

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688
(510) 464-6000

NOTICE OF MEETING AND AGENDA
Transit Security Advisory Committee (TSAC)
March 26, 2019

Committee Members: Janet Abelson, Chris Finn, Jessie Jones, Sue Kuipers, Crystal Raine, and Armando Sandoval.

A regular meeting has been called of the Transit Security Advisory Committee on Tuesday, March 26, 2019, at 10:00 a.m. The Meeting will be held in the BART Board Room, Kaiser Center 20th Street Mall – Third Floor, 2040 Webster Street, Oakland, California.

AGENDA

1. Call to Order. For Discussion.
 - a. Roll Call.
 - b. Introductions.
2. Approval of Minutes of the Meeting of February 26, 2019. For Discussion and Action.
3. Public Comment (Limited to 3 minutes per speaker).
(An opportunity for members of the public to address the TSAC on matters not on the agenda.)
4. Brown Act and Parliamentary Procedure Overview. For Discussion.
5. Ethics Training. For Discussion.
6. Staff Comments. For Discussion.
7. Next Meeting Agenda Items and Date. For Discussion and Action.
8. Adjournment.

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to these meetings, as there may be people in attendance susceptible to environmental illnesses.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address Committee matters. A request must be made within one and five days in advance of Board/Committee meetings, depending on the service requested. Please contact the Office of the District Secretary at (510) 464-6083 for information.

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300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Transit Security Advisory Committee Meeting Minutes
Tuesday, February 26, 2019

A regular meeting of the Transit Security Advisory Committee (TSAC) was held February 26, 2019 convening at 10:03 a.m. in the Community Room, East Bay Paratransit's location at, 1750 Broadway, Oakland, California. The meeting was called to order by Chairperson Crystal Raine; May Cooper, Recording Secretary.

Members Present: Members Janet Abelson, Crystal Raine, Sue Kuipers, Christopher Finn and Armando Sandoval.

Absent: Jessie Jones

1. Call to Order.

The regular meeting was called to order at 10:03 a.m. by Chairperson Raine.

Chairperson Crystal Raine, Janet Abelson, Sue Kuipers, Christopher Finn and Armando Sandoval were present, amounting to a quorum.

2. Approval of Minutes of the Meeting of January 22, 2019.

Ms. Abelson called for a motion to approve Minutes of the Meeting of January 22, 2019; Mr. Sandoval seconded the motion. The motion passed with Ayes – 5: Members Abelson, Sandoval, Raine, Finn and Kuipers. Noes: 0. Absent - 1: Member Jones.

3. Public Comment.

No comments were received.

4. Monthly Assembly Bill (AB) 730 Statistics Review for September – December of 2018.

The monthly statistics were discussed.

5. 2018 AB730 Annual Report.

The Committee collectively contributed to the review and made recommendations to the 2018 AB730 Annual Report final draft. All recommendations were approved by a quorum of the TSAC.

The Committee determined that a special meeting was not necessary for further review of the annual report.

6. Staff Comments.

No comments were received.

Mr. Sandoval exited the meeting.

7. Next Meeting Agenda Items and Date.

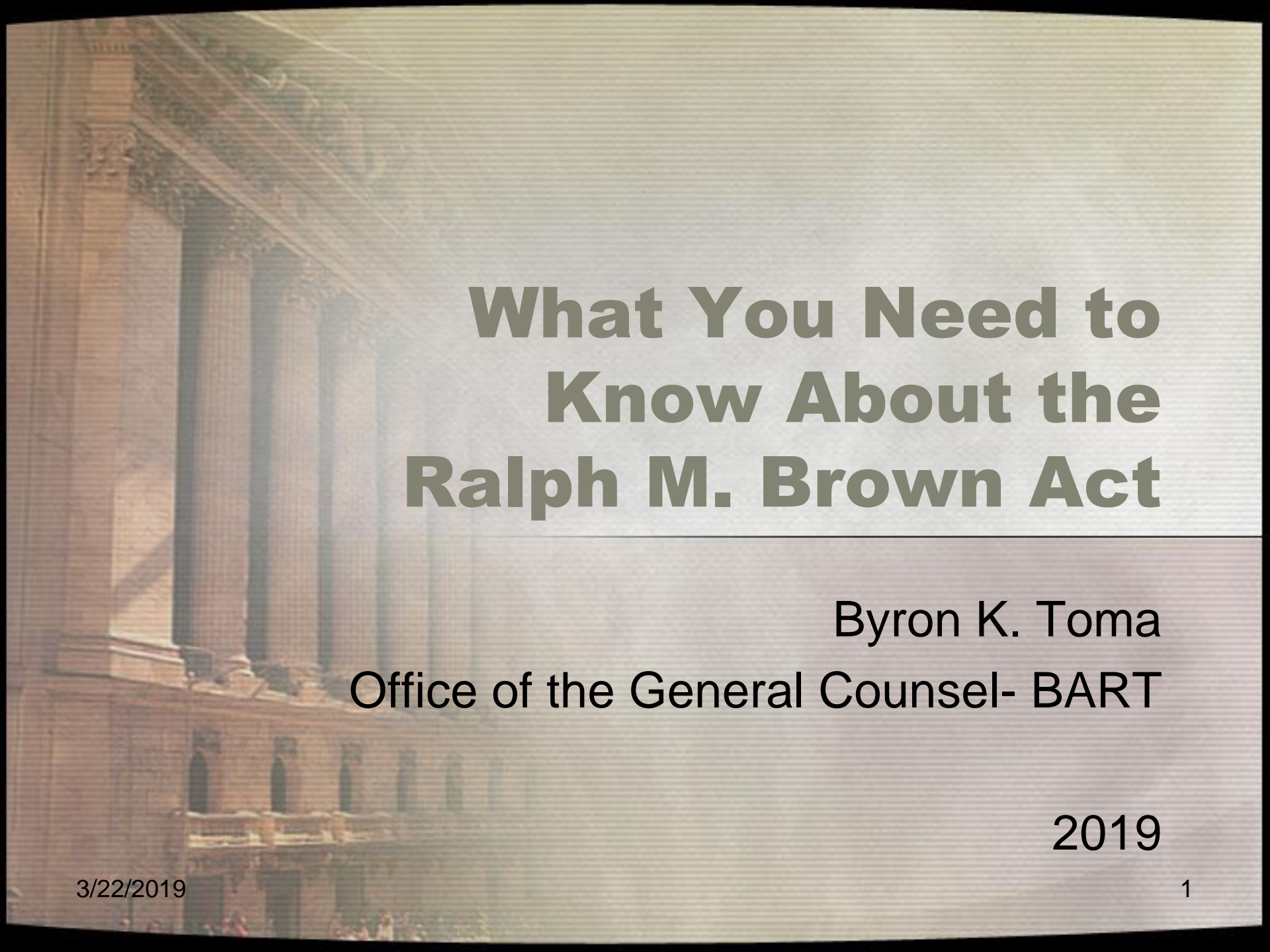
The next meeting date is set for Tuesday, March 26, 2019 at 10 a.m. in the BART Board Room. The agenda will include Ethics and Brown Act Training.

8. Adjournment.

A motion to adjourn the meeting was made by Mr. Finn and seconded by Ms. Kuipers.
The motion passed unanimously.

The Meeting was adjourned at 11:49 a.m.

DRAFT



What You Need to Know About the Ralph M. Brown Act

Byron K. Toma
Office of the General Counsel- BART

2019

General Background



- Referred to simply as the Brown Act
- Found in California Government Code sections 54950-54962
- Enacted by Legislature in 1953 to:
 - facilitate public participation in local government; and
 - curb misuse of the democratic process by secret legislation by public bodies

Background

- “The people of this State do not yield their sovereignty to the agencies which serve them . . . The people insist on remaining informed so that they may retain control over the instruments they have created.”
- Presumption in favor of access, confidentiality an exception

Overview



- To whom does the Act apply?
- What is a meeting?
- What are the notice and agenda requirements?

Overview



- What are the public's rights?
- When and how for closed sessions?
- What are the consequences for violations?

To whom does the Act apply?

- Section 54953 requires that “[a]ll 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”

Bodies Covered by the Act

- “Legislative bodies” includes all legislative bodies of local agencies, e.g. boards, commissions, councils and committees
- “Legislative bodies” also includes any advisory board of a legislative body created by charter, ordinance, resolution or any similar formal action
- “Local agencies” include cities, counties, school districts, special districts, municipal corp. etc.

Bodies NOT Covered

- Any *ad hoc* committee composed solely of less than a quorum of the members of a legislative body (i.e., less than a majority of the total voting members) that has not been established by formal action of the legislative body
- However, if the committee includes one or more persons who are not members of the legislative body, this exception does not apply

Summary of Act Applicability

- Thus the Brown Act applies to any standing committee of the legislative body which has either:
 - Continuing subject matter jurisdiction over a topic; or
 - A meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body

What is a meeting?

- Section 54952.2 defines a meeting as “any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.”

A meeting is . . .

- A meeting includes not only action but also the receipt of information, deliberation, or discussion
- Thus a meeting may include lunches, social gatherings, board retreats etc.
- A serial meeting if it is for the purpose of developing a concurrence as to action to be taken

Serial Meeting Defined

- A serial meeting is a:
 - series of communications (whether in person or by phone, email etc.)
 - each of which individually involves less than a quorum
 - but which when taken as a whole, involve a majority of the boards members

Serial Meeting Defined

- “concurrency as to action to be taken” is defined as substantive matters that are already or are likely to be on board’s agenda, but does not include purely housekeeping matters (e.g. times, dates and locations of meetings)
- Example: a meeting of board members’ intermediaries

A meeting is NOT . . .

- Any gatherings attended by a majority of a legislative body if **no official business** of the legislative body or the agency is **discussed**
- For example a meeting organized by a person or local agency other than the local agency to address a topic of local community of concern and conferences open to the public are not meetings

Meeting Location

- Meetings of the legislative body (both regular and special) must be within the boundaries of the local agency except if held to:
 - Comply with state or federal law, or attend a judicial or administrative proceeding;
 - Inspect real or personal property;
 - Participate as a body in a multi-agency meeting held in another jurisdiction;
 - Meet in the closest facility if the local agency does not have a facility within the jurisdiction;

Meeting Location

- Meetings of the legislative body (both regular and special) must be within the boundaries of the local agency except if held to:
 - Meet outside the jurisdiction with elected or appointed federal or state officials over which state or federal officials have jurisdiction;
 - Meet outside the jurisdiction at or nearby a facility owned by the agency, provided the topic of the meeting is limited to items related directly to that facility; or
 - Visit the office of the agency's legal counsel for a closed session pending litigation when doing so would reduce legal costs

Summary of What is a Meeting

- Thus under the Brown Act a meeting is:
 - any gathering of a majority of the members of the legislative body
 - Where the members hear, discuss, or deliberate upon any item on which the legislative body could act

Meeting Location

- A meeting may not be held in any facility that:
 - prohibits the admittance of any person on the basis of race, religious creed, color, national origin, ancestry or sex;
 - which is inaccessible to disabled persons; or
 - where members of the public may not attend without making a payment or purchase

Notice and Agenda Requirements for Regular Meetings

- **Regular Meetings** are those whose time and place is set by ordinance, resolution or by-law
- Requires that an agenda be posted at least 72 hours prior to meeting
- Agenda purpose is to notify public of meeting

Notice and Agenda Requirements for Regular Meetings

- Agenda must contain:
 - a brief general description of each action or discussion item to be considered
 - items to be discussed at closed sessions
 - opportunity for public testimony
 - May impose a reasonable time limit
 - Board can't take action if item not on agenda
- Agenda must be publicly posted so that it is freely accessible
 - not freely accessible if agenda only available during business hours

Notice and Agenda Requirements for Regular Meetings

- Need not be on agenda but must be publicly announced before proceeding:
 - Emergency matters (requires majority vote)
 - Need for immediate action arising after publication of agenda (requires 2/3 vote)
 - Matter which has been posted for a previous meeting which is carried over for no more than five days

Notice Requirements for Special Meetings

- **Special meetings** require 24 hours written notice to each local newspaper of general circulation, radio and/or television station requesting notice and must be posted in a public place
- No business may be considered except that for which the meeting was called
- May be held in closed session

Notice Requirements for Emergency Meetings

- **Emergency meetings** require at least one hour notice by phone to each local newspaper of general circulation, radio and/or television station requesting notice
- Can only be called because of crippling disasters, strikes, public health and/or safety threats
- No closed session permitted

Notice Requirements

- Notice for Special and Emergency meetings must contain:
 - Time
 - Place
 - Items of business to be addressed

Notice and Agenda Requirements Summary

- General Meeting:
 - Requires 72 hours posted agenda in a public place
 - Closed session allowed
- Special Meeting
 - Requires require 24 hours written notice to each local newspaper of general circulation, radio and/or television station requesting notice
 - notice must be posted in a public place
 - Closed session allowed
- Emergency Meeting
 - One hour notice by phone to television/radio
 - No closed session allowed

Discussion of Items Not on Agenda

- If an item not on posted the agenda is brought up, a member of the legislative body or agency may:
 - Briefly respond to statements or questions;
 - Ask questions for clarification;
 - Make a brief announcement;
 - Provide a reference to staff or other resources for factual information;
 - Request staff to report back at subsequent meeting;
or
 - Direct staff to place a matter of business on a future agenda

The Public's Rights

- All persons are permitted to attend any meeting of a legislative body
- No member of the public may be required to register his or her name, provide information or fulfill any other requirement as a condition of his or her attendance
- Each agenda must provide an opportunity for members of the public to address the legislative body on items within their jurisdiction

The Public's Rights

- The legislative body may not prohibit public criticism of the politics, procedures, programs, or services of the agency
- Any person may record and/or broadcast any meeting unless doing so constitutes a persistent disruption of the proceedings

The Public's Rights

- If a meeting is interrupted by any person or persons such that continuing is not feasible, or order cannot be restored by the removal of the disrupting individuals, the legislative body can order the room cleared and continue the meeting
 - However accredited members of the press or news media not participating in the disturbance must be allowed to remain

The Public's Rights Summary

- All members of the public must be allowed access
- No fulfillment of any condition prior to attendance may be required
- Must allow for time for the public to speak
- Any person may record/broadcast meeting as long as its not a persistent disruption

When and How for Closed Sessions

- **Closed sessions** are the exception to the Brown Act's general requirement that all meetings be open to the public
- Any closed session must be **authorized by a specific statutory provision**

Notice and Agenda Requirements for Closed Session

- Closed Sessions require three types of notice:
 - Agenda
 - Pre-closed session announcement, and
 - Post-closed session announcement
- However confidential matters discussed in closed session may not be disclosed

Closed Sessions Authorized by Specific Statutory Provisions

- Allowable closed sessions:
 - Grand Jury
 - legislative body members may give testimony in closed session
 - License Applications
 - when determining if an applicant for a license who has a criminal record is sufficiently rehabilitated to obtain the license
 - Security of Public Buildings and Services
 - Personnel
 - to consider appointment, evaluation, or dismissal
 - to hear complaints or charges brought against an employee
 - Employee must be given option of closed hearing 24 hours before session otherwise any actions taken are void

Closed Sessions Authorized by Specific Statutory Provisions

- Allowable closed sessions:
 - Employee Compensation Matters
 - For labor negotiations, salary negotiation etc.
 - No final action may be taken compensation for any unrepresented employees
 - Property Negotiations
 - Concerning the sale, exchange, or lease of real property
 - Pending Litigation
 - To allow legislative body to confer with its legal counsel regarding “pending litigation”

Closed Session for Pending Litigation

- Pending litigation is defined as:
 - A proceeding that has been formally initiated
 - The agency faces significant exposure to litigation
 - When the agency is deciding to initiate litigation

Closed Session Summary

- Closed session must be on agenda
- Must give a pre-closed session announcement
- Must give a post-closed session announcement
- Allowed only if explicitly mentioned by statute
- Confidential material may not be disclosed

Consequences for Violations

- Criminal Penalties
 - Misdemeanor where action taken in violation of the act
- Civil Remedies
 - Injunction, mandamus, declaratory relief
 - Action may be voided following notice to correct, which must be received within 90 days, and acted on within 30 days, lawsuit filed within 15 days
- Attorneys fees
 - Awarded against agency, not individual

Public Record Availability

- Except as to documents distributed within a closed session, all materials are available to the public at the same time they are distributed to the legislative body.
- If materials are distributed less than 72 hours before a public meeting, those records must be made available to the public at a designated place and/or on the local agency's website.

Conclusion

- As the Brown Act is occasionally amended by the Legislature, it is necessary to periodically review the Brown Act for recent changes. Likewise, courts occasionally tweak the common understanding of the language of the Act.



END

Thank you for your attention

Possible further reading

http://caag.state.ca.us/publications/2003_Main_BrownAct.pdf

<http://www.vanguardnews.com/brownact.htm#title>

<http://www.miracosta.cc.ca.us/senate/BrownAct/BrownAct.htm>

TELECONFERENCING UNDER THE BROWN ACT

In recent years, the California Legislature has considered various enactments to move municipalities fully into the information age. Although an amendment to the Public Records Act requiring full electronic access to city documents in electronic format appears likely to fall short of adoption in 1999 (AB 1099 - Shelley), a future enactment of these rules appears inevitable. Recent regulations relating to CEQA already encourage direct electronic public access to notices and documents. (CEQA Guidelines §§ 15062, 15075, 15085, 15201, 15202, 15205, and 15206.)

The Brown Act has also been amended to allow cities to take advantage of information age technologies for the conduct of public meetings. In comprehensive 1994 amendments, and through minor amendments in 1997 and 1998, the Legislature greatly expanded the ability of cities to conduct their business by teleconference. The 1994 amendments (codified in Government Code Section 54953 and hidden under the heading "Meetings to be open and public; attendance") allowed only "video teleconferencing", a term that required potentially costly audio and video participation by members of the city council¹ and the public at each location. The 1997 law -- supported by both the California Newspaper Association and the League -- provides greater flexibility and freedom to use the full range of conferencing technologies available.

1. Basic Provisions.

The Brown Act allows a city council to use any type of teleconferencing in connection with any meeting. (Gov't Code § 54953(b).) "Teleconference" is defined as "a meeting of a individuals in different locations, connected by electronic means, through either audio or video, or both." In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the law otherwise applicable. (Id.) Section 54953(b) contains the following specific requirements:

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the city council must participate from teleconferencing locations within the city's jurisdiction.
- Each teleconference location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at each teleconference location.
- Each location must be accessible to the public.

¹ Although the Brown Act term "legislative body" applies to various city decision-making bodies (Gov't Code § 54952), I use "city council" herein because city attorneys most frequently interact with this body.

- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by rollcall.

These requirements are explained in detail below.

- a. At least a quorum must teleconference from locations within the city.

The 1998 amendments to Section 54953 provide that at least a quorum of the city council must participate from locations within the city. (Gov't Code § 54953(b)(3).) The 1999 amendments allow local agencies to provide teleconference locations for the public where no member of the legislative body is present. (Gov't Code § 54953(b)(4).)

Although some opponents to the 1997 amendments argued that it is important to have at least a quorum in one room where the public can present face-to-face testimony, the 1998 and 1999 amendments make it clear that council members may participate from outside the city and that although a quorum must be within the city limits, they need not participate at the same location. The Southern California Association of Governments took the position in 1997 that this approach enhances public participation. SCAG argued that with regard to meetings in large jurisdictions or meetings of multi-jurisdictional regional bodies, the public's opportunity to participate is enhanced if, for example, citizens do not have to travel across town to a city council meeting or to a neighboring jurisdiction to attend a regional transit board meeting. This view prevailed in the final version of the amendments.

- b. Each audio/video teleconference location must be identified in the notice and agenda of the meeting.

The Act requires public notice of all audio/video teleconferencing events. This prevents a council member who is running late to audio/video teleconference in lieu of actual attendance if public notice of the teleconference location was not given in the agenda. Although the law is not specific as to what "identification" is required in the notice, cities should give the teleconferencing location, the street address, any suite or office number, and could even provide maps to the location. (An online agenda could provide a link to "Yahoo! Maps" or some other navigational device.)

- c. Agendas must be posted at all teleconferencing locations.

Section 54953(b)(3) requires that agendas be posted at all teleconferencing locations. The Act does not provide specific guidance on this requirement, but where practical, the agendas should probably be posted both outside the main facility of a teleconference location at a main entrance (e.g., outside an office building) and outside the specific teleconference location (e.g., outside the particular room or office door).

Agendas should, of course, remain visible at these locations. They should not be posted behind doors that are frequently ajar or behind counters, so as to be out of average reading distance.

d. Each audio/video teleconference location must be made accessible to the public.

While this requirement may not seem to be an obstacle, it may prove troublesome when deciding the means by which to teleconference. Because public access is not always possible, this requirement precludes some locations, such as car telephones or offices not accessible to the public. All telephones used for teleconferencing must have a functioning speaker to enable public access, even if there are no members of the public present at a particular location. The meeting must be conducted so that participants by audio alone are clearly identified.

Similarly, city staff must ensure that logistical problems do not occur in providing public access. For example, if a member is audio/video teleconferencing from his office, someone must be present to allow the public entry to the office building if it is normally locked after hours. If the office is in a location where the public is not welcome, then audio/video teleconferencing cannot occur at that location. Similarly, vacationing members wishing to teleconference must realize that the public must have access to the member's hotel room or cruise ship cabin and receive notice of that opportunity in the agenda. Presumably, the "no free admission" clause of Section 54952.2(c)(2) applies to members of the public wishing to join a member in a teleconference at these exotic locations as long as physical access is available.

The more difficult issues arise in accommodating council members confronted with hospital confinement, immunocompromising diseases, or treatments that limit public exposure. Although it appears safe to assume that dual teleconferencing facilities in the same building (e.g., one teleconference setup in an ill member's garage and another setup in his bedroom) would satisfy the spirit if not the letter of this requirement, this arrangement, unfortunately, has not gone unchallenged. In this and similarly compromised situations, counsel should be certain to obtain and document the concurrence of public speakers in the Brown Act arrangement at each location before assuming it is safe to proceed.

e. The agenda must provide the opportunity for the public to address the city council directly at each teleconference location.

This provision requires some cooperation among teleconference sites. It requires that all audio and video hookups ensure that all members of the city council can hear and respond to public comments from all locations. It requires that the public hear all council deliberations.

f. All votes must be taken by rollcall.

The Act requires that all votes, regardless of topic, be taken by rollcall. With a large body – a regional air quality board, for example – this may be cumbersome. Where it is clear on routine items such as agenda approval that all members are in accord, it may be possible to ask whether there is any dissent, and if there is none, to dispense with a member-by-member roll call.

2. New issues.

These new amendments raise several issues that require further definition at the implementation stage.²

a. Quorums and locations.

As noted above, former law provided that legislative bodies could only use video teleconferencing to hear public comment and to deliberate. Under former law, a council member was not present for the purposes of a quorum and therefore, could not vote if she teleconferenced with audio equipment such as a telephone.

The 1997 legislation not only allows the use of audio or video equipment for the purposes of teleconferencing, but allows the council to conduct all meeting functions by audio or video teleconference. Council members are present for the purposes of a quorum, are able to vote, deliberate, hear public testimony and participate in all council functions by remote location.

Further, there is no limit on the numbers of council members who may fully participate in a meeting by teleconferencing. But, as mentioned above, a least a quorum of the city council must participate from locations within the city. Conceivably, all members of the council can conduct a lawful meeting from their individual offices or homes, provided the statutory procedures are met.

b. Due process considerations.

Under former law, before a council member could participate in a meeting by video teleconference, the city was required to adopt “reasonable regulations” to protect the statutory and constitutional rights of citizens appearing before the council. The new law no longer requires cities to adopt reasonable regulations, but states that they shall “conduct teleconference meetings in a manner that protects the statutory and constitutional rights” of citizens. (Gov’t Code § 54953(b)(3).)

This provision has interesting ramifications where substantive or procedural due process rights are at stake. For example, in land use proceedings, maps or photographs may be crucial to a council’s decision on an application or to a neighbor’s appreciation of

² Michael Jenkins raised several additional issues still lacking legislative or court direction in “1998 Brown Act Amendments”, City Attorneys Department Meeting, Spring 1999.

the decision's ramifications. Although video teleconferencing, a simultaneous telecopy, or some other digital transmission of an exhibit to each location would probably provide adequate due process, it may be difficult to protect these rights when only audio teleconference equipment is used. In the same vein, disciplinary proceedings or permit revocations may hinge on witnesses' demeanor not adequately conveyed through still images. In these situations, city councils should probably refrain from any action until its voting members are physically present at duly authorized meetings.

c. Attorney/client confidentiality.

Protection of attorney/client confidences requires additional precaution where closed sessions are held by teleconference. The broad range of sophistication in technology presents a broad range of risks.

- Video teleconferencing over dedicated telephone lines. This type of teleconferencing is provided over dedicated ISDN telephone lines. Access is not shared with other users and the information passes only through conventional, secure data lines provided by the phone company. These communications are the most secure, providing security equivalent to traditional telephone communications.
- Wide area networks. These are services not provided through dedicated lines, but by a provider willing to make a portion of its wide area network (WAN) available for teleconferencing. The WAN provider employs data encryption as the means of deterring interception of the communication. Because the lines are shared, confidentiality is not assured. However, some providers will guarantee security.
- Virtual private networking. This type of teleconferencing is available in many off-the-shelf forms and can be employed with common PC's. It can provide audio coupled with serial still pictures or video "streaming" where a relatively uninterrupted video image is transmitted. Although this technology is very inexpensive, faulty encryption or the involvement of too many hosts – common Internet problems – can compromise the lawyer's duty to protect and maintain client confidentiality.

While the attorney/client privilege in Section 954 of the Evidence Code is generally protected where an electronic eavesdropper intercepts a communication, communicating by means that others could easily intercept is evidence that the communication was not intended to be confidential. (See, Jack L. White, "You've Got Mail!", City Attorneys Department Meeting, Spring 1999.)

3. Practice tips.

The city attorney should not assume that teleconference procedures will go unscrutinized. On the contrary, it is probably safe to assume that for each council member who feels sufficiently compelled to take the extra steps to patch in, there is an antagonist who would rather see the council member not participate. In order to protect council action from invalidation under the Brown Act, it is important make sure the extra steps are documented.

This is doubly important where the city attorney might be called upon later to provide an opinion on the validity of the council proceeding or action. One city attorney called upon to issue an opinion letter for a bond issue, prepared the attached script to read into the record documenting that the agenda posting, setup of teleconference facilities, attendance, and rollcalls complied with the Brown Act.

SCOTT C. SMITH

Mr. Smith wishes to acknowledge the assistance of colleagues Hayley Peterson, Steve Deitsch, and Steve DeBaun in preparing these materials.

SAMPLE SCRIPT FOR TELECONFERENCING PUBLIC MEETINGS
UNDER BROWN ACT
(Gov't Code Section 54953)

PRIOR TO ROLL CALL:

Prior to roll call, I would like to make clear for the record of this meeting, and it should be reflected in the minutes, that at least a portion of this City Council and Redevelopment Agency meeting is conducted pursuant to California Government Code Section 54953, in that Mayor Pro-Tem Hansen is on the Viking Standard Cruise Ship in or off the Coast of Mexico, and Council member Kensington is in Edinburgh, Scotland. Both Mayor Pro-Tem Hansen and Council member Kensington are participating by speaker phone. In accordance with the Ralph M. Brown Act, each teleconference location has been identified in the notice and agenda for this meeting.

Madame Clerk, it would now be appropriate for you to conduct roll call, after which I would ask the Mayor to recognize me in order to confirm certain matters for the record.

[ROLL CALL]

I would now like to request that Mayor Pro-Tem Hansen respond to the following questions:

- (1) Mayor Pro-Tem Hansen, can you hear me well?
- (2) Were you able to hear our proceedings on this end up until now?
- (3) Do you have a copy of the agenda for this meeting?
- (4) Have you posted the agenda at the location where you are?
- (5) Is your location reasonably accessible to the public, such that any member of the public could participate in this teleconference from your location if he or she wished to do so?
- (6) Is there any member of the public there with you who would like to participate in the public comment portion of this meeting, or otherwise address any agenda item for this meeting?

Next, I would like to request that Council member Kensington respond to the following questions:

[REPEAT THE SAME QUESTIONS]

I would now like to ask that any member of the City Council and Board of the Redevelopment Agency speak up at this time if such Council member and Board Member has not been able to clearly hear either Mayor Pro-Tem Hansen or Council member Kensington. Hearing no comment, the record should reflect that all Council members and Agency Board members present have indicated that they were able to hear both Mayor Pro-Tem Hansen and Council member Kensington clearly.

I would next like to ask Mayor Pro-Tem Hansen whether he has been able to hear Council member Kensington.

I would next like to ask Council member Kensington whether he has been able to hear Mayor Pro-Tem Hansen.

I would next request that any Council member and Agency Board Member, including Council members Hansen and Kensington, speak up at this time if such Council member and Board Member has any reason to believe, based on voice recognition or otherwise, that those persons representing themselves to be either Council member Hansen or Council member Kensington are not truly so. Hearing no comment, the record should reflect that no Council member has expressed doubt that Council members Hansen and Kensington are the parties participating by teleconference with Council members and Board Members present here.

I would now like to advise the Mayor and Council members and the City Clerk, that any votes taken during the teleconference portion of this meeting must be taken by roll call.

The background of the slide is a solid orange color with a pattern of various leaf shapes in a slightly darker shade of orange, scattered across the surface. The leaves vary in size and orientation, creating a textured, autumnal feel.

Tips on Parliamentary Procedure

Governing Principles and Common Sense

The BIG Picture

- Parliamentary law is a system of maintaining order in organizations. It provides an approved and uniform method of conducting meetings in a fair, orderly, and expeditious manner.
- Respect for law is a basic characteristic of democratic governments. This respect is clearly shown by a willingness to practice an orderly method of procedure in organizations so as to follow the will of the majority, to protect the rights of the minority, and to protect the interests of those absent.
- The San Francisco Bay Area Rapid Transit District Board of Directors has adopted Alice Sturgis' Standard Code of Parliamentary Procedure to govern its affairs and, unless otherwise indicated, the governance of subordinate bodies.

Alice Sturgis' Philosophy

- Alice Sturgis considered principles more important than rules.
- She stressed the need to understand the “why” behind every procedure.
- She held that when there is a conflict between common sense and archaic ritual, common sense should prevail.

Key Principles

- All members have equal rights, privileges, and obligations; rules must be administered impartially.
- The minority has rights which must be protected.
- Full and free discussion of all motions, reports, and other items of business is a right of all members.
- In doing business, the simplest and most direct procedure should be used.
- Logical precedence governs introduction and disposition of motions.
- Only one question can be considered at a time.
- Members must be recognized by the chair and have obtained the floor.
- No one may speak more than twice on the same question w/o permission of the assembly. No member may speak a second time on the same question if anyone who has not spoken on that question wishes to do so.
- In voting, members have the right to know at all times what motion is before the assembly and what affirmative and negative votes mean.

Summary of Steps in Handling a Motion

- A member rises and addresses the presiding officer.
- The presiding officer recognizes the member.
- The member states the motion.
- Another member seconds the motion.
- The presiding officer restates the motion, thus placing it before the assembly for consideration.
- The assembly may discuss the motion if it is debatable and amend the motion if it is amendable.
- The presiding officer takes the vote.
- The presiding officer announces the result.

Precedence of Motions

- Since only one question may be considered at a time, the sequence in which motions may be taken up is fixed by parliamentary law.
- The main motion is the basic motion and all other legitimate motions are taken up and acted upon before the main motion is finally disposed of.
- In other words, motions are acted upon one at a time in REVERSE ORDER of proposal, with the main motion acted on last.
- Subsidiary and incidental motions which are introduced must be given priority so that the action finally taken on the main motion will accurately reflect the will of the assembly.
- Privileged and subsidiary motions have the highest status and are arranged in an explicit order of precedence. Let's look at them more closely.

What are Privileged Motions?

- Privileged Motions are motions to enable a member to secure an immediate decision that concerns the comfort, convenience, rights, etc. of a member even though other business is pending.
- Example: "I move to take a 15 minute recess."

What are the Privileged Motions?

- To Adjourn
- To Recess
- To raise a Question of Privilege

What are Subsidiary Motions?

- Subsidiary motions are motions to modify a motion that is being considered by the board so that it will express more satisfactorily the will of the members.
- Example: "I move to amend the motion by inserting the word 'three' before the word 'representatives'."

What are the Subsidiary Motions?

- To postpone temporarily
- To close debate
- To limit debate
- To postpone to a certain time
- To refer to committee
- To amend

Ranking of PRIVILEGED and subsidiary motions

- 1. ADJOURN (privileged)
- 2. RECESS (privileged)
- 3. RAISE A QUESTION OF PRIVILEGE (privileged)
- 4. Postpone Temporarily or "Table" (subsidiary)
- 5. Close debate – requires 2/3 vote (subsidiary)
- 6. Limit debate – requires 2/3 vote (subsidiary)
- 7. Postpone to a certain time (subsidiary)
- 8. Refer to a committee (subsidiary)
- 9. Amend (subsidiary)

Tips regarding the ranking table

- When a motion is being considered, only motions with higher precedence (as noted on the earlier slide) may be introduced.
- Lower precedence motions may not be considered.

What is a Main Motion?

- Main motions are motions by which a member may present a substantive proposal to the board for consideration and action.
- It is the basic motion of the transaction of business.
- Example: "I move that we apply for a 223 grant to fund the proposed demonstration project."

What is a restorative main motion?

- The term refers to a motion to amend a main motion that was previously approved by the Board.

What is an Incidental Motion?

- Incidental motions arise incidentally out of the immediate pending business at any time and must be decided as soon as they arise.
- Example: "I move to withdraw my motion."
- They are not viewed as presenting a problem of precedence.

Unanimous (General) Consent

- Under Sturgis (p.142) Unanimous General Consent is an informal method of taking a vote, used for routine and non-controversial decisions.
- Example: "The minutes have been circulated. Are there any corrections to the minutes? (Pause)? If not, the minutes are approved as circulated."
- Example: "Is there any objection to changing the agenda to consider item 7? (Pause)? There being no objection, we will proceed now with item 7, and then return to item 3."
- Unanimous Consent is not appropriate when voting on main motions, since they do not qualify as "routine and non-controversial decisions". Members must be given the full opportunity to express their sentiment by a formal show of hands.

NOTE: Parliamentary Procedure Rules co-exist with other enactments of government

Hierarchy of Governing Documents under Sturgis (p.203)

- 1. Laws of the Land (Constitution, Statutes, etc.)
- 2. Constitution (Originating Instrument) and Bylaws
- 3. Rule Book (e.g. Sturgis) and Special Rules of Order

Did you know:

- Under Sturgis, the Chair maintains the right to vote.
- A motion requires (at least) a majority vote to pass.
- Where a motion would limit the rights of members, a 2/3 vote is required.
- Associate members cannot vote.
- Board members who have a direct personal gain by voting may not vote.
- Under Sturgis (p. 135) abstentions do not count.
- Under Sturgis (p.136), if the result of a vote is a tie, the motion fails to pass.
- Seconding a motion merely indicates that the member wishes the motion to be considered by the Board; it is not necessarily an endorsement of the motion.

Final words of wisdom

- Don't get bogged down with detail.
- Use common sense.
- Have reference materials readily available.
- Take notes.
- Practice.
- Take care of only one thing at a time.
- No business without a quorum. Individual board members do not have the power to act independently. They are members of a body and therefore may not speak or act for the body unless given specific authority by the body. An individual doing so will be individually responsible for their own actions.

Resources

- Alice Sturgis, Standard Code of Parliamentary Procedure (4th edition)

The background is a solid orange color with a pattern of various leaf shapes in a slightly darker shade of orange, scattered across the surface.

Questions?

Don't be shy – I don't know anything.

ETHICS AND PUBLIC SERVICE



AB 1234 Training – March 2019 by the Office of the General Counsel



SESSION OBJECTIVES

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



PUBLIC SERVICE ETHICS IS DIFFERENT

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



ETHICS V. ETHICS LAW

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



PERSONAL AND ORGANIZATIONAL ETHICS

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



LEADERSHIP AND ETHICS

Where do we look for examples of ethics?

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



LEADERSHIP AND ETHICS

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



THE ETHICS EXPLOSION - CALIFORNIA

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



THE ETHICS EXPLOSION - CALIFORNIA

- 1970's – 2000
 - Political Reform Act -- Proposition 9 -- 1974
 - Bias, Due Process
 - Public Contract Code -- Consolidated - 1981
 - Common Law Conflicts
 - Revolving Door -- State Officials

- 2000 - Present
 - AB 1234
 - Revolving Door -- Expanded to Local Officials
 - New Gift Rules

FOUR GROUPS OF ETHICS LAWS CORE TOPICS – FPPC REG. 18371

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



Key Ethics Law Principles For Public Servants

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

PERSONAL FINANCIAL GAIN
Public officials:

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

PERSONAL ADVANTAGES & PERKS
Public officials:

- Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$500 (2006) from a single source in a given year.
- Cannot receive compensation from third parties for speaking, writing an article or attending a conference.

GOVERNMENT TRANSPARENCY
Public officials:

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

FAIR PROCESSES
Public officials:

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

INSTITUTE FOR LOCAL GOVERNMENT

GROUP 1: PERSONAL FINANCIAL GAIN ISSUES

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





EXAMPLES OF LAWS

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





BRIBERY

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





CASE STUDY: STRIPPERGATE

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



BRIBERY – FEDERAL LAW

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

18 U.S.C. § 666



BRIBERY – FEDERAL LAW

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

18 U.S.C. §§ 1341, 1346



BRIBERY: HONEST SERVICES MAIL FRAUD

Cases: How do they get started?

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



BRIBERY: HONEST SERVICES MAIL FRAUD

Summary of Behaviors Which Make You a Target

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



SIMILAR CRIMES

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





THE POLITICAL REFORM ACT

The Fundamental Provisions

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



PERSONAL FINANCIAL GAIN

The Political Reform Act

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



THE POLITICAL REFORM ACT

Analysis

1. Is a **public official** involved?
2. Is the official **making, participating in making** or attempting to use his/her position to **influence** a government decision?
3. Does the public official have an **economic interest**?
4. Is the economic interest **directly** or **indirectly** involved?
5. Is it **reasonably foreseeable** that the governmental decision will have a material financial effect on the official's economic interest?



THE POLITICAL REFORM ACT

Exceptions?

Public Generally

Legally Required Participation



ECONOMIC INTERESTS – FORM 700 - Financial Discl.

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



1. BUSINESS ENTITIES

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

2. REAL PROPERTY INTEREST

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





Revised 500 foot rule (2014)

- The FPPC has eliminated the “one penny rule” and replaced it with a somewhat more lenient
- standard that provides that a public official is presumed to have a conflict of interest if he or she owns
- residential property within 500 feet of a project, unless the FPPC determines that there are sufficient facts
- to indicate that there will be no reasonably foreseeable measurable impact on the official’s property. The
- significance of this amendment is that now public officials may be able to participate in government
- decisions even if they own residential property within 500 feet of a project, if they get FPPC approval,
- even if it is possible that there might be a nominal financial impact on their real property interest. While
- public officials could previously request advice letters on this issue, the standard the FPPC used to
- determine whether the official could participate was the strict “one penny rule” that essentially required
- the public official to demonstrate that it was not reasonably foreseeable that the project would have even
- “one penny” of impact on the public official’s property value. This was obviously a high standard, and
- while it was a rebuttable presumption, it was very difficult to overcome. Under the revised regulations, an
- official will only need to demonstrate that there is “no reasonably foreseeable measurable impact on the
- official’s property.” While, as a practical matter, this standard may still require public officials to obtain
- appraisals and related other documentation to support their claims, the revised hurdle is intended to be
- somewhat easier to overcome than the former “one penny rule.” (*Compare* former 18704.2(a)(1) and
- current 18705.2(a)(11).)



However . . .

- Even if a public official owns residential real property that is located more than 500 feet
- away from the project area, he or she may still have a disqualifying conflict of interest if the government
- decision would (1) change the development potential, income-producing potential, or the highest and best
- use of the property; or (2) “...change the character of the parcel of real property by substantially altering
- traffic levels or intensity of use, including parking, of property surrounding the official’s real property
- parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would
- affect the market value of the real property parcel in which the official has a financial interest.” Stated
- otherwise, even if the official’s residential property is located more than 500 feet away from a project, if
- that project would impact the parking, privacy, noise, odors, or views from that parcel and those impacts
- affect the market value of the property, then the official may have material financial interest which could
- result in disqualification. For instance, if the public official owned an ocean view residence 1,000 feet
- away from a proposed 10-story apartment that, if approved, would block the official’s ocean views, he or
- she may have a material financial interest subject to disqualification, unless he or she could demonstrate
- that the impeded views would not have any effect on his or her market value.



3. SOURCES OF INCOME

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





4. SOURCES OF GIFTS

- Form 700 → Disclose \$50 or more
 - Aggregate by Source – calendar year
- \$500 or more – aggregate 12 months prior to decision
- \$500 annual gift limit; exceptions
- Amazingly detailed regulations

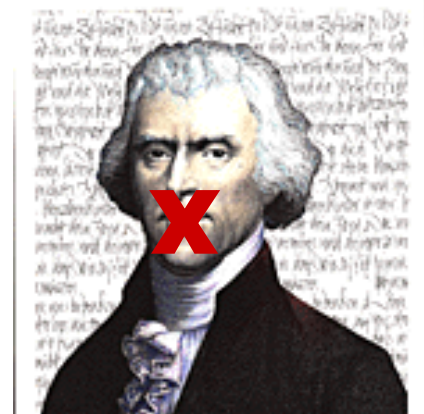


5. PERSONAL FINANCES RULE

- You have a financial interest if you can reasonably foresee a financial effect of \$250 or more
- 12 months prior to/after the decision

IF YOU ARE DISQUALIFIED FOR A FINANCIAL CONFLICT

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



DISQUALIFICATION BASED ON FINANCIAL INTERESTS

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





DISQUALIFICATION VERSUS ABSTENTION

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



PENALTIES

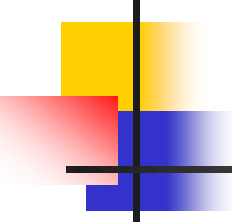
- Invalidate decision
- Misdemeanor (could result in loss of office)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys fees (yours and others)
- Embarrassment (personal/political)



CASE STUDY: THE TRAVEL STORE

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

FUTURE EMPLOYMENT ISSUES



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

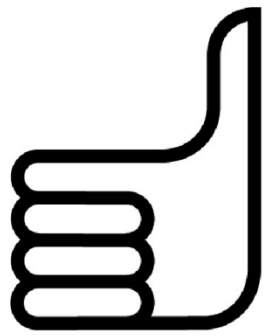


MASS (BULK) MAILING

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

- Newsletters
- Letters

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



BEST PRACTICES

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

WARNING! SPECIAL RULES FOR CONTRACTS

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





CONTRACTS – GOVERNMENT CODE 1090

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



GROUP 2: PERKS

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



GROUP 2: PERKS

- **Principles: No Unauthorized Perks**

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



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

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



TWO KINDS OF PERK RULES

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





NOT ALL GIFTS HAVE BOWS

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



NOT ALL GIFTS HAVE BOWS

■ Gifts

- From anywhere--inside or outside the jurisdiction
- \$50 or more -- disclose on annual statement
- \$500 -- gift limit in effect until December 31, 2020; (aggregate in 12 calendar months)
- Disclosure
 - Aggregate from one source
 - Based on **calendar** year
- Disqualification - \$500 or more. Accepting less is OK
 - – but disqualification from participating in the decision making process may result because **you go back 12 months preceding the decision – not “calendar” months!**



BYRON'S GIFT THEORUM

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



EXCEPTIONS TO THE DEFINITION OF "GIFT"

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

GIFTS

GUIDES TO GIFT REGULATIONS

§18940

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

GIFTS

GUIDES TO GIFT REGULATIONS

(Continued)

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



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

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

GIFTS

GIFTS TO THE PUBLIC AGENCY (VERSUS THE PUBLIC OFFICIAL)

FOUR CRITERIA:

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



PERKS - OTHER OFFERS

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



USE OF PUBLIC RESOURCES ISSUES

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



EXAMPLE: EXPENSE REIMBURSEMENT

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

CONSEQUENCES OF VIOLATIONS

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





WHAT IS THE BART RULE ON GIFTS?

NO GIFTS!



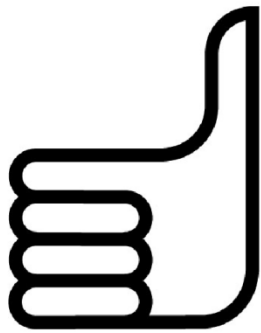
CASE STUDY: SACRAMENTO SUBURBAN WATER DISTRICT

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

POLITICAL USE OF PUBLIC RESOURCES

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





BEST PRACTICE

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



GROUP 3: TRANSPARENCY LAWS

Principles:

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





TRANSPARENCY RULES

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

INSTITUTE for LOCAL GOVERNMENT

Celebrating 50 years of service to local officials
www.ilsg.org

The ABCs of Open Government Laws

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

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

CALIFORNIA'S TRANSPARENCY LAWS REQUIRE PUBLIC OFFICIALS TO:

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

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

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



For a Regular Meeting of a Legislative body

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



For a Special Meeting of a Legislative body

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



For an Emergency Meeting of a Legislative Body

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



For a dire emergency meeting of a Legislative Body

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



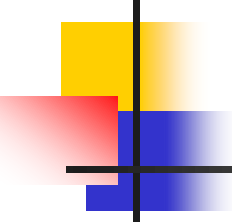
CONDUCTING BUSINESS AT OPEN MEETINGS

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



CONSEQUENCES OF VIOLATIONS

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



Some governments enact additional transparency rules

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



BART's Brown Act Lite Rules

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



PUBLIC RECORDS

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

FINANCIAL INTEREST DISCLOSURE

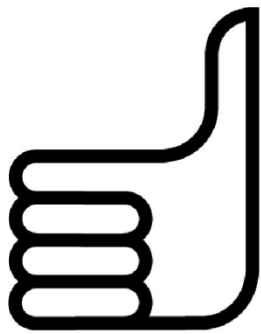
- Transparency includes obligation for high level public servants to disclose financial interests
 - Assuming office
 - Annually while in office
 - Upon leaving office





CHARITABLE FUNDRAISING

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



BEST PRACTICES

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



GROUP 4: FAIR PROCESS LAWS

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



FAIR PROCESS LAWS

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





Nasha LLC v. City of LA

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



Clark v. Hermosa Beach

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

FAIR PROCESS LAWS

continued

- Competitive bidding requirements
 - State law defines
 - Also local requirements
 - Principles:
 - Everyone has a right to compete for agency's business
 - That competition produces the best price for taxpayers

- Example:
 - Council member steered contracts to sister's firm and apparently received kickbacks

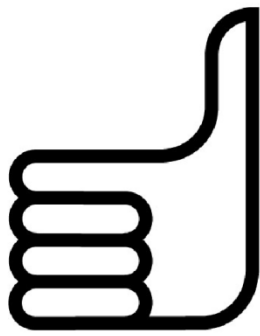


FAIR PROCESS LAWS

continued

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

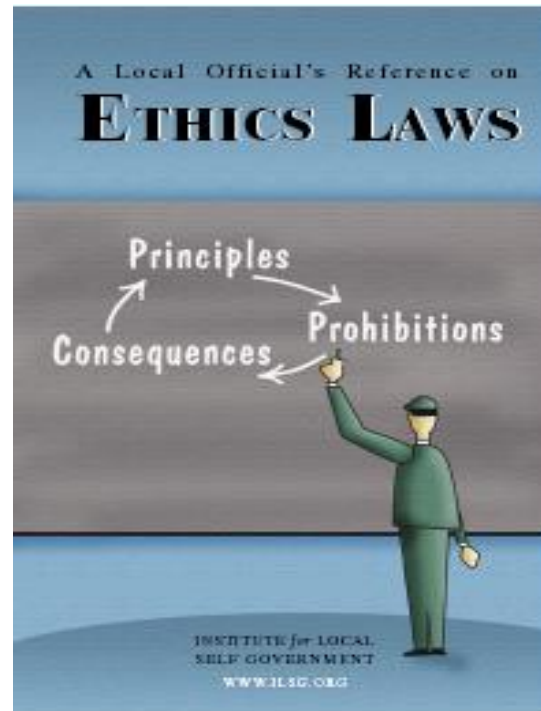




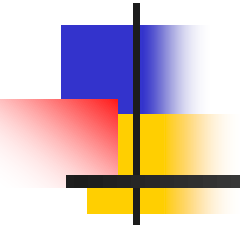
BEST PRACTICES

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

RESOURCES FOR FURTHER READING



BEYOND THE LAW: PUBLIC SERVICE ETHICS PRINCIPLES





ETHICS = VALUES

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

Source: Institute for Global Ethics

APPLYING VALUES TO PUBLIC SERVICE

Trustworthiness:

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

PUBLIC SERVICE VALUES

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

Trustworthiness

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

Fairness

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

Responsibility

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

Integrity

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

Respect

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

Compassion

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

Loyalty

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

The Importance of Public Perception

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

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

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

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



ANALYZING ETHICAL DILEMMAS

Two kinds of dilemmas:

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

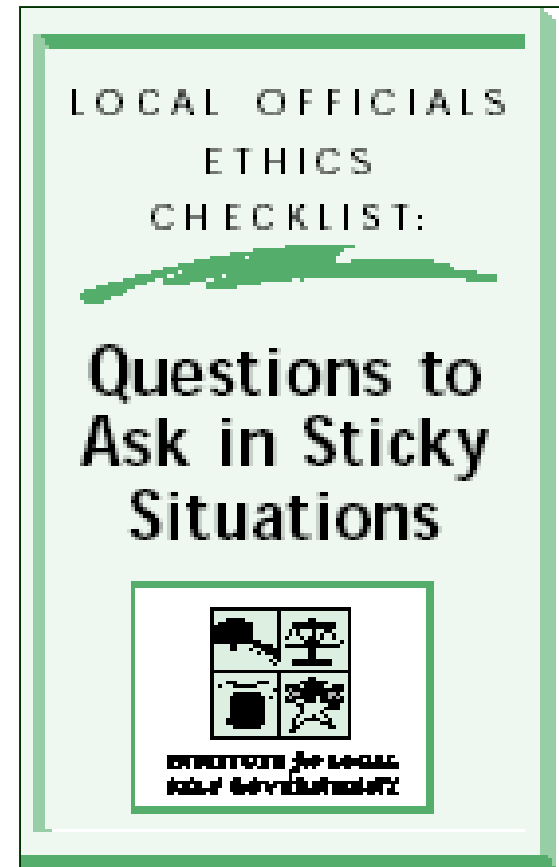


EXAMPLE

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

QUESTIONS TO ASK

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





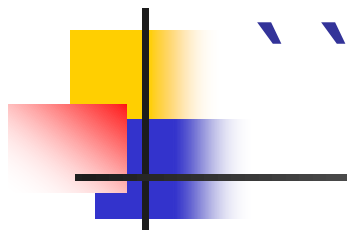
KEY LESSONS

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



AB 1234 COMPLIANCE

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



QUESTIONS?