to the request that the agency will disclose.[69] If the agency is withholding any records pursuant to one or more applicable exemptions, the response must be in writing and identify the exemption(s) invoked to justify the nondisclosure.[70] Sometimes records will contain both nonexempt and exempt information, and the agency must redact a writing to conceal the portions that are exempt before disclosing the writing.[71] Although the CPRA sets a specific deadline for *responding* to a records request, the CPRA simply states that the nonexempt records must be actually *disclosed* to the requester "promptly."[72]

RECORDS RETENTION

Counties and cities generally must retain public records for a minimum of two years, but for special districts, the duration of time varies based on the type of records sought to be destroyed.[73] Most local agencies adopt record retention schedules as part of their records management system. These define which records must be retained and for how long. The California Secretary of State provides local agencies with record management guidelines.[74]

> *A safe assumption is that most materials involved in one's public service are public records subject to disclosure.*

FOR MORE INFORMATION

On Public Records, see the following resources:

- *The People's Business: A Guide to the California Public Records Act*, 2008. Available at the League of California Cities website at www.cacities.org/PRAGuide or in hardcopy form from www.cacities.org/publications or by calling (916) 658-8217.
- *The People's Business* December 2014 Guide Supplement, 2014. Available at the League of California Cities website at www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications.
- *The People's Business: 2014 Chart of Frequently Requested Information and Records*, 2014. Available at the League of California Cities website at www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications.
- *Summary of the California Public Records Act*, 2004. Available on the California Attorney General's website at http://ag.ca.gov/publications/summary_public_records_act.pdf.

For specific questions, please contact agency counsel.

PENALTIES

Anyone can sue the agency to enforce the right to access public records which are subject to disclosure.[75] If the agency loses, it must pay costs and attorney's fees.[76]

FOR MORE INFORMATION

On penalties for violations of ethics laws, see www.ca-ilg.org/ consequences.

Conducting the Public's Business in Public

BASIC RULES

The underlying philosophy of California's open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government.

The Ralph M. Brown Act (Brown Act) is California's open meeting law for the governing bodies of nearly all local agencies.[77] The Brown Act provides minimum legal requirements for local agency transparency in decision-making.[78] (Please note that community college boards are subject to less stringent requirements than are other local agencies. Check the endnotes for specific references to open meeting laws pertaining to community college districts.)[79]

Under the Brown Act, elected and most appointed local agency decision-making bodies, including many advisory committees, must conduct their business in open and public meetings to assure that the local decision-making process is observable by the public.[80] The issue of what kinds of bodies are subject to open meeting laws may require careful legal analysis. For purposes of clarity, this guide uses the term "decision-making body" and "decision-makers," but the reader should be aware that this term is imprecise.

A "meeting" is any congregation of a majority of the members of a decision-making body to discuss, hear, deliberate, or make a decision on any item within the agency's jurisdiction. In other words, a majority of a decision-making body cannot hear a presentation or talk privately about an issue within its subject matter jurisdiction, no matter how the conversation occurs, whether by telephone or e-mail, on a private blog, or at a local coffee shop.[81]

The following are some key things to keep in mind:

» **Committees and Advisory Bodies.** Advisory groups or committees formally created by a governing body are subject to the open meeting laws. Standing committees are subject to the open meeting laws if they have a continuing subject- matter jurisdiction or have a meeting schedule fixed by charter or formal action of the governing body.[82]

» **Serial Meetings.** Avoid unintentionally creating a "serial" meeting—a series of communications that result in a majority of decision-makers conferring on an issue. For example, if two members of a five-member decision-making body consult with each other outside of a public meeting (which is not in and of itself a violation) about a matter of agency business, and then one or both of those individuals consults with a third member on the same issue, a majority of the body has consulted on the same issue and a violation of the open meeting law has occurred. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member polling decision-makers members in a way that reveals the members' positions to one another.[83]

However, separate communications of an employee or official of a local agency with individual decision-makers to answer questions or provide information are permissible, as long as those communications do not communicate information about other decision-makers' comments or positions.[84] For example, the General Manager of a special district may have an individual meeting with Board Member A to answer questions or provide information about a proposal, and then the General Manager may have a similar meeting with Board Member B, as long as the General Manager does not communicate Board Member A's comments or position on the proposal to Board Member B.

GOOD ETHICS EQUALS GOOD POLITICS

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

» **Posting and Following the Agenda.** The Brown Act requires that at least 72-hours before a regular meeting, and 24-hours before a special meeting, a local agency must post an agenda for the meeting, including on the agency's website, if the agency maintains one.[85] In general, public officials may only discuss and act on items included on the posted agenda for that meeting.[86] However, decision-makers or staff may briefly respond to questions or statements during the public comments section of the meeting even if the questions or statements are unrelated to any agenda items. Officials can also request staff to look into a matter or place a matter on the agenda of a subsequent meeting.[87] Action may be taken on a matter not on the agenda only when the decision-making body determines by a majority vote that an emergency situation exists or the decision-making body determines by a two-thirds vote of those officials present at the meeting that there is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda being posted.[88]

» **Permissible Gatherings.** Not every gathering of members of a decision-making body outside of a noticed meeting violates the law. For example, an open meeting violation would not occur if a majority of a decision-making body attends the same educational conference or a meeting not organized by the local agency as long as certain requirements are met.[89] Neither is attendance at a social or ceremonial event in and of itself a violation.[90] The basic rule to keep in mind is a majority of members of a decision-making body cannot discuss agency business (including at conferences or social events) except at an open and properly noticed meeting.

» **Closed Sessions.** The open meeting laws allow for closed discussions only under very limited circumstances.[91] For example, a governing body may generally meet in a closed session to receive advice from its legal counsel regarding pending or reasonably anticipated litigation.[92] However, the reasons for holding the closed session must be noted on the agenda and different disclosure requirements apply to different types of closed sessions.[93] See the table on the next page for information on what kinds of closed sessions are permissible.

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

FOR MORE INFORMATION

On open meeting laws, see the following resources:

» Open and Public V: A Guide to the Ralph M. Brown Act, 2016. Available on the League of California Cities website at www.cacities.org/OpenandPublicV or in hardcopy form by visiting www.cacities.org/ publications or by calling (916) 658-8217.

» The Brown Act: Open Meetings for Local Legislative Bodies, 2003. Available on the California Attorney General's website at http://oag.ca.gov/open- meetings.

» "Closed Session Leaks: Discretion is the Better Part of Valor – and Ethics," available at www.ca-ilg.org/ closed-session-leaks.

» The use of technology and public meetings is discussed in Meetings and Technology: Finding the Right Balance, 2013. Available at www.ca-ilg.org/technology-and-meetings.

For specific questions, please contact agency counsel.

TYPICAL CLOSED SESSION ISSUES

Local agency open meetings laws vary in terms of what kinds of closed sessions are allowed. Below is a list of matters that generally may be addressed in closed session. The list is illustrative, but not comprehensive, and in many cases, there are statutory limitations and requirements that must be considered. Consult with agency counsel concerning 1) whether a particular type of closed session is permissible and 2) under what circumstances.

- **Personnel.** To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints against an employee; however, where the body will be hearing complaints against an employee, at least 24-hours before the time for holding the session, the employee must receive a written notice of his or her right to require that the hearing be in open session .[94]
- **Pending Litigation.** To confer with or receive advice from the agency's legal counsel with respect to existing, threatened or potential litigation.[95]
- **Real Estate Negotiations.** To grant authority to the agency's negotiator regarding the price and terms for the purchase, sale, exchange, or lease of real property on the agency's behalf.[96]
- **Labor Negotiations.** To meet with the agency's labor negotiator regarding salaries, benefits, and other matters within the scope of labor negotiations.[97]
- **Student Disciplinary Issues (for School Districts and Community College Districts).** To consider discipline of a student if a public hearing would result in the prohibited disclosure of private information, after notifying the student (and his or her parents in the case of minor students) and not receiving in response a request for a public hearing.[98]
- **Grand Jury Proceedings.** To allow testimony in private before a grand jury (either individually or collectively).[99]
- **License Applicants with Criminal Records.** To allow an agency to determine whether an applicant for a license or license renewal with a criminal record is sufficiently rehabilitated to obtain the license.[100]
- **Public Security.** To confer with designated law enforcement officials regarding threats to public facilities or services, or the public's right of access to those facilities or services.[101]
- **Multi-jurisdictional Law Enforcement Agency.** To discuss ongoing multi-jurisdictional criminal investigations.[102]
- **Hospital Peer Review and Trade Secrets.** To discuss issues related to medical quality assurance or involving hospital trade secrets.[103]

Just because a topic may be discussed in closed session does not mean that it always must be discussed in closed session. However, sometimes there are reasons for discussing a matter during a permissible closed session. For example, the governing body should discuss an employee disciplinary matter in a closed session meeting to protect the privacy interests of the employee, unless the affected employee gives permission for the governing body to discuss the matter in open session. Other times, the governing body may decide than an open session is in the public's best interest, even if not required (for example, in determining negotiating positions for the agency). Keep in mind that the decision of whether a meeting should be open or closed (where the governing body has authority to decide) is a collective one, not an individual one. However, also keep in mind that a closed session is permissible only where a statute specifically allows it. Otherwise, the matter must be discussed in open session.

PENALTIES

Nullification of Decision

Many decisions that are not made according to the open meeting laws are voidable.[104] After asking the agency to cure the violation, either the District Attorney or any interested person may sue to have the action declared void.[105]

Criminal Sanctions

Additionally, members of the governing body who intentionally violate the open meeting laws may be guilty of a misdemeanor.[106] The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to $1,000 or both.[107]

Other Consequences

Either the District Attorney or any interested person may sue to remedy past, and prevent future, violations of the open meeting laws.[108] Another remedy, under certain circumstances, is for a court to order all closed sessions be electronically recorded.[109] Costs and attorney fees may be awarded to those who successfully challenge open meeting law violations.[110]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

A NOTE ABOUT BLOGGING AND SOCIAL NETWORKING SITES

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

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

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

However, a majority of decision-makers participating in a blog or other web-based conversation could constitute a "meeting" within the meaning of the open meeting laws. This means that the meeting must be held in accordance with all open meeting requirements, in an appropriate (accessible to those with disabilities) location, with prior notice and an agenda.

What is the reasoning underlying these restrictions? One is that the public has a right to know about discussions and decision-making on any issue that may affect them. There is also an underlying belief that decision-makers should deliberate on issues in front of, and facing, their constituents. Another proposed justification is that officials should hear the thoughts of the full range of constituents (not just those on the Internet), should constituents choose to offer them. Further, public discussions and decision-making prevents fears of secret backroom deals made without public knowledge.

For more information, see "Legal Issues Associated with Social Media" (available at www.ca-ilg.org/SocialMediaLegalIssues) and "Taking the Bite Out of Blogs: Ethics in Cyberspace" (available at www.ca-ilg.org/ blogs).

The Public's Right to Participate in Meetings

BASIC RULES

Another element of open meeting laws is the public's right to address the governing body at any open meeting. An elected official's duty is to both hear and evaluate these communications. There are a number of basic rules that govern this right. (Again, check the endnotes for specific references to requirements for community college boards.)[111]

Posting and Following the Agenda

The open meeting laws provide requirements for informing the public of the date, time, and location of meetings, and the items of business to be addressed at the meetings.[112] The agenda must be posted at least 72-hours in advance of a regular meeting.[113]

Members of the public may request that a copy of the agenda packet be mailed to them at the time the agenda is posted or upon distribution to the governing body.[114] Local agencies must post these materials on their website, if the agency has a website.[115]

There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances.[116] These exceptions, where applicable, also permit an agency to take action on or discuss items not on the agenda.[117] The agency may also hold special meetings on 24-hours' notice[118] or on less than 24-hours'notice if a true emergency exists.[119]

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

Any documents or other materials relating to an agenda item for an open session of a regular meeting of a governing body distributed less than 72 hours before the meeting must be made available to the public. This must occur when the materials are distributed to the members of the governing body at a public office or location that the agency designates for this purpose. Local agencies must list the address of this office or location on the agendas for all meetings of their governing body. [120]

Any documents distributed during a public meeting must also be made available to the public. This must occur at the meeting if the document is prepared by the agency, or after the meeting if the document is prepared by someone else, such as a member of the public.[121]

SPECIAL ISSUES

Electronic Recording of Meetings is Allowed

Anyone attending a meeting may photograph or record it with an audio or video recorder unless the governing body reasonably finds that the noise, illumination, or obstruction of view would disrupt the meeting.[122]

Any audio or video recording of a meeting made by the local agency becomes a public record that must be made available to the public for at least 30 days.[123]

Sign-In Must Be Voluntary

Members of the public cannot be required to register their name or fulfill any other condition for attendance at a meeting. If an attendance list is used, it must clearly state that signing the list is voluntary.[124]

The Public's Right to be Heard

Generally, every agenda must include an opportunity for the public to address the governing body on any item of interest to the public within the body's jurisdiction.[125] If the issue of concern is one pending before the governing body, the opportunity must be provided before or during the body's consideration of that issue.[126]

Reasonable Time Limits May Be Imposed

Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.[127]

When many people wish to comment on an issue, for example, an agency may assign a time limit to each speaker to ensure that everyone has a chance to be heard and the agency can complete its business (individuals using a translator must be allotted at least twice the amount of time of a English speaker). However, every effort should be made to avoid artificially short time limits; this gives the public a reasonable chance to share their views and demonstrates the agency's commitment to considering the public's perspectives.

Handling Disruptions

If an individual or group willfully interrupts a meeting and order cannot be restored, the room may be cleared.[128] Members of the media must be allowed to remain (except those participating in the disturbance) and only matters on the agenda can be discussed.[129]

The chair may encourage everyone to be civil and mutually respectful during the meeting and have disruptive individuals removed from the room.[130] However, speakers may not be prevented from criticizing the governing body.[131]

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

FOR MORE INFORMATION

On public participation in meetings, see the following resources:

- The Brown Act: Open Meetings for Local Legislative Bodies, 2003. Available on the California Attorney General's website at http://oag.ca.gov/open-meetings.
- Institute resources on civility, see www.ca-ilg.org/civility.

For specific questions, please contact agency counsel.

GOOD ETHICS EQUALS GOOD POLITICS

Community relations—and the public's opinion of an official's responsiveness—are seriously undermined when it appears an official is not listening to input provided by the public. There can be even more damage if an official expresses disagreement in a hostile or disrespectful way with a position that is being advocated.

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

PENALTIES

Nullification of Decision
As a general matter, decisions that are not made according to the open meeting laws are voidable.[132] After asking the agency to cure the violation, either the District Attorney or any interested person may sue to have the action declared void.[133]

Criminal Sanctions
Additionally, members of the governing body who intentionally violate the open meeting laws may be guilty of a misdemeanor.[134] The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months, a fine of up to $1,000, or both.[135]

Other Measures
Either the District Attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws.[136] Another remedy, under certain circumstances, is for a court to order that all closed sessions be electronically recorded.[137] Costs and attorney's fees may be awarded to those who successfully challenge open meeting law violations.[138]

Potential Civil Rights Violations
By implementing policies or taking actions to regulate or limit the public's right to participate in meetings, other than those regulations and limitations specifically allowed under California law and constitutional law principles, the governing board exposes the local agency to liability for violations of individuals' civil rights[139] including liability for attorney fees.[140]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

VOTERS SUPPORT OPEN GOVERNMENT

In 2004, California voters made public agency transparency a state constitutional and statutory requirement. The California Constitution now provides that "[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."[141]

Endnotes and Additional Information

Note: The California Codes are accessible at http://leginfo.legislature.ca.gov/. Fair Political Practices Commission regulations are accessible atwww.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html. A source for case law information is www.findlaw.com/cacases/ (requires registration).

1 Political Reform Act. Cal. Gov't Code §§ 87200-10.

2 Cal. Gov't Code § 82019.

3 *See* Cal. Gov't Code § 87500.2.

4 Cal. Gov't Code §§ 87202-04, 87302. See 2 Cal. Code Regs. § 18722.

5 Cal. Gov't Code § 87300.

6 *See* Cal. Gov't Code § 87103(c).

7 2 Cal. Code Regs. § 18229.

8 Cal. Gov't Code §§ 82030, 87103(c).

9 2 Cal. Code Regs. § 18229.

10 Cal. Gov't. Code § 82029.

11 2 Cal. Code Regs. § 18229.

12 *See* Cal. Gov't Code §§ 82033, 87103(b).

13 2 Cal. Code Regs. § 18229.

14 Cal. Gov't Code §§ 82034, 87103(a) .

15 Cal. Gov't Code § 87103(d).

16 *See* Cal. Gov't Code § 82005.

17 Cal. Gov't Code §§ 82034, 87103(a), (d).

18 Cal. Gov't Code § 82033 (pro rata interest, if own 10 percent interest or greater).

19 Cal. Gov't Code § 82030(a),(b)(8), (10).

20 Cal. Gov't Code § 87207(a)(1).

21 *See generally* Cal. Gov't Code §§ 91000-14.

22 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

23 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

24 Cal. Gov't Code § 91000(b).

25 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

26 Cal. Gov't Code § 91013.

27 *See generally* Cal. Gov't Code §§ 84100-511.

28 *See* Cal. Gov't Code § 81002(a).

29 *See, e.g.,* Cal. Gov't Code §§ 82013, 84101.

30 *See* Cal. Gov't Code § 82013(c).

31 *See* Cal. Gov't Code § 84202.3.

32 *See* Cal. Gov't Code §§ 81013, 81009.5.

33 Cal. Gov't Code § 81009.5(a). Local disclosure requirements can be found on the Fair Political Practices Commission's website, available at http://www.fppc.ca.gov/learn/campaign-rules/local-campaign-ordinances.html.

34 *See generally* Cal. Gov't Code §§ 91000-14.

35 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

36 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

37 Cal. Gov't Code § 91000(b).

38 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

39 *See* Cal. Gov't Code § 82015(b)(2)(B)(iii); 2 Cal. Code Regs. § 18215.3(a). *See also* Cal. Fair Political Practices Commission, *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans*, at 8 (2015), available at http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/StateGiftFactSheet.pdf.

40 *See* Cal. Gov't Code § 82015(b)(2)(B)(iii). *See also* Fair Political Practices Commission, California Form 803 – Behested Payments Report Instructions, available at http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf .

41 Cal. Gov't Code § 82015(b)(2)(B)(iii).

42 Cal. Gov't Code § 82015(b)(2)(B)(iii); Fair Political Practices Commission, California Form 803 – Behested Payments Report Instructions, available at http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf.

43 Fair Political Practices Commission, California Form 803 - Behested Payments Report, available at http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf.

44 *See Schmidt Advice Letter*, No. A-96-098 (March 26, 1996); S. Rules. Comm., S.B. 124 S. Floor Analysis, 1997-1998 Sess., (Cal. Sept. 2, 1997).

45 Cal. Penal Code § 518; *In re Shepard*, 161 Cal. 171 (1911). *See also* 18 U.S.C. § 666(a)(1)(B) .

46 *See generally* Cal. Gov't Code §§ 91000-14.

47 Cal. Penal Code § 521.

48 Cal. Penal Code § 19.

49 Cal. Gov't Code §§ 3060-3074.

50 18 U.S.C. §§ 1951(a), 3571(b).

51 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).

52 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).

53 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision- making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).

54 *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005). In *Skilling v. U.S.*, 130 S.Ct. 2896, 2931 (2010), the U.S. Supreme Court held that in order to avoid unconstitutional vagueness 18 USC §1346 (honest services fraud) only criminalizes bribes and kick-back schemes.

55 18 U.S.C. §1341 (". . . shall be fined under this title or imprisoned not more than 20 years, or both.").

56 *See* Cal. Gov't Code §§ 6250-70.

57 *See* Cal. Gov't Code §§ 34090-34090.8.

58 *See generally* Cal. Gov't Code §§ 6250-70.5. *See also* Cal. Const. art. I, § 3(b)(1).

59 *See* Cal. Gov't Code §§ 6252-53.

60 Cal. Gov't Code § 6252(g) ("'Writing' means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.")

61 *State ex rel. Division of Industrial Safety v. Superior Court*, 43 Cal. App. 3d 778, 117 Cal. Rptr. 726 (1974); *Cook v. Craig*, 55 Cal. App. 3d 773, 127 Cal. Rptr. 712 (1976).

62 Cal. Gov't Code § 6254(b).

63 Cal. Gov't Code § 6254(a).

64 Cal. Gov't Code § 6254(c).

65 League of California Cities, The People's Business: A Guide to the California Public Records Act, 11 (2008), available at http://www.cacities.org/PRAGuide (citing Los Angeles Times v. Alameda Corridor Transportation Authority (2001) 88 Cal.App.4th 1381).

66 *Id.* at 10.

67 *Id.* at 11 (citing *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159).

68 *Id.* at 12 (citing Cal. Gov. Code § 6253.1; *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177).

69 *Id.* at 11 (citing Cal. Gov't Code § 6253(c)).

70 *Id.* at 13 (citing Cal. Gov't Code § 6255).

71 *Id.* (citing Cal. Gov. Code § 6253(a); *ACLU Foundation v. Deukmejian* (1982) 32 Cal.3d. 440).

72 *Id.* (citing Cal. Gov. Code § 6253(b); 88 Ops.Cal.Atty.Gen. 153 (2005); 89 Ops.Cal.Atty.Gen. 39 (2006)).

73 Cal. Gov't Code §§ 26202 (counties), 34090(d) (cities), 60201 (special districts). Note that in California, the Public Records Act is not a records retention statute. *See Los Angeles Police Dept. v. Superior Court*, 65 Cal. App. 3d 661 (1977).

74 The Secretary of State's Local Government Records Management Guidelines may be viewed at http://www.sos.ca.gov/archives/admin-programs/local-gov-program.

75 Cal. Gov't Code § 6258.

76 Cal. Gov't Code § 6259(d).

77 *See generally* Cal. Gov't Code §§ 54950-63 (for cities, counties, special districts and school districts).

78 *See* Cal. Gov't Code § 54953.7.

79 Cal. Educ. Code §§ 72121-29 (for community college district governing boards).

80 *See* Cal. Gov't Code § 54952.2(a).

81 Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.

82 Cal. Gov't Code § 54952(b).

83 Cal. Gov't Code § 54952.2.

84 Cal. Gov't Code §§ 54954.2; 54956.

85 Cal. Gov't Code § 54952.2(b)(2).

86 Wolfe v. City of Fremont, 144 Cal. App. 4th 533, 50 Cal. Rptr. 3d 524 (2006); see also S.B. 1732, 2007-2008 Leg., Reg. Sess. (Cal. 2008) (clarifying Cal. Gov't Code § 54952.2 to include both communications that result in a collective concurrence and those that are part of the process of developing collective concurrence).

87 Cal. Gov't Code § 54954.2; Cal. Educ. Code § 72121.5.

88 Cal. Gov't Code § 54954.2(a)(2), See Cal. Educ. Code § 72121.5.

89 Cal. Gov't Code § 54954.2(b).

90 Cal. Gov't Code § 54952.2(c)(2).

91 Cal. Gov't Code § 54952.2(c)(5).

92 *See, e.g.,* Cal. Gov't. Code §§ 54956.5-54957, 54957.6, 54957.10, 54962; Cal. Educ. Code § 72122.

93 Cal. Gov't Code § 54956.9.

94 Cal. Gov't Code §§ 54957(b)(1), (2).

95 Cal. Gov't Code § 54956.9.

96 Cal. Gov't Code § 54956.8.

97 Cal. Gov't Code §§ 3549.1 (school and community college districts), 54957.6 (other local agencies).

98 Cal. Educ. Code §§ 35146, 72122.

99 Cal. Gov't Code § 54953.1.

100 Cal. Gov't Code § 54956.7.

101 Cal. Gov't Code § 54957(a).

102 Cal. Gov't Code § 54957.8.

103 Cal. Gov't Code §§ 37606, 37624.3; Cal. Health & Safety Code §§ 1461, 1462, 32106, 32155.

104 Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).

105 *Id.*

106 Cal. Gov't Code § 54959.

107 *See* Cal. Penal Code § 19.

108 Cal. Gov't Code § 54960(a).

109 Cal. Gov't Code § 54960(b).

110 Cal. Gov't Code § 54960.5.

111 Cal. Educ. Code §§ 72121-29 (for community college district governing boards).

112 Cal. Gov't Code § 54954.2(a); Cal. Educ. Code § 72121.

113 *Id.*

114 Cal. Gov't Code § 54954.1.

115 *See* Cal. Gov't Code § 54954.2. This requirement currently only applies to:

- The governing body of a local agency or any other local body created by state or federal statute; or
- A commission, committee, board, or other body of a local agency, created by charter, ordinance, resolution, or formal action of a legislative body, if the members are compensated for their appearance, and at least one member is also the member of a governing body created by state or federal statute.

  However, per 2016 Cal. Stat. ch. 265, § 1 (amending Cal. Gov't Code § 54954.2), beginning January 1, 2019, the agenda for a meeting of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state must be posted on the local agency's "primary Internet Web site homepage" if the local agency has a webpage.

116 Cal. Gov't Code § 54954.2(b).

117 Cal. Gov't Code § 54954.2(b)(2).

118 Cal. Gov't Code § 54956.

119 Cal. Gov't Code § 54956.5.

120 Cal. Gov't Code § 54957.5.

121 Cal. Gov't Code § 54957.5(c).

122 Cal. Gov't Code § 54953.5(a).

123 Cal. Gov't Code § 54953.5(b).

124 Cal. Gov't Code § 54953.3.

125 Cal. Gov't Code § 54954.3(a); Cal. Educ. Code § 72121.5.

126 Cal. Gov't Code § 54954.3(a).

127 Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

128 Cal. Gov't Code § 54957.9.

129 *Id.*

130 Cal. Gov't Code § 54957.9;*Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010).

131 Cal. Gov't Code § 54954.3(c); *Perry Educational Association v. Perry Local Educators' Association*, 460 U.S. 37, 46 (1983); *Acosta v. City of Costa Mesa*, 718 F.3d 800 (9th Cir. 2013).

132 Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).

133 *Id.*

134 Cal. Gov't Code § 54959.

135 *See* Cal. Penal Code § 19.

136 Cal. Gov't Code § 54960(a).

137 Cal. Gov't Code § 54960(b).

138 Cal. Gov't Code § 54960.5.

139 *See* 42 U.S.C. § 1983.

140 *See* 42 U.S.C. § 1988.

141 Cal. Const. art. I, § 3(b)(1).

CHAPTER 5:

Fair Process Laws and Merit-Based Decision-Making

Chapter 5: Fair Process Laws and Merit-Based Decision-Making

CONTENTS

The Right to Fair and Unbiased Decision-Makers

BASIC RULES

Although California statutes largely determine when public officials must disqualify themselves from participating in decisions, common law (judge-made law) and some constitutional principles still require a public official to exercise his or her powers free from personal bias—including biases that have nothing to do with financial gain or losses.

Under the common law doctrine, an elected official has a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of private interests. It should be noted that the interest need not be financial.[1]

Local officials are much less constrained when the body is acting in a legislative, as compared to a quasi-judicial capacity.

In addition, constitutional due process principles require a decision-maker to be fair and impartial when the decision-making body is sitting in what is known as a "quasi-judicial" capacity. Quasi-judicial matters include variances, use permits, annexation protests, personnel disciplinary actions and licenses. Quasi-judicial proceedings tend to involve the application of common requirements or principles to specific situations, much as a judge applies the law to a particular set of facts.

The kinds of impermissible bias[2] include:

» **Personal Interest in the Decision's Outcome.** For example, one court found an elected official was biased and should not participate in a decision on a proposed addition to a home in his neighborhood when the addition would block the elected official's view of the ocean from the official's apartment.[3] Personal interest bias can also arise when hearing officers are selected and paid on an ad hoc basis, making their future work dependent on the public agency's goodwill.[4]

» **Personal Bias.**

- **People.** Strong animosity about a permit applicant based on conduct that occurred outside the hearing is one example. Conversely, a strong personal loyalty toward a party could bias an official as well.[5]
- **Belief/Ideology.** Examples include strong ideological reactions to a proposed Planned Parenthood clinic or community center for a particular ethnic or religious group.

» **Factual Bias.** For example, information an official might receive outside the public hearing that causes the official to have a closed mind to any factual information that may be presented in a hearing. This is a variation of the "ex parte communications" doctrine, which suggests that, in quasi-judicial matters, all communications to decision-makers about the merits (or demerits) of an issue should occur in the context of the noticed hearing (as opposed to private meetings with either side of an issue, for example).[6]

» **Dual Role Influence.** Another example is when someone plays multiple roles in a decision making process. A court concluded that a business owner's fair hearing rights were violated when a public agency attorney made the initial decision to deny the renewal of the business's regulatory permit then acted as a legal adviser to a hearing officer reviewing that denial.[7]

When an official sits in a quasi-judicial capacity, that official's personal interest or involvement, either in a decision's outcome or with any participants, can create a risk that the agency's decision will be set aside by a court if the decision is challenged. Typically, having the official disqualify himself or herself removes the risk.[8]

Decision-makers are also well advised to step aside on participation in a quasi-judicial matter when the decision-maker has pre-judged the matter. Attributes of having "pre-judged the matter" include having a closed mind or a preconceived and unalterable view of the proper outcome without regard to the evidence.[9]

This rule does not preclude holding opinions, philosophies or strong feelings about issues or specific projects; it also does not proscribe expression of views about matters of importance in the community, particularly during an election campaign.[10] Nevertheless, if an official has made very strident and unequivocal statements for or against a pending project or issue, a court could find that the official could not participate as an unbiased decision-maker when the project or issue comes before the agency.[11] Also, local officials are much less constrained when the body is acting in a legislative, as opposed to quasi-judicial capacity.

FOR MORE INFORMATION

On fair decision-making and bias, see the following resources:

- When an Elected Official Feels Passionately About an Issue: Fair Process Requirements in Adjudicative Decision-Making," available at www.ca-ilg.org/bias.
- "When Your Decision Will Affect a Friend or Supporter," available at www.ca-ilg.org/resource/when-your-decision-will-affect-friend-or-supporter.
- Understanding the Basics of Local Agency Decision- Making, 2009, available at www.ca-ilg.org/decisionmaking.
- An Ounce of Prevention: Best Practices for Making Informed Land Use Decisions, 2006, available at www.ca-ilg.org/ounce.

For specific questions, please contact agency counsel.

Effect of Violations

EFFECT ON DECISION

An administrative decision tainted by bias will be set aside. The agency will have to conduct new proceedings free of the influence of the biased decision-maker.[12]

DUE PROCESS VIOLATIONS

If the violation rises to the level of a denial of due process under constitutional law, the affected individual(s) may seek damages, costs and attorney's fees.[13]

FOR MORE INFORMATION

On the effect of ethics law violations, see www.ca-ilg.org/consequences.

Vote-Trading

BASIC RULES

The California law that prohibits public officials from asking for, receiving, or agreeing to receive bribes in exchange for their votes or other official actions also forbids them from giving, or offering or promising to give, "any official vote" in exchange for another public official's vote on the"same or another question."[14]

Like bribery, vote-trading is a form of "you-do-this-for-me,-I-will-do-this-for-you" practice. In Latin, this is known as a quid pro quo ("this for that"). Quid pro quos are legally risky. Any time a public official stops making decisions based on what's best for the public, the transparency and integrity of the policy-making process is compromised.

Note that the California Attorney General has concluded that the prohibition against vote-trading applies to exchanges of votes between public officials and not to commitments made by jurisdictions in an inter-agency agreement.[15]

FOR MORE INFORMATION

On vote trading, see www.ca-ilg.org/votetrading. For specific questions, please contact agency counsel.

PENALTIES

Penalties for vote trading include "imprisonment in the state prison for two, three, or four years and . . . by a restitution fine of not less than two thousand dollars ($2,000) or not more than ten thousand dollars ($10,000) . . ."[16] A conviction for vote-trading will also lead to an immediate loss of office and permanent disqualification from holding any office in the state.[17]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Personal Loans

BASIC RULES

Elected officials and others may not receive a personal loan from any officer, employee, member or consultant of the official's respective agency while in office.[18]

There also are limits on elected officials' and others' ability to receive loans from those with contracts with the agency (except for bank or credit card loans made in the regular course of the company's business).[19] Personal loans over $500 from others must meet certain requirements (for example, be in writing, clearly state the date, amounts and interest payable).[20] For further discussion of ethics laws related to personal loans and other economic interests, see Chapter 2.

PENALTIES

These restrictions are part of the Political Reform Act.

Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[21]

These penalties can include any or all of the following:

- Immediate loss of office;[22]
- Prohibition from seeking elected office in the future;[23]
- Fines of up to $10,000 or more depending on the circumstances;[24] and
- Jail time of up to six months.[25]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Decisions May Not Benefit Family

BASIC RULES

An important part of a fair process is that everyone, irrespective of their personal relationship to decision-makers, will have the same access to public agency benefits and approvals.

An outgrowth of this principle is the rule that public officials must disclose their interests and disqualify themselves under the Political Reform Act and other laws (for example Government Code section 1090's proscription against interests in contracts) from participating in decisions that will have the result of their immediate family's expenses, income, assets or liabilities increasing or decreasing.[26] "Immediate family" includes one's spouse or domestic partner and dependent children.[27] For further discussion of conflict of interest disclosure and disqualification, see Chapter 2.

Some jurisdictions have also adopted additional policies to prevent nepotism in hiring, promotions and appointments. For example, marital status policies regarding supervisor/supervisee relationships, consensual workplace romance policies, and anti-fraternizations policies. For more information about hiring family members, see "Hiring: When a Relative Wants a Job," available at www.ca-ilg.org/fair-processes.

PENALTIES

The disqualification requirements relating to family members are part of the Political Reform Act. A refusal to disqualify oneself is punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[28]

These penalties can include any or all of the following:

- Immediate loss of office;[29]
- Prohibition from seeking elected office in the future;[30]
- Fines of up to $10,000 or more depending on the circumstances;[31] and
- Jail time of up to six months.[32]

If the family members' interest relates to an interest in a contract, penalties for violating Government Code section 1090 apply (for example, felony prosecution or refunds of amounts paid under the contract).[33] For more information about Government Code section 1090, see Chapter 2.

EFFECT ON AGENCY AND THOSE AFFECTED BY AGENCY'S DECISION

When a disqualified official participates in a decision, it can also void the decision.[34] This can have serious consequences for those affected by the decision as well as the public agency.

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Restrictions and Disqualification Requirements Relating to Campaign Contributions

BASIC RULES

Generally, the ethics laws with respect to campaign contributions emphasize disclosure rather than disqualification.[35] Disclosure enables voters to assess the degree an official could be influenced by campaign contributors who appear before the agency. Both financial and in-kind (goods and services) support must be disclosed.[36] These requirements are discussed on Chapter 4.

Moreover, the courts have held the receipt of campaign contributions does not generally give rise to a duty to disqualify for bias. For example, a court determined an elected official who received a campaign contribution from a developer is not automatically barred from acting on the developer's land use permit application.[37] The court left open the possibility this scenario could, under certain circumstances, create a problem.

However, under limited (and sometimes counterintuitive) circumstances, certain local agency officials must disqualify themselves from participating in proceedings regarding licenses, permits and other entitlements for use if the official has received campaign contributions of more than $250 during the previous twelve months from any party or participant.[38] Campaign contributions may be both monetary (dollars) and "in-kind" (goods or services) contributions.[39]

In addition, these officials are prohibited from receiving, soliciting or directing a campaign contribution of more than $250 from any party or participant in a license, permit or entitlement proceeding while the proceeding is pending and for three months after the proceeding.[40]

Affected Officials

Generally speaking, this requirement does not apply to officials directly elected to the board of local agencies while acting in the scope of the office for which they were elected. However, elected officials are covered by this prohibition when they sit as members of other boards to which they were not elected (such as joint powers agencies, regional government entities or local agency formation commissions).[41]

Other covered officials include appointed board or commission members who become or have been candidates for elective office.[42]

These prohibitions apply only with respect to campaign contributions from persons who are financially interested in the outcome of the specified proceedings. Those interested persons include:

- Parties to the proceeding (such as applicants for the permit, license or entitlement); and
- Participants.[43]

A participant is a person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit or other entitlement for use and who has a financial interest in the outcome of the decision.[44] A person qualifies as a "participant" if he or she attempts to influence the officers or employees of the agency with respect to the decision or testifies in person before the agency with respect to the decision.[45]

Extortion under California and Federal Law

A demand for campaign contributions can also constitute extortion. Extortion occurs when someone obtains money through threat of harm or under color of official right.[46]

- **California Law.** Extortion under California law is a misdemeanor.[47] Misdemeanors are punishable by up to six months in county jail, a fine of up to $1,000 or both.[48] Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings for official misconduct.[49]

- **Federal Law.** To be chargeable as a federal offense, the act must affect interstate commerce. The maximum penalty for extortion under federal law is 20 years in prison and a $250,000 fine.[50]

Kinds of Proceedings Affected

The general rule applies to all proceedings involving licenses and permits, including use permits. This includes:

- Business, professional, trade and land use licenses and permits;

- Land use permits;

- Franchises; and

- Contracts, other than competitively bid, labor or personal employment contracts.[51]

Examples of land use permits include conditional use permits,[52] zoning variances,[53] and tentative subdivision and parcel maps.[54] Examples of covered contracts include consulting contracts, whether engineering, architectural or legal.[55]

Actions That Must Be Taken

Disclosure

When someone files a permit or license application, that individual must publicly report all covered officials to whom the individual made contributions of more than $250 during the previous twelve months.[56] Likewise, a covered official must publicly disclose on the record of the proceeding any party or participant who has contributed more than $250 during the previous twelve months to that official.[57]

The disclosure must be made prior to the agency making any decision in the proceeding (without the covered official's participation).[58]

Disqualification

If prior to making a decision in the proceeding, a covered official knowingly receives more than $250 in campaign contributions from a party during the previous twelve months, that official must disqualify himself or herself from participating in the proceeding.[59] Likewise, with respect to contributions received from a participant, the covered official must disqualify himself or herself if he or she has reason to know, prior to making a decision in the proceeding, that the participant is financially interested in the outcome of the proceeding.[60]

(Note the disqualification requirement is triggered by actual receipt of campaign contributions, not simply asking for a contribution if the request is unsuccessful. Of course, there are significant ethical issues associated with soliciting campaign contributions from either parties or participants while a decision is pending).

Disqualification means the official may not participate in making any decision in the proceeding, and may not in any way attempt to use his or her official position to influence the decision.[61]

Avoiding Disqualification

A covered official may avoid disqualification if he or she returns the contribution, or that portion which is over $250, within 30 days from the time the official knows or has reason to know of the contribution and the proceeding.[62]

No Contributions During the Proceeding

While the permit or license proceeding is pending and for three months after the decision, covered officials must not solicit or receive campaign contributions from either parties or participants (persons who actively support or oppose a particular decision and are financially interested in the outcome).[63] This prohibition includes a prohibition against soliciting, receiving or directing contributions on behalf of another person or on behalf of a campaign committee.[64]

Likewise, all parties and participants are prohibited during this period of time from making contributions of more than $250 to any officials involved in the proceedings.[65]

MORE ON FUNDRAISING

Even when the law does not constrain an official's political fund-raising activities (other than requiring disclosure of donors), it is important to be extraordinarily judicious in choosing those one will ask for campaign contributions.

If an individual or company has matters pending with one's agency, they (and others, including the media and one's fellow candidates) are going to perceive a relationship between the decision and whether they contribute to one's campaign. The unkind characterization for this dynamic is "shake-down."

Two important points to remember:

- Public officials who indicate their actions on a matter will be influenced by whether they receive a campaign contribution put themselves at risk of being accused of soliciting a bribe or extortion.
- The legal restrictions on campaign fund-raising are minimum standards.

FOR MORE INFORMATION

See the following resources:

» "Raising Funds for Favorite Causes," available at www.ca-ilg.org/fundraising.

» Institute resources on ethics on the campaign trail, see www.ca-ilg.org/campaigning-office.

» "FPPC resources on campaign contribution limits, see www.fppc.ca.gov/learn/campaign-rules/state-contribution-limits.html.

» "Campaign Disclosure Manual 2 – Information for Local Candidates, Superior Court Judges, Their Controlled Committees, and Primarily Formed Committees for Local Candidates," 2016. Available at www.fppc.ca.gov/learn/campaign-rules/campaign-disclosure-manuals.html.

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

PENALTIES

The disqualification requirements are part of the Political Reform Act. A refusal to disqualify one-self is punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.[66]

These penalties can include any or all of the following:

» Immediate loss of office;[67]

» Prohibition from seeking elected office in the future;[68]

» Fines of up to $10,000 or more depending on the circumstances;[69] and

» Jail time of up to six months.[70]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Agency Staff and Political Activities

BASIC RULES

There are a number of laws designed to insulate public employees from having to participate in the campaign activities of candidates for their agency's governing board.

Employment Decisions, Soliciting Support and Campaign Contributions

California law forbids candidates and officials from conditioning employment decisions on support of a person's candidacy.[71]

Soliciting campaign funds from agency officers or employees is also unlawful.[72] There is an exception if the solicitation is made to a significant segment of the public that happens to include agency officers or employees.[73] Candidates also may not offer or arrange for an increase in salary for an agency employee in exchange for a political contribution.[74]

Note that members of the International City/County Management Association and the City Attorneys Department of the League of California Cities place a high value on maintaining their independence from the political process. As a result, both organizations encourage their members not to make campaign contributions to local officials.[75]

Engaging in Political Activities During Work Hours or While in Uniform

Engaging in political activities during work hours violates prohibitions against the political use of public resources.[76] Local agencies and school districts may impose additional restrictions on the political activities of employees during working hours or while on agency property.[77] Such restrictions can include wearing political buttons during work hours and displaying political signs at one's workstation.[78]

Additionally, California law prohibits employees or officers of local agencies from engaging in political activities of any kind while in uniform.[79]

For more information about the use of public resources for political purposes, see Chapter 3.

PENALTIES

Violation of the prohibition against soliciting campaign funds from agency staff is punishable as a misdemeanor.[80] Offering or arranging a raise for an agency employee in exchange for a contribution is punishable by up to a year in county jail, a fine of up to $5,000 or both.[81]

No penalties are specified in the code sections creating the prohibitions against conditioning employment decisions on political support or against engaging in political activities while in uniform.[82] Presumably violations would fall into the catchall penalty for misconduct in office, which is loss of office.[83]

Public officials face both criminal and civil penalties for using public resources for political benefit.[84] See Chapter 3 for more details.

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Holding Multiple Public Offices

There is such a thing as too much public service; the law limits the degree to which public officials can simultaneously hold multiple offices. The reason is, when an official assumes a public office, he or she takes on responsibility to the constituents of that agency to put their interests first. When an official occupies multiple offices in multiple agencies, fulfilling that responsibility becomes more complicated, both legally and ethically.

Potential legal issues include:

- Political Reform Act issues when the official is in the position of making decisions that affect the official's economic interests. This issue is covered in Chapter 2;
- Section 1090 issues when the official's position is such that the official has an interest in a contract in which the agency is involved. This issue is also covered in Chapter 2; and
- Incompatibility of office issues (for example, membership on the city council and serving on the board of another local agency) when the official's offices are such that the official may be subjected to conflicting loyalties.[85]

The incompatible office holding problem differs from a conflict of interest that involves a potential clash between one's private interest and one's public duties, incompatibility of offices normally refers to the "public-public" situation where no personal conflict of interest is involved. Instead there is a potential clash between one's responsibility to two sets of constituents.

A similar but different conflict can arise when a local agency officer engages in incompatible employment activities. Here, there is only one public office with the conflict arising from the outside employment activity.[86]

BASIC RULES

California law prohibits public officers from simultaneously holding multiple offices that are "incompatible" with one another.[87] Offices are incompatible when:

- Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;
- Based on the powers and jurisdiction of the offices, there is a possibility of significant clashes of duties or loyalties between the offices; or
- Public policy considerations make it improper for the position of making decisions that affect the official's economic interests. This issue is covered in Chapter 2;

The notion underlying the prohibition is that it can be unfair and unwise to have decision-makers who are supposed to have just one agency's (and one agency's constituents) interests at heart assume multiple decision-making roles. As the Attorney General observed, the public is entitled to utmost loyalty from those who occupy offices.[89]

This restriction on holding multiple public offices only applies to positions that are considered to be offices—including appointed or elected members of a governmental board, commission, committee, or other body.[90] The restriction does not apply to positions of employment in an agency,[91] although employees may be prohibited from serving on the governing bodies of agencies in which they are employed.[92]

Note there can be specific legislative exceptions to this rule.[93] Under some circumstances, local agencies may allow simultaneous occupancy of what would otherwise be incompatible offices.[94]

> *When one assumes a public office, one takes on responsibility to the constituents of that agency to put their interests first. When one occupies multiple offices in multiple agencies, that job becomes more complicated...*

SPECIAL ISSUES

Employees Who Run for the Governing Board of Their Public Agency Employers

Generally, an individual may not serve as an elected or appointed member of a local agency's governing board if he or she is an employee of the local agency.[95] If the employee does not resign, the individual's employment automatically terminates upon being sworn into office.[96] Volunteer firefighters are exempt from these provisions if the firefighter receives no salary.[97]

Individual Agency Guidelines

Local agencies must adopt rules regarding incompatible employment activities.[98]

FOR MORE INFORMATION

On holding multiple offices see "Holding Two Positions" available online at www.fppc.ca.gov/learn/public-officials-and-employees-rules-/conflict-of-interest/holding-two-positions.html.

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

PENALTIES

If an official accepts a second office that is incompatible with an office he or she currently holds, the prior office automatically terminates when the official is sworn into the second office.[99]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Competitive Bidding Processes for Public Contracts

BASIC RULES

Public contracting laws — including those adopted at the local level — are designed to give all interested parties the opportunity to do business with the government on an equal basis.[100]

This keeps contracts from being steered to businesses or individuals because of political connections, friendship, favoritism, corruption or other factors. It also assures that the public receives the best value for its money by promoting competition among businesses.[101]

Many competitive bidding requirements are locally imposed, for example by charter cities as part of their municipal affairs authority.[102] California law also authorizes local agencies to adopt procedures for acquisition of supplies and equipment.[103] Most purchasing ordinances require competitive bids for contracts in excess of designated dollar amounts.

For public works projects, California law defines when general law cities and counties must use competitive bidding. For general law cities, public works projects over $5,000 are subject to the state's competitive bidding requirements.[104] For county projects, the threshold is based on population: $6,500 (counties with populations of 500,000 or over),[105] $50,000 (counties with populations of 2 million or over)[106] and $4,000 (all other counties).[107] Note that it is a misdemeanor to split projects to avoid competitive bidding requirements.[108]

The contract for a competitively bid public project must be awarded to the lowest responsible bidder. [109] A responsible bidder is one who is able to perform the contract if awarded.[110]

EXCEPTIONS

Emergency
Contracts may be awarded without competitive bidding if the legislative body makes a finding by a four-fifths vote that an emergency exists.[111]

Professional Services
Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, and surveying, or construction management firms need not be competitively bid, but must be awarded on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.[112] However, if the professional services are too closely akin to the work typically performed by public works construction contractors (for example, some services performed by construction managers), then competitive bidding may be required.[113]

Special Services
The legislative body of any public agency may contract with and employ persons for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required.[114] The test as to whether services are special services depends on the nature of the services, the necessary qualifications required of a person furnishing the services, and the availability of the service from public sources.[115]

Design-Build

Design-build is a method of project delivery in which the design and construction functions are combined and contracted to a single entity (called the "design builder"). Local agencies (defined to include cities, counties and special districts[116]), with approval of the agency's governing body, may use design-build contracting for building construction projects over one million dollars.[117] Local agencies may award design-build projects using either the lowest responsible bidder or best value.[118]

FOR MORE INFORMATION

On public agency procurement processes, see the Institute resources available at www.ca-ilg.org/post/fair-procurement.

PENALTIES

An agency that improperly awards a bid to any bidder other than the lowest responsible bidder may be liable for reimbursing the low bidder's actual cost in submitting the bid, but will not be liable for the low bidder's lost profits.[119]

HONEST SERVICES, FRAUD AND EXTORTION

Under federal wire and mail fraud laws, the public has the right to the "honest services" of public officials.[120]

The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary.[121] That duty is violated when a public official makes a decision that is not motivated by his or her constituents' interests but instead by his or her personal interests.[122] Specifically, honest services fraud refers to actions that constitute bribery and kickback schemes.[123]

"Kickbacks" (for example, receiving money back from proceeds paid to a company that does business with a public entity) in exchange for favorable contracting decisions is one area in which prosecutors have been particularly active.

The maximum penalty for being guilty of wire and/or mail fraud includes a jail term of up to 20 years and a $250,000 fine.[124]

An official's refusal to award a contract unless the individual receives benefits can also be prosecuted as extortion.[125] To be chargeable as a federal offense, the act must affect interstate commerce. The maximum penalty for extortion under federal law is 20 years in prison and a $250,000 fine.[126]

For more information about honest services, fraud and extortion, see "Making a Federal Case Out of Corruption," available at www.ca-ilg.org/fedcase.

Whistle-Blowing Protections

BASIC RULES

California whistle-blowing laws make it unlawful for employers to retaliate against employees who refuse to participate in unlawful activities.[127] Furthermore, if an employee can demonstrate by a preponderance of evidence that his or her whistle-blowing activities were a contributing factor in an adverse employment action, the burden of proof then shifts to the employer to demonstrate by clear and convincing evidence that the employer would have taken the action for "legitimate, independent reasons" even if the employee had not been a whistle-blower.[128] These protections apply specifically to local agency employees.[129]

California law requires employers to post the state attorney general's whistle-blower hotline number at the workplace.[130] Any employee or member of the public can call the hotline at (800) 952-5225 to register their concerns about potentially unlawful practices.[131]

FOR MORE INFORMATION

On whistle-blower protections, see the following resources:

- "For Whom the Whistle Blows," available at www.ca-ilg.org/whistle.
- Walking the Line: What to do When You Suspect an Ethics Problem, 2005. Available at www.ca-ilg.org/WhatToDo.

PENALTIES

Violation of whistle-blower protection laws is a misdemeanor.[132] The maximum criminal penalty for an individual is a year of jail time, a fine of $1,000 or both.[133] In the case of corporations, the criminal penalty is a fine of up to $5,000.[134]

In addition, retaliation against an employee for whistle-blowing activities could result in a suit for violation of the employee's civil rights.[135] Such actions carry the prospect of damages[136] and attorney's fees awards.[137]

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Endnotes and Additional Information

Note: The California Codes are accessible at http://leginfo.legislature.ca.gov/. Fair Political Practices Commission regulations are accessible atwww.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html. A source for case law information is www.findlaw.com/cacases/ (requires registration).

1 *See Nussbaum v. Weeks*, 214 Cal. App. 3d 1589, 1597-98, 263 Cal. Rptr. 360, 365-66 (4th Dist. 1989).

2 *See Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1234 n.23, 97 Cal. Rptr. 2d 467 (2d Dist. 2000) (finding no common law bias).

3 *See Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (2d Dist. 1996) (finding common law bias).

4 *Haas v. County of San Bernadino*, 27 Cal. 4th 1017, 119 Cal. Rptr. 2d. 341 (2002).

5 *See Breakzone*, 81 Cal. App. 4th at 1234 n.23, 97 Cal. Rptr. 2d at 490.

6 *See, e.g., Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 89, 133 Cal. Rptr. 2d 234, 241 (2d Dist. 2003).

7 *Nightlife Partners*, 108 Cal.App.4th at 97-98, 133 Cal. Rptr. 2d at 248.

8 *See Fairfield v. Superior Court*, 14 Cal. 3d 768, 122 Cal. Rptr. 543 (1975); *Mennig v. City Council*, 86 Cal. App. 3d 341, 150 Cal. Rptr. 207 (2d Dist. 1978).

9 *See Cohan v. City of Thousand Oaks*, 30 Cal. App. 4th 547, 35 Cal. Rptr. 2d 782 (2d Dist. 1994) (where local ordinance called for "person" appealing planning commission decision to city council to show cause why the commission's action should be overturned, city council's decision to appeal the action to itself was an appearance of conflict of interest and was part of overall violation of developer's substantive and procedural due process rights).

10 *Fairfield v. Superior Court*, 14 Cal. 3d 768, 122 Cal. Rptr. 543 (1975).

11 *Nasha v. City of Los Angeles*, 125 Cal. App. 4th 470, 482, 22 Cal. Rptr. 3d 772 (2004).

12 *See generally* Cal. Civ. Proc. Code § 1094.5. *See Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (2d Dist. 1996) (requiring the council to rehear an appeal from the planning commission's decision and provide a fair hearing).

13 *See* 42 U.S.C. §§ 1983, 1988.

14 Cal. Penal Code § 86.

15 91 Cal. Op. Att'y Gen. 46 (2008).

16 Cal. Penal Code § 86.

17 *See* Cal. Pen. Code § 88. *See also* Cal. Elect. Code § 20 (making those convicted of a felony involving bribery, embezzlement, extortion or theft of public money ineligible for public office); Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

18 Cal. Gov't Code § 87460(a), (b).

19 *See* Cal. Gov't Code § 87460(c), (d).

20 *See* Cal. Gov't Code § 87461.

21 *See generally* Cal. Gov't Code §§ 91000-14.

22 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

23 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

24 Cal. Gov't Code § 91000(b).

25 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

26 2 Cal. Code Regs. § 18700.

27 *See* Cal. Gov't Code § 82029.

28 *See generally* Cal. Gov't Code §§ 91000-14.

29 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

30 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

31 Cal. Gov't Code § 91000(b).

32 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

33 *See, e.g., People v. Honig*, 48 Cal. App. 4th 289, 55 Cal. Rptr. 2d 555 (1996).

34 *See* Cal. Gov't Code § 91003(b).

35 This is a requirement of the Political Reform Act. *See generally* Cal. Gov't Code §§ 84100-511.

36 Cal. Gov't Code § 82015; 2 Cal. Code Regs. § 18421.1.

37 *Woodland Hills Residents Association v. City Council*, 26 Cal. 3d 938, 164 Cal. Rptr. 255 (1980). *But see* Cal. Gov't Code § 84308; 2 Cal. Code Regs. §§ 18438.1-.8 (defining who is disqualified from acting on a land use entitlement application after receipt of a campaign contribution).

38 Cal. Gov't Code § 84308(c).

39 *See* Cal. Gov't Code § 82015; 2 Cal. Code Regs. § 18215.

40 *See* Cal. Gov't Code § 84308(b).

41 *See* Cal. Gov't Code § 84308(a)(3); 2 Cal. Code Regs. § 18438.1.

42 *See* Cal. Gov't Code § 84308(a)(4); 2 Cal. Code Regs. § 18438.1. *See also* Davis Advice Letter No. A-02-344.

43 *See* Cal. Gov't Code § 84308(b), (c); 2 Cal. Code Regs. § 18438.4.

44 *See* Cal. Gov't Code § 84308(a)(2).

45 *Id.*

46 Cal.Pen. Code §518; 18 U.S.C. § 1951.

47 Cal. Penal Code § 521.

48 Cal. Penal Code § 19.

49 Cal. Gov't Code §§ 3060-3074.

50 18 U.S.C. § 1951(a). *See generally* 18 U.S.C. § 3571(b).

51 *See* Cal. Gov't Code § 84308(a)(5); 2 Cal. Code Regs. § 18438.2.

52 Cal. Gov't Code § 65901.

53 Cal. Gov't Code § 65906.

54 Cal. Gov't Code §§ 66411-413.5.

55 Cal. Gov't Code §§ 4526, 37103, 53060.

56 Cal. Gov't Code § 84308(d); 2 Cal. Code Regs. § 18438.8.

57 Cal. Gov't Code § 84308(c).

58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.*

62 *Id.*

63 Cal. Gov't Code § 84308(b).

64 *Id.*

65 Cal. Gov't Code § 84308(d).

66 *See generally* Cal. Gov't Code §§ 91000-14.

67 *See* Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).

68 *See* Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).

69 Cal. Gov't Code § 91000(b).

70 *See* Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding $1,000, or both).

71 *See* Cal. Gov't Code § 3204, which reads as follows: No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

72 *See* Cal. Gov't Code § 3205.

73 *See* Cal. Gov't Code § 3205(c).

74 *See* Cal. Gov't Code § 3205.5, which reads as follows: No one who holds, or who is seeking election or appointment to, any office shall, directly or indirectly, offer or arrange for any increase in compensation or salary for an employee of a state or local agency in exchange for, or a promise of, a contribution or loan to any committee controlled directly or indirectly by the person who holds, or who is seeking election or appointment to, an office. A violation of this section is punishable by imprisonment in a county jail for a period not exceeding one year, a fine not exceeding five thousand dollars ($5,000), or by both that imprisonment and fine.

75 The ICMA Code is available on the ICMA website at: http:// icma.org/codeofethics.

76 *See* Cal. Gov't Code § 8314.

77 *See* Cal. Gov't Code § 3207 (providing that any city, county or local agency may prohibit or restrict officers and employees engaging in political activity during working hours and political activities on agency premises); Cal. Educ. Code § 7055; 5 U.S.C. §§ 7321-26 (prohibiting employees of state and local executive agencies who work in connection with programs financed in whole or in part by federal loans or grants from engaging in political activities while on duty).

78 *See Cal. Teachers Ass'n v. Governing Bd.*, 45 Cal.App.4th 1383, 53 Cal.Rptr.2d 474 (1996); 5 C.F.R. § 734.306 example 16 (with limited exception, those employees working in connection with federally funded programs "may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.").

79 Cal. Gov't Code § 3206. *See also* Cal. Gov't Code § 3302.

80 *See* Cal. Gov't Code § 3205

81 *See* Cal. Gov't Code § 3205.5, which reads as follows: No one who holds, or who is seeking election or appointment to, any office shall, directly or indirectly, offer or arrange for any increase in compensation or salary for an employee of a state or local agency in exchange for, or a promise of, a contribution or loan to any committee controlled directly or indirectly by the person who holds, or who is seeking election or appointment to, an office. A violation of this section is punishable by imprisonment in a county jail for a period not exceeding one year, a fine not exceeding five thousand dollars ($5,000), or by both that imprisonment and fine.

82 *See* Cal. Gov't Code §§ 3204, 3206.

83 *See* Gov't Code §§ 3060-75. *See also Steiner v. Superior Court*, 50 Cal.App.4th 1771, Cal. Rptr.2d 668 (1996) (discussing the types of misconduct warranting removal from office under section 3060).

84 *See* Cal. Penal Code § 424; Cal. Gov't Code § 8314.

85 *See* Cal. Gov't Code § 1099.

86 *See* Cal. Gov't Code § 1126.

87 Cal. Gov't Code § 1099(a).

88 Cal. Gov't Code § 1099(a)(1)-(3).

89 91 Cal. Op. Att'y Gen. 25 (2008)

90 Cal. Gov't Code § 1099(a).

91 Cal. Gov't Code § 1099(c).

92 Cal. Gov't Code § 53227(a); Cal. Educ. Code §§ 35107(b)(1), 72103(b)(1).

93 *See, e.g.*, Cal. Health & Safety Code § 6480(b) (relating to city officials serving on sanitary districts) *See also* 85 Cal. Op. Att'y Gen. 239 (2002) (noting the Legislature can create exceptions to the incompatibility doctrine).

94 *See* 66 Cal. Op. Att'y Gen. 293 (1983) (offices of city and county planning commission are incompatible but county and charter city may adopt legislation specifying otherwise).

95 *See* Cal. Gov't Code § 53227 (for cities, counties and special districts); Cal. Educ. Code §§ 35107(b)(1) (school districts), 72103(b)(1) (community college districts). *See also* 84 Cal. Op. Att'y Gen. 126 (2001) (community college board member may not become part-time instructor for district).

96 Cal. Gov't Code § 53227(a); Cal. Educ. Code §§ 35107(b)(1), 72103(b)(1).

97 *See* 85 Cal. Op. Att'y Gen. 230 (2002) ("salary" does not include per-call and equipment stipends).

98 Cal. Gov't Code § 1126(c).

99 Cal. Gov't Code § 1099(b) (noting that this position is enforceable through Civil Procedure Code section 803). *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636, 107 P.2d 388 (1940). *See also* Cal. Gov't Code § 1126.

100 *See* Cal. Pub. Cont. Code § 100.

101 *Id.*

102 *Smith v. City of Riverside*, 34 Cal. App. 3d 529, 110 Cal. Rptr. 67 (4th Dist. 1973). *See also* Cal. Pub. Cont. Code § 1100.7.

103 Cal. Gov't Code §§ 54201-25.

104 Cal. Pub. Cont. Code § 20162.

105 Cal. Pub. Cont. Code § 20122.

106 Cal. Pub. Cont. Code § 20123.

107 Cal. Pub. Cont. Code § 20121.

108 Cal. Pub. Cont. Code § 20163.

109 Cal. Pub. Cont. Code § 20162.

110 *See* Cal. Pub. Cont. Code § 1103.

111 Cal. Pub. Cont. Code §§ 1102, 20168, 22050.

112 Cal. Gov't Code § 4526.

113 *City of Inglewood-Los Angeles County Civic Ctr. Auth. v. Superior Court*, 7 Cal. 3d 861, 103 Cal. Rptr. 689 (1972).

114 Cal. Gov't Code § 53060.

115 *Cal. School Employees Ass'n v. Sunnyvale Elementary Sch. Dist.*, 36 Cal. App. 3d 46, 60, 111 Cal. Rptr. 433, 442 (1st Dist. 1973).

116 Cal. Pub. Cont. Code § 22161(f).

117 Cal. Pub. Cont. Code § 22162.

118 Cal. Pub. Cont. Code § 22164.

119 *Kajima/Ray Wilson v. Los Angeles County Metro. Transp. Auth.*, 23 Cal. 4th 305, 315-16, 96 Cal. Rptr. 2d 747 (2000).

120 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).

121 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).

122 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision- making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).

123 *See Skilling v. U.S.*, 130 S.Ct. 2896, 2931(2010) (holding that in order to avoid unconstitutional vagueness, 18 USC §1346, defining "scheme or artifice to defraud," only criminalizes bribes and kick-back schemes).

124 18 U.S.C. §§ 1341 (". . . shall be fined under this title or imprisoned not more than 20 years, or both."), 1343 ("shall be fined under this title or imprisoned not more than 20 years, or both.").

125 18 U.S.C. § 1951.

126 18 U.S.C. § 1951(a).

127 *See* Cal. Lab. Code § 1102.5(c) ("An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.").

128 Cal. Lab. Code § 1102.6.

129 *See* Cal. Lab. Code § 1106.

130 *See* Cal. Lab. Code § 1102.8 (requiring employers to post employees' rights and responsibilities under the whistle- blower laws, including the telephone number for the Attorney General's hotline).

131 *See* Cal. Lab. Code § 1102.7 (requiring the Attorney General to set up the hotline).

132 Cal. Lab. Code § 1103.

133 *Id.*

134 *Id.*

135 *See, e.g., Connick v. Myers*, 461 U.S. 138, 103 S.Ct. 1684 (1983); *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will County, Ill.*, 391 U.S. 563, 88 S.Ct. 1731 (1968); *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951(2006).

136 42 U.S.C. § 1983.

137 42 U.S.C. § 1988.

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Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

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LEAGUE OF CALIFORNIA CITIES

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

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Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024

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IT IS THE PEOPLE'S BUSINESS

Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the act's initial section, declaring the Legislature's intent:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."[1]

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

> *"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*[2]

PRACTICE TIP: The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

The Brown Act's other unchanged provision is a single sentence:

> *"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."*[3]

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body discusses, deliberates, or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference or videoconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Social Media posts, comments, and "likes" can result in a Brown Act violation. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions, and some state legislatures have banned the practice. On the other hand, widespread video streaming and videoconferencing of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to ensure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multimember government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body. [5]

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents and staff. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and limits on the time allotted to each speaker. For more information, see chapter 4.

Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Some public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately, such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and businesslike, but it may be perceived as unresponsive and untrustworthy.

PRACTICE TIP: Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling, for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.[6] Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.

- A local agency's right to confidentially address certain negotiations, personnel matters, claims, and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

A detailed and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law and look at its unique circumstances to determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

PRACTICE TIP: The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action are to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series titled "Your Secret Government" that ran in May and June 1952.

Out of the series came a decision to push for a new state open-meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill, and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open-meeting laws, such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open-meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **https://www.calcities.org/home/resources/open-government2**. A current version of the Brown Act may be found at **https://leginfor.legislature.ca.gov**.

ENDNOTES

1 Cal. Gov. Code, § 54950.

2 Cal. Const., Art. 1, § 3, subd. (b)(1).

3 Cal. Gov. Code, § 54953, subd. (a).

4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Const., Art. 1, § 3, subd. (b)(2).

5 Cal. Gov. Code, § 54952.2, subds. (b)(2) and (c)(1); Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533.

6 Cal. Gov. Code, § 54953.7.

Chapter 2

LEGISLATIVE BODIES

Chapter 2

LEGISLATIVE BODIES

The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.[1]

What is a "legislative body" of a local agency?

A "legislative body" includes the following:

- The **"governing body** of a local agency" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards, and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision, or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]
- **Newly elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.[7] Thus, meetings between incumbents and newly elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

PRACTICE TIP: The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

Q. On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation, but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions, and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]
- **Standing committees** of a legislative body, irrespective of their composition, which have either (1) a continuing subject matter jurisdiction or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates committees on budget and finance or on public safety that are not limited in duration or scope, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11] A majority of the members of a legislative body may attend an open and public meeting of a standing committee of that body, provided the members who are not part of the standing committee only observe.[12] For more information, see chapter 3.
- The governing body of any **private organization** either (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company, or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[13] These include some nonprofit corporations created by local agencies.[14] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[15] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[16]

PRACTICE TIP: It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a nonexempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

Q. The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

A. *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q. If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A. *Yes. But if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[17]

What is <u>not</u> a "legislative body" for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[18] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[19]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[20]

Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

A. *No, because the committee has not been established by formal action of the legislative body.*

Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

A. *Possibly, because the direction from the city council might be regarded as a formal action of the body, notwithstanding that the city manager controls the committee.*

- Individual decision-makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads is not subject to the Brown Act since such assemblies are not those of a legislative body.[21]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[22]
- County central committees of political parties are also not Brown Act bodies.[23]

Legal counsel for a governing body is not a member of the governing body, therefore, the Brown Act does not apply to them. But counsel should take care not to facilitate Brown Act violations by members of the governing body.[24]

ENDNOTES

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127.

2 Cal. Gov. Code, § 54952, subds. (a) and (b).

3 Cal. Gov. Code, § 54951; Cal. Health & Saf. Code, § 34173, subd. (g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Cal. Ed. Code § 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550.

5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990).

6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362.

7 Cal. Gov. Code, § 54952.1.

8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805.

9 Cal. Gov. Code, § 54952, subd. (b)

10 79 Ops.Cal.Atty.Gen. 69 (1996).

11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793.

12 Cal. Gov. Code § 54952, subd. (c)(6).

13 Cal. Gov. Code, § 54952, subd. (c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996, who, after that date, is made a nonvoting board member by the legislative body. Cal. Gov. Code § 54952, subd. (c)(2).

14 Cal. Gov. Code, § 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002).

15 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300 fn. 5.

16 *"The Brown Act, Open Meetings for Local Legislative Bodies,"* California Attorney General's Office (2003), p. 7.

17 Cal. Gov. Code, § 54952, subd. (d).

18 Cal. Gov. Code, § 54952, subd. (b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

19 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129.

20 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973).

21 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879.

22 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513.

23 59 Ops.Cal.Atty.Gen. 162, 164 (1976).

24 *GFRCO, Inc. v. Superior Court of Riverside County* (2023) 89 Cal.App.5th 1295, 1323; *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95, 105 (a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting).

Chapter 3

MEETINGS

Chapter 3

MEETINGS

The Brown Act only applies to meetings of local legislative bodies. It defines a meeting as "any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body."[1] The term *meeting* is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.[2]

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.[3]
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.[4]
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.[5]
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.[6]

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:[7]

Individual contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on their own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, as long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

Community meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

> **"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**
>
> *The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for reelection and all three participate. All of the candidates are asked their views on a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. *Yes, because the chamber of commerce, not the city, is organizing the debate. The city should not sponsor the event or assign city staff to help organize or run the event. Also, the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates. Finally, incumbents participating in the event should take care to limit their remarks to the program set by the chamber and safeguard due process by indicating they will keep an open mind regarding specific applications that might come before the council.*

Q. May the three incumbents accept an invitation from the editorial board of a local paper to all candidates to meet as a group and answer questions about and/or debate city issues?

A. *No, unlike the chamber of commerce event, this would not be allowed under the Brown Act because it is not an open and publicized meeting.*

Other legislative bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of (1) another body of the local agency and (2) a legislative body of another local agency.[8] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony, trying to influence the outcome of proceedings before a subordinate body, or discussing the merits with interested parties.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body that the public may attend.*

Q. The members then proceed upstairs to the office of their local assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the assembly member.*

Standing committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting, and they must sit where members of the public sit).[9]

Q. The legislative body establishes a standing committee of two of its five members that meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Q. Can the legislative body establish multiple standing committees with partially overlapping jurisdiction?

A. *Yes. One result of this overlap in jurisdiction may be that three or more of the members of the legislative body ultimately end up discussing an issue as part of a standing committee meeting. This is allowed under the Brown Act provided each standing committee meeting is publicly noticed and no more than two of the five members discuss the issue at any given standing committee meeting.*

Social or ceremonial events

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attend the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. As long as no such business is discussed, there is no violation of the Brown Act.

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.[10] This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements. Staff may provide written briefings (e.g., staff updates, emails from the city manager, confidential memos from the city attorney) to the full legislative body, but apart from privileged memos, the written materials may be subject to disclosure as public records as discussed in chapter 4.

Retreats, trainings, and workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, trainings, or workshops are subject to the requirements of the Brown Act. This is the case whether the gathering focuses on long-range agency planning, discussion of critical local issues, satisfying state-mandated ethics training requirements, or team building and group dynamics.[11]

Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings include only a portion of a legislative body, but eventually they comprise a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting … 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."[12] The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

The serial meeting may occur by either a "daisy chain" or a "hub and spoke" sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D, and so on until a quorum has discussed, deliberated, or taken action on an item within the legislative body's subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, D, and so on (the spokes) until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one by one for discussion, deliberation, or a decision on a proposed action.[13] Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[14]

The Brown Act is violated, however, if several one-on-one meetings or conferences lead to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum

of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[16] Such a memo, however, may be a public record.[17]

The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"

"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Bradley and Cohen lined up and another vote leaning. With you, I'd be over the top."

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

The lobbyist and the reporter are facilitating a violation of the Brown Act. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking, "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[18] Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation, or action taken among the majority of the legislative body.

"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"

"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

Q. Various social media platforms and websites include forums where agency employees and officials can discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

A. *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*

Q. A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?

A. *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply all" option that may inadvertently result in a Brown Act violation. Staff should consider using the "bcc" (blind carbon copy) option when addressing an email to multiple members of the legislative body and remind recipients not to "reply all."

Social media should also be used with care. A member of the legislative body cannot respond directly to any communication on an internet-based social media platform that is made, posted, or shared by any other member of the legislative body. This applies to matters within the subject matter jurisdiction of the legislative body. For example, if one member of a legislative body "likes" a social media post of one other member of the same body, that could violate the Brown Act, depending on the nature of the post.[19]

Finally, electronic communications (such as text messaging) among members of a legislative body during a public meeting should be discouraged. If such communications are sent to a majority of members of the body, either directly or through an intermediary, on a matter on the meeting agenda, that could violate the Brown Act. Electronic communications sent to less than a majority of members of the body during a quasi-judicial proceeding could potentially raise due process concerns, even if not per se prohibited by the Brown Act. Additionally, some legislative bodies have rules governing electronic communications during meetings of the legislative body and how their members should proceed if they receive a communication on an agenda item that is not part of the record or not part of an agenda packet.

Informal gatherings

Members of legislative bodies are often tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[20] A gathering at which a quorum of the legislative body discusses matters within their jurisdiction violates the Brown Act even if that gathering occurs in a public place. The Brown Act is not satisfied by public visibility alone. It also requires public notice and an opportunity to attend, hear, and participate.

Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence does not lessen the potential for a violation of the Brown Act.

Technological conferencing

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

Except for certain non-substantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But in an effort to keep up with modern technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[21] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

Teleconference is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."[22] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[23]

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction.
- Additional teleconference locations may be made available for the public.
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable.
- Agendas must be posted at each teleconference location, even if a hotel room or a residence.
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C., to New York. May she?

A. *She may not participate or vote because she is not in an open, noticed, and posted teleconference location.*

Until Jan. 1, 2026, teleconferencing may also be used on a limited basis where a member indicates their need to participate remotely for "just cause" (e.g., childcare or a contagious illness) or due to "emergency circumstances" (e.g., a physical or family medical emergency). This teleconferencing option has extremely detailed requirements, and careful review is needed. If the City experiences a technical issue that prevents members of the public from viewing the meeting and/or offering comments virtually, then no further action can be taken until the technical issue is resolved.[24]

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[25]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[26]

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party.
- Inspect real or personal property that cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property.

Q. The agency is considering approving a major retail mall. The developer has built other similar malls and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice.
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction.

- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- Visit the office of its legal counsel for a closed session on pending litigation when to do so would reduce legal fees or costs.[27]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[28] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[29]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[30] State law has also allowed for virtual meetings under certain emergency situations.[31]

ENDNOTES

1 Cal. Gov. Code, § 54952.2, subd. (a).

2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870.

3 Cal. Gov. Code, § 54954, subd. (a).

4 Cal. Gov. Code, § 54956.

5 Cal. Gov. Code, § 54956.5.

6 Cal. Gov. Code, § 54955.

7 Cal. Gov. Code, § 54952.2, subd. (c).

8 Cal. Gov. Code, § 54952.2, subd. (c)(4).

9 Cal. Gov. Code, § 54952.2, subd. (c)(6). See 81 Ops.Cal.Atty.Gen. 156 (1998).

10 Cal. Gov. Code, § 54953.1.

11 "*The Brown Act,*" California Attorney General (2003), p. 10.

12 Cal. Gov. Code, § 54952.2, subd. (b)(1).

13 *Stockton Newspapers, Inc. v. Redevelopment Agency* of the City of Stockton (1985) 171 Cal.App.3d 95.

14 Cal. Gov. Code, § 54952.2, subd. (b)(2).

15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518.

16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

17 Cal. Gov. Code, § 54957.5, subd. (a).

18 Cal. Gov. Code, § 54952.2, subd. (b)(2).

19 Cal. Gov. Code, § 54952.2, subd. (b)(3).

20 Cal. Gov. Code, § 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964).

21 Cal. Gov. Code, § 54953, subd. (b)(1).

22 Cal. Gov. Code, § 54953, subd. (b)(4).

23 Cal. Gov. Code, § 54953. Until Jan. 1, 2024, the legislative body could use teleconferencing "during a proclaimed state of emergency" by the Governor in specified circumstances, and teleconference locations were exempt from certain requirements, such as identification in and posting of the agenda.

24 Cal Gov. Code, § 54953, subd. (f) (which will become Govt. §54953(e) as of Jan. 1, 2024).

25 Cal. Gov. Code, § 54954, subd. (b).

26 Cal. Gov. Code, § 54954, subd. (b)(1)-(7).

27 94 Ops.Cal.Atty.Gen. 15 (2011).

28 Cal. Gov. Code, § 54954, subd. (c).

29 Cal. Gov. Code, § 54954, subd. (d).

30 Cal. Gov. Code, § 54954, subd. (e).

31 Cal. Gov. Code, § 54953, subd. (e) (exp. January 1, 2026).

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location "freely accessible to members of the public."[1] The courts have not definitively interpreted the "freely accessible" requirement. The California Attorney General has interpreted this provision to require posting in a location open and accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.[2] This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.[3] While posting an agenda on an agency's internet website will not, by itself, satisfy the "freely accessible" requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if (1) the local agency has a website and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body or (b) has members that are compensated, with one or more members that are also members of a governing body.[4]

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city's website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for "substantial compliance" with all agenda posting requirements, including posting to the agency website.[5] Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties that cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.[6] This inquiry requires a fact-specific examination of whether the agency or its legislative body made "reasonably effective efforts to notify interested persons of a public meeting" through online posting and other available means.[7] The Attorney General's opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.[8] For these reasons, obvious website technical difficulties might not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."[9] For a discussion of descriptions for open and closed-session agenda items, see chapter 5. Special care should be made to describe on the agenda each distinct action to be taken by the legislative body, while an overbroad description of a "project" must be avoided if the "project" is actually a set of distinct actions, in which case each action must be listed separately on the agenda.[10] For example, the listing of an "initiative measure" alone on an agenda was found insufficient where the agency was also deciding whether to accept a gift from the measure proponent to pay for the election.[11]

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

Q. The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street.
- Consideration of a contract with ABC Consulting.

Are these descriptions adequate?

A. *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read, "Consideration of a contract with ABC Consulting in the amount of $50,000 for traffic engineering services regarding traffic on Eighth Street."*

Q. The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which is listed on the agenda.

Is this permissible?

A. *Yes, as long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed-session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions.[12] Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted or upon distribution to all, or a majority of all, of the members of the legislative body, whichever occurs first. If the local agency has an internet website, this requirement can be satisfied by emailing a copy of, or website link to, the agenda or agenda packet if the person making the request asks for it to be emailed. Further, if requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[13]

Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation and each radio and television station that has requested such notice in writing. This notice must be delivered at least 24 hours before the time of the meeting by personal delivery or any other means that ensures receipt.

The notice must state the time and place of the meeting as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda, that is, with a brief general description. Some items must appear on a regular, not special, meeting agenda (e.g., general law city adoption of an ordinance or consideration of local agency executive compensation).[14]

As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: at a site that is freely accessible to the public, and on the agency's website if (1) the local agency has a website and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body or (b) has members that are compensated, with one or more members that are also members of a governing body.[15]

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[16] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[17] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[18]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[19] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[20]

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[21] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[22] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and can address the board on those items.[23]

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[24] Although written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments, as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a

mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[25] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[26]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings).
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action, and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline.
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

PRACTICE TIP: Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

> **"I'd like a two-thirds vote of the board so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.**
>
> **"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"**

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

> **"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go-ahead tonight, even though it's not on the agenda."**

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:

- First, make two determinations: (1) that there is an immediate need to take action
  and (2) that the need arose after the posting of the agenda. The matter is then
  placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on their own activities.[27] However, caution should be used to avoid any discussion or action on such items.

> **Council Member Jefferson: I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street. Are there problems with this project?**
>
> **City Manager Frank: The public works director has prepared a 45-minute PowerPoint presentation for you on the status of this project and will give it right now.**
>
> **Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.**

It is clear from this dialogue that the Elm Street project was not on the council's agenda but was raised during the public comment period for items not on the agenda. Council Member Jefferson properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

A number of Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[28]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[29] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[30]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[31]

Action by secret ballot, whether preliminary or final, is flatly prohibited.[32]

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[33]

Q. The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A. *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt or disrupt proceedings.[34] Ejection is justified only when audience members actually disrupt the proceedings,[35] or, alternatively, if the presiding member of the legislative body warns a person that their behavior is disruptive and that continued disruption may result in their removal (but no prior warning is required if there is a use of force or true threat of force).[36] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to readmit an individual or individuals not responsible for the disturbance.[37]

Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[38] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[39]

Q. In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A. *No. The memorandum is a privileged attorney-client communication.*

Q. In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A. *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A nonexempt or otherwise non-privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose, and the agendas for all meetings of the legislative body must include the address of this office or location.[40] The location designated for public inspection must be open to the public, not a locked or closed office. Alternatively, the documents can be posted on the city's website for public review if statutory requirements are met.[41]

A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body.
- After the meeting if prepared by some other person.[42]

This requirement does not prevent assessing a fee or deposit for providing a copy of a public record pursuant to the California Public Records Act except where required to accommodate persons with disabilities.[43]

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[44] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[45]

In addition, the public is specifically allowed to use audio or videotape recorders or still or motion picture cameras at a meeting to record meetings of legislative bodies, absent a reasonable finding by the body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[46]

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[47]

PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record but must respect a speaker's desire for anonymity.

The public's right to speak during a meeting

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, as long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[48]

Q. Must the legislative body allow members of the public to show videos or make a PowerPoint presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

A. *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the Brown Act, as well as case law, prevents legislative bodies from prohibiting public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself.[49] However, this prohibition does not provide immunity for defamatory statements.[50]

Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

A. *No, as long as the criticism pertains to job performance.*

Q. During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

A. *There is no case law on this subject. Some would argue that purely campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section where relevant to the governing of the agency and an implicit criticism of the incumbents' performance of city business.*

The legislative body may adopt reasonable regulations, including a limit on the total time permitted for public comment and a limit on the time permitted per speaker.[51] Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[52]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a regular (but not special) public meeting if all interested members of the public had the opportunity to

speak on the item before or during its consideration, and if the item has not been substantially changed.[53]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[54]

ENDNOTES

1 Cal. Gov. Code, § 54954.2, subd. (a)(1).

2 78 Ops.Cal.Atty.Gen. 327 (1995).

3 88 Ops.Cal.Atty.Gen. 218 (2005).

4 Cal. Gov. Code, §§ 54954.2, subd. (a)(1) and 54954.2, subd. (d).

5 Cal. Gov. Code, § 54960.1, subd. (d)(1).

6 99 Ops.Cal.Atty.Gen. 11 (2016).

7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432.

8 99 Ops.Cal.Atty.Gen. 11 (2016).

9 Cal. Gov. Code, § 54954.2, subd. (a)(1).

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of California Environmental Quality Act [CEQA] action [mitigated negative declaration] without specifically listing it on the agenda violates the Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis). See also *GI Industries v. City of Thousand Oaks* (2022) 84 Cal.App.5th 814 (depublished) (Brown Act requires CEQA finding of exemption to be listed on agenda items that are projects under CEQA).

11 *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194.

12 Cal. Gov. Code, § 54954.5.

13 Cal. Gov. Code, § 54954.1.

14 Cal. Gov. Code, §§ 36934; 54956, subd. (b).

15 Cal. Gov. Code, § 54956, subds. (a) and (c).

16 Cal. Gov. Code, § 54955.

17 Cal. Gov. Code, § 54954.2, subd. (b)(3).

18 Cal. Gov. Code, § 54955.1.

19 Cal. Gov. Code, § 54956.5.

20 Cal. Gov. Code, § 54952.3.

21 Cal. Edu. Code, §§ 35144, 35145, and 72129.

22 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196.

23 Cal. Edu. Code, § 35145.5

24 Cal. Edu. Code, § 54954.6

25 See Cal. Const. Art. XIIIC, XIIID; Cal. Gov. Code, § 54954.6, subd. (h).

26 Cal. Gov. Code, § 54954.2, subd. (b).

27 Cal. Gov. Code, § 54954.2, subd. (a)(2); *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239 (six-minute colloquy on non-agenda item with staff answering questions and advising that matter could be placed on future agenda fell within exceptions to discussing or acting upon non-agenda items).

28 Cal. Gov. Code, § 54953.3.

29 Cal. Gov. Code, § 54961, subd. (a); Cal. Gov. Code, § 11135, subd. (a).

30 Cal. Gov. Code, § 54952.2, subd. (c)(2).

31 Cal. Gov. Code, § 54953, subd. (b).

32 Cal. Gov. Code, § 54953, subd. (c).

33 Cal. Gov. Code, § 54953, subd. (c)(2).

34 Cal. Gov. Code, §§ 54957.9, 54957.95.

35 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed toward mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption); but see *Kirkland v. Luken* (S.D. Ohio 2008) 536 F.Supp.2d 857 (finding no First Amendment violation by mayor for turning off microphone and removing speaker who used foul and inflammatory language that was deemed as "likely to incite the members of the audience during the meeting, cause disorder, and disrupt the meeting").

36 Cal. Gov. Code, § 54957.95.

37 Cal. Gov. Code, § 54957.9.

38 Cal. Gov. Code, § 54957.5.

39 Cal. Gov. Code, § 54957.5, subd. (d).

40 Cal. Gov. Code, § 54957.5(b); see also *Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.

41 Cal. Gov. Code § 54957.5.

42 Cal. Gov. Code, § 54957.5, subd. (c).

43 Cal. Gov. Code, § 54957.5, subd. (d).

44 Cal. Gov. Code, § 54953.5, subd. (b).

45 Cal. Gov. Code, § 54957.5, subd. (d).

46 Cal. Gov. Code, § 54953.5, subd. (a).

47 Cal. Gov. Code, § 54953.6.

48 Cal. Gov. Code, § 54954.3, subd. (a).

49 Cal. Gov. Code, § 54954.3, subd. (c); Acosta v. City of Costa Mesa (9th Cir. 2013) 718 F.3d 800.

50 Cal. Gov. Code, § 54954.3, subd. (c).

51 *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150 (public comment time limit of three minutes for each speaker did not violate First Amendment).

52 Cal. Gov. Code, § 54954.3. subd. (b); *Chaffee v. San Francisco Public Library Commission* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992).

53 Cal. Gov. Code, § 54954.3, subd. (a); *Preven v. City of Los Angeles* (2019) 32 Cal.App.5th 925.

54 Cal. Gov. Code, § 54954.3, subd. (a).

Chapter 5

CLOSED SESSIONS

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A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.[1]

As summarized in chapter 1 of this guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. However, there is no prohibition in putting overlapping exceptions on an agenda in order to provide an opportunity for more robust closed session discussions. As an example, a city council cannot give direction to the city manager about a property negotiation during a performance evaluation exception. However, if both real property negotiation and performance evaluation exceptions are on the agenda, those discussions might be conducted. Similarly, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

PRACTICE TIP: Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions applies to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),[4] the Brown Act does not authorize closed sessions for other contract negotiations.

Agendas and reports

Closed session items must be briefly described on the posted agenda, and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly put on the agenda as a

closed session item or unless it is properly added as a closed-session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill-in-the-blank sample agenda descriptions for various types of authorized closed sessions that provide a "safe harbor" from legal attacks. These sample agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multijurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda, and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[8] The legislative body must take public comment on the closed session item before convening in a closed session.

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report vary according to the reason for the closed session and the action taken.[9] The announcements may be made at the site of the closed session, as long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[10]

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.[11] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.[12] A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

Litigation

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation.[13] The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. Essentially, a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.[14] The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.[15] For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.[16]

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.[17] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.[18]

Existing litigation

Q. May the legislative body agree to settle a lawsuit in a properly noticed closed session without placing the settlement agreement on an open session agenda for public approval?

A. *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*[19]

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[20]

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[21] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff. If an agency receives a documented threat of litigation, and intends to discuss that matter in closed session, the record of a litigation threat must be included in the body's agenda packet.[22]

Anticipated initiation of litigation by the local agency

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed session. Other actions, such as when final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[23] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[24] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues, such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[25]

Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern,[26] and the names of the parties with whom its negotiator may negotiate.[27]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person as soon as the agency is informed of it.[28]

"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.

"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.

PRACTICE TIP: Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

Public employment

The Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."[29] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[30] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[31] That authority may be delegated to a subsidiary appointed body.[32]

An employee must be given at least 24 hours' notice of any closed session convened to hear specific complaints or charges against them. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[33] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[34] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[35] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[36]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[37]

Q. Must 24 hours' notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

A. *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[38] An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager, or superintendent. Examples of the latter include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[39] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay. That means, among other things, there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[40] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[41]

> **"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager effective immediately. The council has met in closed session, and we've negotiated six months' severance pay."**
>
> **"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**
>
> *This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution must be exercised not to discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

PRACTICE TIP: The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[42] on employee salaries and fringe benefits for both represented ("union") and unrepresented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[43]

PRACTICE TIP: Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[44]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[45] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization.
2. A meeting of a mediator with either side.
3. A hearing or meeting held by a fact finder or arbitrator.
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[46]

Public participation under the Rodda Act also takes another form.[47] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[48] The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[49]

PRACTICE TIP: Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[50] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[51]

Joint powers authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[52]

License applicants with criminal records

A closed session is permitted when an applicant who has a criminal record applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw it, the body must deny the license in public, either immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[53]

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings; essential public services, including water, sewer, gas, or electric service; or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials, including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[54] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an ongoing criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[55]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[56]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals under other provisions of law:[57]

1. A meeting to hear reports of hospital medical audit or quality assurance committees or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information that is not generally known to the public or competitors and that (1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; (2) is necessary to initiate a new hospital service or program or facility; and (3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[58]

Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to review the Brown Act carefully to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including a response to a confidential final draft audit report from the Bureau of State Audits,[59] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[60] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[61] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[62] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[63]

PRACTICE TIP: Meetings are either open or closed. There is nothing "in between."[64]

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official or essential role in the closed session subject matters must be excluded from closed sessions.[65]

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

A. *No, attendance in closed sessions is reserved exclusively for the agency's advisors.*

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[66] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[67] Only the legislative body acting as a body may agree to divulge confidential closed session information. With regard to attorney-client privileged communications, the entire body is the holder of the privilege, and only the entire body can decide to waive the privilege.[68]

PRACTICE TIP: There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information regarding pending litigation that was received during a closed session,[69] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[70] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief and, if the breach is a willful disclosure of confidential information, disciplinary action against an employee and referral of a member of the legislative body to the grand jury.[71]

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure (1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; (2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or (3) is information that is not confidential.[72]

The interplay between these possible sanctions and an official's First Amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the city council in closed session that must be reported publicly.[73] The second comment to the property owner is not. Disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

ENDNOTES

1 Cal. Gov. Code, § 54962.

2 Cal. Const. , Art. 1, § 3.

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see Cal. Gov. Code, § 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations and other related matters).

4 Cal. Gov. Code, § 54957.1.

5 Cal. Gov. Code, § 54954.5.

6 Cal. Gov. Code, § 54954.2.

7 Cal. Gov. Code, § 54954.5.

8 Cal. Gov. Code, §§ 54956.9, 54957.7.

9 Cal. Gov. Code, § 54957.1, subd. (a).

10 Cal. Gov. Code, § 54957.1, subd. (b).

11 Cal. Gov. Code, § 54957.2.

12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal. Code Regs. § 18707.

13 But see *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 (protection of the attorney-client privilege alone cannot by itself be the reason for a closed session).

14 Cal. Gov. Code, § 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).

15 82 Ops.Cal.Atty.Gen. 29 (1999).

16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471.

17 *"The Brown Act,"* California Attorney General (2003), p. 40.

18 Cal. Gov. Code, § 54956.9, subd. (g).

19 See e.g., Avco Community Developers, Inc. v. South Coast Regional Com. (1976) 17 Cal.3d 785; Trancas Property Owners Assn. v. City of Malibu (2006) 138 Cal.App.4th 172.

20 *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172.

21 Cal. Gov. Code, § 54956.9, subd. (e).

22 Fowler v. City of Lafayette (2020) 46 Cal.App.5th 360.

23 Cal. Gov. Code, § 54957.1.

24 Cal. Gov. Code, § 54956.8.

25 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904. See also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner, and timing of consideration and other items that cannot be disclosed without revealing price and terms).

26 73 Ops.Cal.Atty.Gen. 1 (1990).

27 Cal. Gov. Code, §§ 54956.8, 54954.5, subd. (b).

28 Cal. Gov. Code, § 54957.1, subd. (a)(1).

29 Cal. Gov. Code, § 54957, subd. (b).

30 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

31 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002).

32 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty.Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

33 Cal. Gov. Code, § 54957, subd. (b)(3).

34 88 Ops.Cal.Atty.Gen. 16 (2005).

35 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860.

36 Cal. Gov. Code, § 54957, subd. (b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges when there was a public evidentiary hearing prior to closed session).

37 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87.

38 *Moreno v. City of King* (2005) 127 Cal.App.4th 17.

39 Cal. Gov. Code, § 54957.

40 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165.

41 Cal. Gov. Code, § 54957.1, subd. (a)(5).

42 Cal. Gov. Code, § 54957.6.

43 Cal. Gov. Code, § 54957.6, subd. (b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not "employees" of the district).

44 Cal. Gov. Code, § 54957.6; 51 Ops.Cal.Atty.Gen. 201 (1968).

45 Cal. Gov. Code, § 54957.1, subd. (a)(6).

46 Cal. Gov. Code, § 3549.1.

47 Cal. Gov. Code, § 3540.

48 Cal. Gov. Code, § 3547.

49 Cal. Edu. Code, § 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

50 Cal. Edu. Code, § 72122.

51 Cal. Edu. Code, § 60617.

52 Cal. Gov. Code, § 54956.96.

53 Cal. Gov. Code, § 54956.7.

54 Cal. Gov. Code, § 54957.

55 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354.

56 Cal. Gov. Code, § 54957.8.

57 Cal. Gov. Code, § 54962.

58 Cal. Health and Saf. Code, § 32106.

59 Cal. Gov. Code, § 54956.75.

60 Cal. Gov. Code, § 54956.81.

61 Cal. Gov. Code, § 54956.86.

62 Cal. Gov. Code, § 54956.87.

63 Cal. Gov. Code, § 54956.95.

64 Ops.Cal.Atty.Gen. 34 (1965)

65 82 Ops.Cal.Atty.Gen. 29 (1999); 2022 WL 1814322, 105 Ops. Cal.Atty.Gen. 89 (2022).

66 Cal. Gov. Code, § 54963.

67 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327. See also Cal. Gov. Code, § 54963.

68 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

69 80 Ops.Cal.Atty.Gen. 231 (1997).

70 76 Ops.Cal.Atty.Gen. 289 (1993).

71 Cal. Gov. Code, § 54963.

72 Cal. Gov. Code, § 54963.

73 Cal. Gov. Code, § 54957.1.

Chapter 6

REMEDIES

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REMEDIES

A violation of the Brown Act can lead to invalidation of the agency's action, payment of a challenger's attorney fees, public embarrassment, and even criminal prosecution. As explained below, a legislative body often has an opportunity to correct a violation prior to the filing of a lawsuit. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation of action taken

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the grounds that they violate the Brown Act.[1] The following actions cannot be invalidated:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites the wrong Brown Act section but adequately advises the public that the legislative body will meet with legal counsel to discuss potential litigation in closed session.[2]
- Those involving the sale or issuance of notes, bonds, or other indebtedness, or any related contracts or agreements.[3]
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment.[4]
- Those connected with the collection of any tax.[5]
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.[6]

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation, or within 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that a legislative body may act only on items posted on the agenda.[7] The legislative body then has up to 30 days to cure and correct its action.[8] The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and, if so, consider correcting the action to avoid the costs of litigation. If the legislative body does not act, any lawsuit must be filed within the next 15 days.[9]

Although just about anyone has standing to bring an action for invalidation,[10] the challenger must show prejudice as a result of the alleged violation.[11] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[12]

Declaratory relief to determine whether past action violated the act

Any interested person, including the district attorney, may file a civil action to determine whether a past action of a legislative body constitutes a violation of the Brown Act and is subject to a mandamus, injunction, or declaratory relief action.[13] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body clearly describing the past action and the nature of the alleged violation.[14] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[15] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, the interested person has 60 days to file an action.[16]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[17] The unconditional commitment must be substantially in the form set forth in the Brown Act.[18] No legal action may thereafter be commenced regarding the past action.[19] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act, and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[20]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[21]

Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to do the following:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body.
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body.
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law.
- Compel the legislative body to audio-record its closed sessions.[22]

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future when the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[23] A court may not compel elected officials to disclose their recollections of what transpired in a closed session.[24]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to audio record its future closed sessions.[25] In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the audio recording if it finds there is good cause to think the Brown Act has been violated and make public a certified transcript of the relevant portion of the closed session recording.[26]

Costs and attorney's fees

A plaintiff who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[27] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Brown Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[28]

Misdemeanor penalties

A violation of the Brown Act is a misdemeanor if (1) a member of the legislative body attends a meeting where action is taken in violation of the Brown Act, and (2) the member intends to deprive the public of information that the member knows or has reason to know the public is entitled to.[29]

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

"Action taken" is not only an actual vote but also a collective decision, commitment, or promise by a majority of the legislative body to make a positive or negative decision.[30] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[31] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[32] There is no case law to support this view. If anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[33]

Voluntary resolution

Successful enforcement actions for violations of the Brown Act can be costly to local agencies. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body and its members. It is in the agency's interest to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

Overall, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

ENDNOTES

1 Cal. Gov. Code, § 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision), sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions), 54954.6 (tax hearings), 54956 (special meetings), and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but they are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198.

3 Cal. Gov. Code, § 54960.1(d)(2).

4 Cal. Gov. Code, § 54960.1(d)(3).

5 Cal. Gov. Code, § 54960.1(d)(4).

6 Cal. Gov. Code, § 54960.1(d)(5).

7 Cal. Gov. Code, § 54960.1, subds. (b), (c)(1).

8 Cal. Gov. Code, § 54960.1, subd. (c)(2).

9 Cal. Gov. Code, § 54960.1, subd. (c)(4).

10 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310, 1318-1319.

11 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561.

12 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118.

13 Cal. Gov. Code, § 54960.2, subd. (a); Senate Bill No. 1003, Section 4 (2011-2012 Session).

14 Cal. Gov. Code, § 54960.2, subds. (a)(1), (2).

15 The legislative body may provide an unconditional commitment after the 30-day period. If the commitment is made after the 30-day period, however, the plaintiff is entitled to attorneys' fees and costs. Cal. Gov. Code, § 54960.2, subd. (b).

16 Cal. Gov. Code, § 54960.2, subd. (a)(4).

17 Cal. Gov. Code, § 54960.2, subd. (c)(2).

18 Cal. Gov. Code, § 54960.2, subd. (c)(1).

19 Cal. Gov. Code, § 54960.2, subd. (c)(3).

20 Cal. Gov. Code, § 54960.2, subd. (d).

21 Cal. Gov. Code, § 54960.2, subd. (e).

22 Cal. Gov. Code, § 54960, subd. (a).

23 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 916 and fn.6.

24 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36.

25 Cal. Gov. Code, § 54960, subd. (b).

26 Cal. Gov. Code, § 54960, subd. (c).

27 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein.

28 Cal. Gov. Code, § 54960.5.

29 Cal. Gov. Code, § 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both (California Penal Code section 19). Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

30 Cal. Gov. Code, § 54952.6.

31 61 Ops.Cal.Atty.Gen. 283 (1978).

32 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

33 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg

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About the Author

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.

Table of Contents

Introduction

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the "ayes" and then asking for the "nays" normally does this. If members of the body do not vote, then they "abstain." Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body."

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member's desired approach with the words "I move … "

A typical motion might be: "I move that we give a 10-day notice in the future for all our meetings."

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion,** for example, "A motion at this time would be in order."
2. **Suggesting a motion to the members of the body,** "A motion would be in order that we give a 10-day notice in the future for all our meetings."
3. **Making the motion.** As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

"Motions to amend" and "substitute motions" are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a "motion to amend" or a "substitute motion" is left to the chair. So if a member makes what that member calls a "motion to amend," but the chair determines that it is really a "substitute motion," then the chair's designation governs.

A "friendly amendment" is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, "I want to suggest a friendly amendment to the motion." The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed,* the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on "hold." The motion can contain a specific time in which the item can come back to the body. "I move we table this item until our regular meeting in October." Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, "I move the previous question" or "I move the question" or "I call the question" or sometimes someone simply shouts out "question." As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a "request" rather than as a formal motion. The chair can simply inquire of the body, "any further discussion?" If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the "question" as a formal motion, and proceed to it.

When a member of the body makes such a motion ("I move the previous question"), the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item.* This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," or "I move the question," or "I call the question," or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it's pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the "no" votes and double that count to determine how many "yes" votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote "no" then the "yes" vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote "abstain" or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of "those present" then you treat abstentions one way. However, if the rules of the body say that you count the votes of those "present and voting," then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are "present and voting."

Accordingly, under the "present and voting" system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are "present"), but you treat the abstention votes on the motion as if they did not exist (they are not "voting"). On the other hand, if the rules of the body specifically say that you count votes of those "present" then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like "no" votes.

How does this work in practice?
Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are "present and voting." If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three "yes," one "no" and one "abstain" also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members "present." Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a "no" vote. Accordingly, if the votes were three "yes," one "no" and one "abstain," then the motion fails. The abstention in this case is treated like a "no" vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an "abstention" vote? Any time a member votes "abstain" or says, "I abstain," that is an abstention. However, if a member votes "present" that is also treated as an abstention (the member is essentially saying, "Count me for purposes of a quorum, but my vote on the issue is abstain.") In fact, any manifestation of intention not to vote either "yes" or "no" on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote "absent" or "count me as absent?" Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually "absent." That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is "no." There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, "point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be, "point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

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Chapter 2.80 SACRAMENTO HOUSING AND REDEVELOPMENT COMMISSION

2.80.010 Created.

There is created a commission to act both as a community redevelopment commission under the Community Redevelopment Law of the state of California, and as a community housing commission under the Housing Authority Law of the state of California. (Prior code § 60.11.090)

2.80.020 Name.

The name of the commission shall be the Sacramento housing and redevelopment commission. (Prior code § 60.11.091)

2.80.030 Definitions.

As used in this chapter, the following definitions apply:

“Agency” means the redevelopment agency of the city of Sacramento.

“City” means the city of Sacramento.

“City council” means the city council of the city of Sacramento.

“City housing authority” means the housing authority of the city of Sacramento, a public entity.

“Commission” means the Sacramento housing and redevelopment commission.

“County” means the county of Sacramento.

“County housing authority” means the housing authority of the county of Sacramento, a public entity.

“Mayor” means the mayor of the city of Sacramento.

“Member” means a member of the Sacramento housing and redevelopment commission.

“Person of low income” means a person or family who lacks the amount of income which is necessary as determined by the city housing authority or county housing authority to enable him or her without financial assistance to live in decent, safe, sanitary dwellings without overcrowding.

“Redevelopment” means the planning, development, replanning, redesign, clearance, reconstruction or rehabilitation, or any combination of these, and the provision of such residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant thereto. (Prior code § 60.11.092)

2.80.040 Functions.

The functions of the Sacramento housing and redevelopment commission shall include, but not necessarily be limited to, the following:

A. Investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions;

B. Determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low-income;

C. Make studies and recommendations relating to the problems of clearing, replanning, and reconstruction of slum areas, and the problem of providing dwelling accommodations for persons of low-income, and cooperate with the city, the county, the state, the federal government, or any of the political subdivisions of the state in action taken in connection with such problems;

D. Engage in research, studies, and experimentations on the subject of housing;

E. Make recommendations to the housing authority for changes or revisions in policies of the housing authority;

F. Review and recommend contracts for site selection, improvements, construction, and property appraisals or leases for any proposed housing authority projects or programs;

G. Review and recommend revisions to personnel policies and procedures;

H. Review and recommend action on annual administrative and operating budgets;

I. Prepare and make recommendations on applications to the federal and state governments for funds for housing and other programs;

J. Cooperate with and advise the county of Sacramento and the housing authority of the county of Sacramento;

K. Perform such other advisory and appellate functions as may be delegated from time to time to the commission by the housing authority or the city council;

L. Recommend urban renewal and redevelopment project areas and contemplated actions for necessary improvements;

M. Prepare a redevelopment plan for each project area, hold and conduct hearings thereon, adopt and submit such plan, together with a report, to the agency and city council, pursuant to all of the provisions, requirements and procedures of Article 4 (commencing with Section 33330) of Chapter 4, Part 1, Division 24 of the Health and Safety Code of the state of California;

N. Screen and recommend purchasers and developers for land to be disposed of by the agency;

O. Review and approve developers' plans for construction on such land and make recommendations thereon to the agency;

P. Review and recommend contracts for services;

Q. Review and recommend contracts for site improvements, construction, and property appraisals;

R. Review and recommend revisions to personnel policies and procedures;

S. Review and recommend action on annual administrative and operating budgets;

T. Prepare and make recommendations on applications to the federal and state governments for funds for urban renewal and other programs;

U. Perform such other advisory and appellate functions as may be delegated from time to time to the commission by the agency or city council. (Prior code § 60.11.093)

2.80.050 Appointment.

A. Commencing August 1, 1984, the commission shall consist of eleven (11) members who shall be appointed as follows:

1. Five members shall be appointed by the mayor with the approval of the city council;

2. Six members shall be appointed by the board of supervisors of the county of Sacramento;

3. One of the five members appointed by the mayor shall be selected from the resident population of the housing authority of the city. One of the six members appointed by the board of supervisors shall be selected from the tenant population of the housing authority of the county of Sacramento;

B. Vacancies occurring during a term shall be filled for the unexpired term by the appointing authority or authorities. A member shall hold office until his or her successor has been appointed and qualified.

C. A member shall not be an elective officer or an employee of the city or county but, notwithstanding any other law, may be a member, commissioner or other employee of any other agency, board, commission or authority of or created by or for the city or county.

D. Any member may waive compensation by filing a written waiver-of-compensation form with the controller for the agency.

The city council may designate one of the nontenant commissioner offices, to which the mayor and council make appointments, as an office for which no compensation is paid.

E. For inefficiency, neglect of duty, or misconduct in office, a member may be removed upon the affirmative vote of:

1. A majority vote of the members of the city council as to a commission member appointed pursuant to subsection A of this section; or

2. A majority vote of the members of the board of supervisors of the county as to a commission member appointed pursuant to subsection B of this section; or

3. A majority vote of both the members of the city council and the board of supervisors of the county as to the commission member appointed pursuant to subsection C of this section.

A commission member may be removed only after the affected member has been given a copy of the charges constituting grounds for the removal and the opportunity to appear before the appointing authority or authorities in closed session to answer such charges unless the member requests a public hearing in person or by counsel. A request to appear must be made by the affected member in writing within ten (10) days after receipt of a copy of the charges. (Ord. 2007-027 § 2; Ord. 2000-017 § 2(e); Ord. 99-049 § 1; Prior code § 60.11.094)

2.80.060 Chairman and organization.

At its first meeting the commission shall elect a chairman and vice chairman, and determine the time, place and frequency of its meetings. The commission may adopt rules of procedure for the conduct of its business and may do any other thing necessary or proper to carry out its functions. The term of office for the chairman and vice chairman shall be the calendar year, or for that portion remaining after they are appointed or elected. When there is a vacancy in the office of chairman or vice chairman, the commission shall fill said office from among its members for the unexpired term. (Prior code § 60.11.095)

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Title 2 ADMINISTRATION AND PERSONNEL

Chapter 2.29 SACRAMENTO HOUSING AND REDEVELOPMENT COMMISSION

2.29.010 Creation of Commission.

There is created in conjunction with the city of Sacramento a commission to act both as a community redevelopment commission under the Community Redevelopment Law of the state of California, and as a community housing commission under the Housing Authority Law of the state of California. (SCC 184 § 1, 1974.)

2.29.020 Name of Commission.

The name of the commission shall be the “Sacramento housing and redevelopment commission.” (SCC 184 § 1, 1974.)

2.29.030 Definitions.

As used in this chapter, the following definitions apply:

1. “Agency” means the redevelopment agency of the City of Sacramento;

2. “City” means the city of Sacramento;

3. “City council” means the city council of the city of Sacramento;

4. “City housing authority” means the housing authority of the city of Sacramento, a public entity;

5. “Commission” means the Sacramento housing and redevelopment commission;

6. “County” means the County of Sacramento;

7. “County housing authority” means the housing authority of the County of Sacramento, a public entity;

8. “Mayor” means the mayor of the city of Sacramento;

9. “Member” means a member of the Sacramento housing and redevelopment commission;

10. “Person of low income” means a person or family who lacks the amount of income which is necessary as determined by the city housing authority or County housing authority to enable him, without financial assistance, to live in decent, safe and sanitary dwellings without overcrowding;

11. “Redevelopment” means the planning, development, replanning, redesign, clearance, reconstruction or rehabilitation, or any combination of these, and the provisions of such residential, commercial, industrial, public or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant thereto. (SCC 184 § 1, 1974.)

2.29.040 Functions of the Commission.

The functions of the Sacramento housing and redevelopment commission shall include, but not necessarily be limited to, the following:

1. Investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions;

2. Determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income;

3. Make studies and recommendations relating to the problems of clearing, replanning and reconstruction of slum areas, and the problem of providing dwelling accommodations for persons of low income, and cooperate with the city, the County, the state, the federal government, or any of the political subdivisions of the state in action taken in connection with such problems;

4. Engage in research, studies and experimentations on the subject of housing;

5. Make recommendations to the housing authority for changes or revisions in policies of the housing authority;

6. Review and recommend contracts for site selection, improvements, construction and property appraisals or leases for any proposed housing authority projects or programs;

7. Review and recommend revisions to personnel policies and procedures;

8. Review and recommend action on annual administrative and operating budgets;

9. Prepare and make recommendations on applications to the federal and state governments for funds for housing and other programs;

10. Cooperate with and advise the city of Sacramento and the housing authority and the redevelopment agency of the city of Sacramento;

11. Perform such other advisory and appellate functions as may be delegated from time to time to the commission by the housing authority or the Board of Supervisors;

12. Recommend urban renewal and redevelopment project areas and contemplated actions for necessary improvements;

13. Prepare a redevelopment plan for each project area, hold and conduct hearings thereon, adopt and submit such plan, together with a report, to the appropriate party, pursuant to all of the provisions, requirements and procedures of Article 4 (commencing with Section 33330) of Chapter 4, Part 1, Division 24 of the Health and Safety Code of the state of California;

14. Screen and recommend purchasers and developers for land to be disposed of by the agency;

15. Review and approve developers' plans for construction on such land and make recommendations thereon to the agency;

16. Review and recommend contracts for services;

17. Review and recommend contracts for site improvements, construction and property appraisals;

18. Review and recommend revisions to personnel policies and procedures;

19. Review and recommend action on annual administrative and operating budgets;

20. Prepare and make recommendations on applications to the federal and state governments for funds for urban renewal and other programs;

21. Perform such other advisory and appellate functions as may be delegated from time to time to the commission by the agency or the Board of Supervisors. (SCC 184 § 1, 1974.)

2.29.050 Appointment of Commission.

The commission shall consist of eleven (11) members who shall be appointed as follows:

a. Five (5) members shall be appointed by the Mayor with he approval of the city Council;

b. Six (6) members shall be appointed by the Board of Supervisors of the County of Sacramento;

c. One of the five members appointed by the Mayor shall be selected from the resident population of the Housing authority of the City of Sacramento. One of the six members appointed by the Board of Supervisors shall be selected from the tenant population of the Housing Authority of the County of Sacramento. (SCC 1153 § 1, 1999; SCC 577 § 1, 1983; SCC 535 § 1, 1983; SCC 512 § 6, 1982; SCC 476 § 1 1981; SCC 470 § 1, 1981; SCC 238 § 1, 1975.)

2.29.052 Terms of Commissioners.

a. The term of office of each member shall be four (4) years, except that on a one-time basis, all terms shall expire on August 1, 1984 and future County appointments shall coincide with the Supervisorial election schedule for the Supervisor making that appointment;

b. Vacancies occurring during a term shall be filled for the unexpired term by the appointing authority or authorities. A member shall hold office until his successor has been appointed and qualified. (SCC 577 § 2, 1983.)

2.29.054 Qualifications—Compensation.

A member shall not be an elective officer or an employee of the City or County, but notwithstanding any other law, may be a member, commissioner or other employee of any other agency, board, commission or authority of or created by or for the City or County.

Each member shall receive as compensation the sum of forty dollars for each commission meeting attended, provided, that the total compensation of each member shall not exceed two hundred dollars in any one month, and further provided that the term “compensation” as used herein means compensation received by said member from both the City of Sacramento and the County of Sacramento for services as a member of the commission. In addition, each such member shall receive necessary travel and subsistence expenses incurred in the discharge of his duties. Any member may waive compensation by filing a written waiver of compensation form with the controller for the agency. (SCC 512 § 7, 1982; SCC 476 § 2, 1981.)

2.29.060 Chairman and/organization of the Commission.

At its first meeting the commission shall elect a chairman and vice chairman, and determine the time, place and frequency of its meetings. The commission may adopt rules of procedure for the conduct of its business and may do any other thing necessary or proper to carry out its functions. The term of office for the chairman and vice-chairman shall be the calendar year, or for that portion remaining after they are appointed or elected. When there is a vacancy in the office of chairman or vice-chairman, the commission shall fill the office from among its members for the unexpired term. (SCC 184 § 1, 1974.)

Contact:

Sacramento County

BYLAWS

OF

FOUNDATION UNITING NEEDS AND DOLLARS (FUND)

(A California Nonprofit Public Benefit Corporation)

ARTICLE I

OFFICES

The principal office of the corporation is hereby fixed and located at 630 I Street, Sacramento, California 95814. The Board of Directors is hereby granted full power and authorized to change their principal office from one location to another in the County of Sacramento. Any such change shall be noted by the Secretary opposite this section, but shall not be considered an amendment to these Bylaws.

ARTICLE II

OBJECTIVES AND PURPOSES

The primary objectives and purposes of the corporation shall be to promote and support the activities of the Housing Authority of the City of Sacramento, the Housing Authority of the County of Sacramento, the Redevelopment Agency of the City of Sacramento and the Redevelopment Agency of the County of Sacramento, all of which activities are administered under the name of the Sacramento Housing and Redevelopment Agency.

ARTICLE III

MEMBERS

This corporation shall make no provision for members. However, pursuant to Section 5310(b) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of this corporation, require approval by the members, shall only require approval of the Board of Directors.

to be selected by the Board of Directors. The time and place for regular meetings shall be specified by resolution of the Board of Directors.

Section 7. Special Meetings. Special Meetings of the Board of Directors may be called at any time by the President of the Board.

Section 8. Ralph M. Brown Act. All meetings of the Directors shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

Section 9. Quorum. At all regular and special meetings of the Board of Directors, those present shall constitute a quorum, provided that at least two (2) Directors are present.

Section 10. Action. Every act or decision done or made by a majority of the Directors present at a regular or special meeting at which a quorum is present, is the act of the Board of Directors.

Section 11. Written Consent Without a Meeting. Any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if all members of the Board shall consent in writing to such action.

Section 12. Nonliability of Directors. Directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

ARTICLE V
OFFICERS

Section 1. Officers. The officers of the corporation shall be:

(a) A President, who is a Director of the corporation;

(b) A Vice President, who is a Director of the corporation;

(c) An Executive Director, who is the Program Manager, Community Services Division (Fund Development) of the Housing Authority of the City of Sacramento and the Housing Authority of the County of Sacramento, and is not a Director of the corporation;

(d) A Secretary who is appointed by the Board of Directors; and

(e) A Treasurer who is appointed by the Board of Directors.

Section 2. Election. The President and the Vice President shall be chosen annually by the Board of Directors and each shall hold office until he/she shall resign or shall be removed or otherwise disqualified to serve.

Section 3. Subordinate Officers. The Board of Directors may

those present at Directors' meetings, and the proceedings thereof.

(b) Give or cause to be given, notice of all meetings of the members of the Board of Directors required by the Bylaws, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the Bylaws.

Section 10. Treasurer. The Treasurer shall have the following duties:

(a) Keep and maintain or cause to be kept and maintained adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains and losses. The books of account shall at all reasonable times be open to inspection by any Director.

(b) Deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He/she shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the President and Directors, whenever they request it, an account of all of his/her transactions as Treasurer and of the financial condition of the corporation.

ARTICLE VI
MISCELLANEOUS

Section 1. Execution of Instruments. The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

Section 2. Gifts. The Board of Directors and the officers may accept on behalf of the corporation any contribution, gift, bequest, or devise for the charitable or public purposes of this corporation.

Section 3. Maintenance of Corporate Records. The corporation shall keep at its principal office in the State of California:

(a) Minutes of all meetings of Directors, committees of the Board, and, indicating the time and place of holding of such

WRITTEN CONSENT OF INCORPORATOR ADOPTING BYLAWS

I, the undersigned, am the Incorporator of FOUNDATION UNITING NEEDS AND DOLLARS (FUND), a California nonprofit public benefit corporation, and pursuant to the authority granted the Incorporator in Section 5134 of the Corporations Code, I hereby adopt the foregoing Bylaws, consisting of seven (7) pages, as the Bylaws of this corporation.

Dated _____

_____

WILLIAM H. EDGAR, Incorporator

CERTIFICATE

This is to certify that the foregoing is a true and correct copy of the Bylaws of the corporation named in the title thereto and that such Bylaws were duly adopted by the Incorporator and said corporation on the date set forth above.

Dated _____

_____

WILLIAM H. EDGAR, Incorporator

BYLAWS OF FOUNDATION UNITING NEEDS AND DOLLARS
(A California Nonprofit Public Benefit Corporation)

ARTICLE I

OFFICES

The principal office of the corporation is hereby fixed and located at 630 I Street, Sacramento, California 95814. The Board of Directors is hereby granted full power and authorized to change their principal office from one location to another in the County of Sacramento. Any such change shall be noted by the Secretary opposite this section, but shall not be considered an amendment to these Bylaws.

ARTICLE II

OBJECTIVE AND PURPOSES

The primary objectives and purposes of the corporation shall be to promote and support the activities of the Housing Authority of the City of Sacramento, the Housing Authority of the County of Sacramento, the Redevelopment Agency of the County of Sacramento, and the Redevelopment Agency of the City of Sacramento, all of which activities are administered under the name of the Sacramento Housing and Redevelopment Agency.

ARTICLE III

MEMBERS

This corporation shall make no provision for members. However, pursuant to Section 5310(b) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of this corporation, require approval by the members, shall only require approval of the Board of Directors.

ARTICLE IV

DIRECTORS

Section 1. Number.

This corporation shall have eleven (11) Directors, and collectively they shall be known as the Board of Directors. The number may be changed by amendment to this Bylaw.

Section 2. Powers.

Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and any limitations in the Articles of Incorporation and Bylaws relating to action required or permitted to be taken or approved by the members, if any, of this corporation, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by and under the direction of the Board of Directors.

Section 3. Duties.

It shall be the duty of the Directors to:

(a) perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation or by these Bylaws;
(b) appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation of any or all officers, agents or employees of the corporation;
(c) supervise all officers, agents and employees of the corporation to assure that their duties are performed properly;
(d) meet at such times and places as required by these Bylaws;
(e) register their addresses with the Secretary of the corporation, and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof; and
(f) approve the allocation of non-designated funds, "those which have not been designated for a particular program, but contributed to FUND, Inc. directly".

Section 4. Designation of Directors.

The Sacramento Housing and Redevelopment Commission shall serve as members of the Board of Directors.

Section 5. Term of Office.

All Directors shall hold office for four (4) years from the date of their appointment

Section 6. Regular Meetings.

Regular meetings of the Board of Directors shall be held at least annually at a time and place to be selected by the Board of directors. The time and place for regular meetings shall be specified by resolution of the Board of Directors.

Section 7. Special Meetings.

Special meetings of the Board of Directors may be called at any time by the President of the Board.

Section 8. Ralph M. Brown Act.

All meetings of the Directors shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

Section 9. Quorum.

At all regular and special meetings of the Board of Directors, those present shall constitute a quorum, provided that least six (6) Directors are present.

Section 10. Action.

Every act or decision done or made by a majority of the Directors present at a regular or special meeting at which a quorum is present, is the act of the Board of directors.

Section 11. Written Consent Without a Meeting.

Any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if all members of the Board shall consent in writing to such action.

Section 12. Nonliability of Directors.

Directors shall not be personally liable for the debts, liabilities, or other obligations of the corporation.

ARTICLE V

OFFICERS

Section 1. Officers.

The officers of the corporation shall be:

(a) a President, who is a director of the corporation and Chair of the Sacramento Housing and Redevelopment Commission;

(b) a Vice-President, who is a director of the corporation and Vice-Chair of the Sacramento Housing and Redevelopment Commission

(c) an Executive Director, who is the Executive Director of the Sacramento Housing and Redevelopment Agency, and is not a Director of the corporation;

(d) a Secretary who is the Agency Clerk of the Sacramento Housing and Redevelopment Agency; and

(e) a Treasurer who is the Director of Administration of the Sacramento Housing and Redevelopment Agency.

Section 2. Election.

The President and the Vice-President shall be chosen annually by the Board of Directors and each shall hold office until he/she shall resign or shall be removed or otherwise disqualified to serve.

Section 3. Subordinate Officers.

The Executive Director is empowered to appoint the Secretary, Treasurer, and such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the board of Directors may from time to time determine.

Section 4. Removal and Resignation.

Any officer, except the Executive Director, may be removed, either with or without cause, by the board of directors, at any regular or special meeting thereof, or, except in the case of an officer chosen by the board of Directors, by any officer upon whom such power of removal may be conferred by the board of directors. Any officer may resign at any time by giving written notice to the board of directors or the President, or the Secretary of the corporation. Any such resignation shall take effect on the date of receipt of such notice or any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies.

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed by the Bylaws for regular appointments to such office.

Section 6. President.

The president shall preside at all meetings of the corporation, shall sign all contracts, deeds and other documents of the corporation as may be required unless by resolution, the board of directors appoints another to execute such items as may be permitted by law, and shall submit to the board of directors such recommendations and information as he/she may consider proper concerning the business affairs and policies of the corporation.

Section 7. Vice President.

The Vice President shall perform all the duties of the President in his/her absence or incapacity.

Section 8. Executive Director.

The Executive Director shall be the chief executive officer of the corporation and, subject to the control of the board of directors, shall have general supervision, direction and control of the affairs of the corporation.

Section 9. Secretary.

The Secretary shall have the following duties:

(a) keep or cause to be kept, at the principal office, or such other place as the Board of Directors may order, a book of minutes of all meetings of the Directors and members with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at Director's meetings, and the proceedings thereof; and

(b) give or cause to be given, notice of all meetings of the members of the Board of Directors, required by the Bylaws, and shall have such other powers and perform such other duties as may be prescribed by the Board of directors or by the Bylaws.

Section 10. Treasurer.

The Treasurer shall have the following duties:

(a) keep and maintain or cause to be kept and maintained adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains and losses. The books of account shall at all reasonable times be open to inspection by any Director; and

(b) deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He/she shall disburse the funds of the corporation as may be ordered by the board of Directors, shall render to the President and Directors, whenever they request it, an account of all of his/her transactions as Treasurer and of the financial condition of the corporation.

ARTICLE VI

DISTRIBUTION OF FUNDS

Section 1. Allocation of Non-Designated Funds

(a) For funds that have not been designated for a particular program, but rather contributed to FUND, Inc. directly, the following procedure shall apply:

(1) Agency programs will be notified of available funding by the director of Administration;
(2) Programs will be encouraged to submit proposals to the Director of Administration for review by the Grants Review Committee, composed of members of the "Friends of FUND"; i.e. Agency employee contributing to FUND;
(3) Grants Review Committee will review the proposals and make recommendations to the Executive Director for designation of funds;
(4) The Executive Director shall recommend designation of funds to the Board of Directors; and
(5) The board of Directors shall make the final determination regarding designation of funds.

Section 2. Allocation of Designated Funds

(a) For funds that have been designated for a particular program, the following procedure shall apply:

(1) Program Manager fills out check claim, requisition and FUND Expenditure Authorization form;
(2) Department Director signs Expenditure Authorization form, approving payment of designated funds and returns to Program;
(3) Program Manager attaches signed Expenditure Authorization form, requisition and check claim, and forwards to the Finance Division;
(4) Finance division processes check claim for payment;

(5) Finance Division prepares and distributes reports as directed, no less than quarterly;
(6) Program Manager reviews FUND report to acknowledge payment and insure accuracy.
(7) Executive Director, or his/her designee, is authorized to approve expenditure of designated funds.

ARTICLE VII

MISCELLANEOUS

Section 1. Execution of Instruments.

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

Section 2. Gifts.

The board of Directors and the officers may accept on behalf of the corporation any contribution, gift, bequest, or devise for the charitable or public purposes of this corporation.

Section 3. Maintenance of Corporate Records.

The corporation shall keep at its principal office in the State of California:

(a) minutes of all meetings of Directors, committees of the Boards, and, indicating the time and place of holding of such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
(b) adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses; and
(c) a copy of the Corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the members, if any, of the corporation at all reasonable times during office hours.

Section 4. Directors' Inspection Rights.

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the corporation. Any inspections under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

Section 5. Fiscal Year.

The fiscal year of the corporation shall be the calendar year.

Section 6. Amendments.

Amendments if the Articles of Incorporation or the bylaws of the corporation may be adopted by approval of the Board of Directors.

Section 7. Filing Statement of Corporation Officers.

The Secretary of the corporation, during the period commencing on April 1 and ending on June 30 in each year, shall file with the Secretary of State of the State of California on a form prescribed by him/her, a statement of the names and complete business or residence addresses of its President, Vice Present, Executive director, Secretary and Treasurer, together with a statement of the location and address of its principal office, in compliance with Section 3301 of the Corporation Codes of California.

Amended:

June 2, 1993