

Understanding Public Service Ethics Laws & Principles: AB 1234 Training

League of California Cities Planning
Commissioners Academy

Wednesday, March 6, 2024



HOUSEKEEPING

You **MUST** be signed
in

You must be present
for the full two-hour
training

You will receive your
certificate at the end
of the training

We also have
certificates for
attorneys for MCLE
credit

Contact Melissa
Kuehne
([mkuehne@ca-
ilg.org](mailto:mkuehne@ca-ilg.org)) with questions
or concerns

ILG IS NONPROFIT, NONPARTISAN & HERE TO HELP

- ILG is the nonprofit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



OUR PROGRAMS AND SERVICES

Program Areas

Leadership & Governance

Civics Education & Workforce

Public Engagement

Sustainable & Resilient Communities



Services

Education & Training

Technical Assistance

Capacity Building

Convening

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

Understanding
Public Service
Ethics Laws
and Principles
(AB 1234)

Planning Commissioners' Academy
Wednesday, March 6, 2024

Presenter:

Aleks R. Giragosian, Senior Counsel
Matthew Slentz, Associate
Colantuono, Highsmith & Whatley, PC

Historical Background



Elements of Ethics Training

- Conflict of Interest Training
- Ralph M. Brown Act Training
- California Public Records Act Training

Due Process/Bias

Requires:

- Notice of the intended action;
- Opportunity to prepare;
- Opportunity to be heard; and
- Fair and impartial hearing.

Types of Decisions

- Legislative decision
- Quasi-judicial decision

Disclosure of Ex Parte Contacts & Site Visits

Conflict of Interest Outline

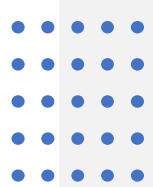
1. Government Code Section 1090
2. Political Reform Act
3. Incompatible Offices/Activities
4. Statement of Economic Interest
5. Gift Limits



Government Code § 1090

Basic Rule

- Adopted as early as 1851, later recodified in 1943
- Public officials “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.”
- Prohibition applicable even when:
 - Contract is objectively fair and reasonable
 - Contract reflects lowest price or best value
 - Official abstains from participation in contract



What Constitutes “Making a Contract”?

- Voting to approve
- Designing specifications
- Preliminary discussions
- Negotiating
- Actual signing of contract

Indirect Interest

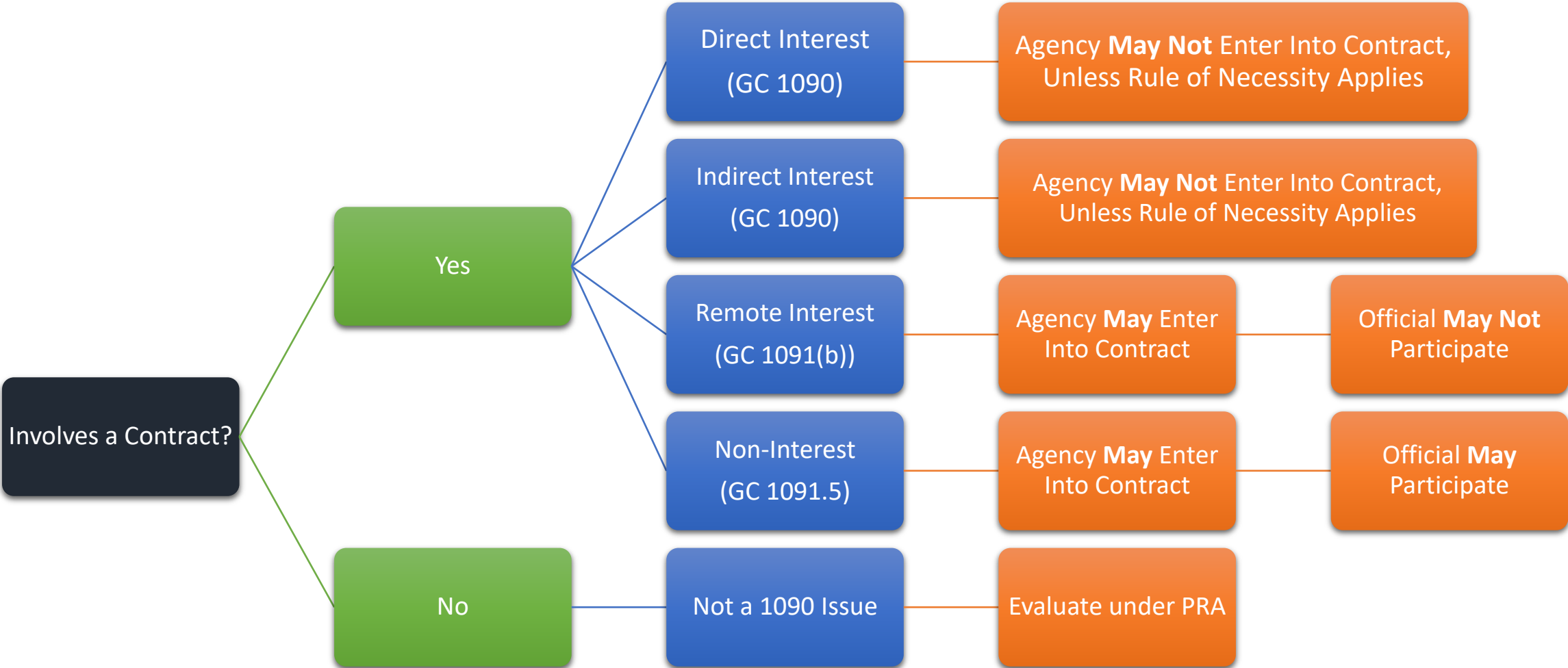
- An indirect interest includes any investment or interest owned by:
 - The spouse or dependent child of a public servant;
 - An agent on behalf of a public servant;
 - A business entity or trust in which the public servant, the public servant's agent, spouse, and dependent children own directly, indirectly, or beneficially a 10% interest or greater



What are the exceptions?

- **The Remote Interest Exception**
 - Disqualifies official, but board may act
- **The Non-interest Exception**
 - The financial interest “doesn’t count” and is ignored
- **The Rule of Necessity**
 - Non-statutory rule applicable only in very limited circumstances

Section 1090 Decision Tree



Obtaining FPPC Advice

Type	Method	Immunity	Precedential Value	Response Time
Informal Advice	Email or Telephone	No	No	2-3 Business Days
Formal Advice	Mail or Fax	Yes	No	21 Business Days
FPPC Opinion	Mail or Fax	Yes	Yes	Several Months



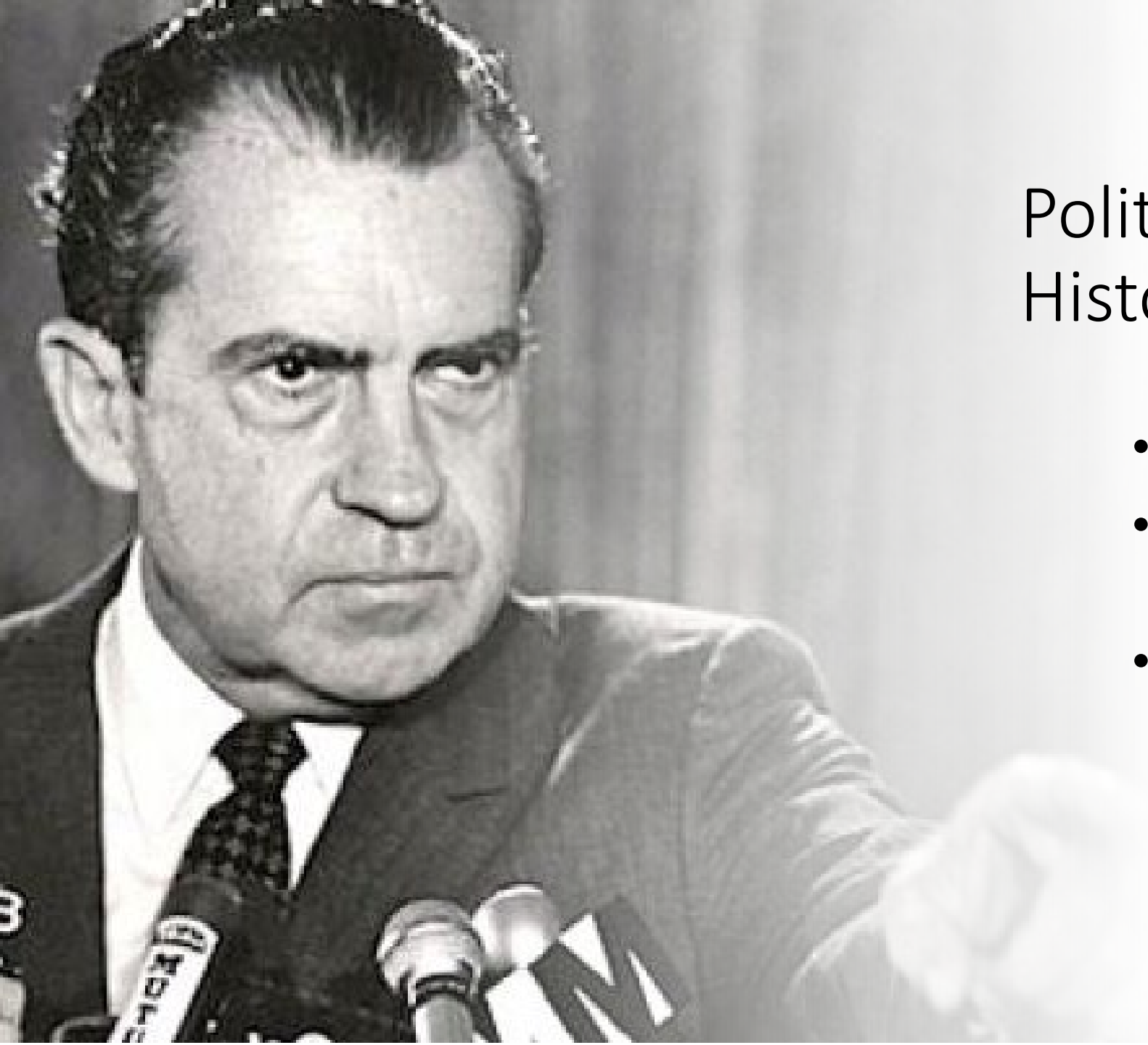
Consequences

- Contract is void and unenforceable
- Agency may keep benefit of the contract
- Official must disgorge any monies
- Violation is a **felony**
 - Fine,
 - Imprisonment,
 - Lifetime ban from public office



Consequences

- Violation is a **Felony** (GC §1097)
 - Fine,
 - Imprisonment,
 - Lifetime ban from public office
- Aider & Abettor Liability (GC §1090(b))
- Civil Statute of Limitations
 - 4 years after a party discovers or should have discovered the violation (GC § 1092(b))
- Criminal Statute of Limitations
 - 3 years after discovery of the violation (PC §§ 801 & 803)



Political Reform Act: History

- In response to Watergate
- Californians adopt Proposition 9 in 1974
- Codified as the Political Reform Act

Does the Political Reform Act Apply?

Public Official

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graph TD; A[Public Official] --> B[Governmental Decision]; B --> C[Financial Interest];
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Governmental Decision

Financial Interest

Who is a “Public Official”?



87200 Filers



Designated Public Servants



Consultants who serve in a staff capacity by contract, or make decisions on behalf of the public agency

What is a “Governmental Decision”?


- Any action taken by a government agency that has a financial effect on any person other than the governmental agency making the decision
- Prohibition on influencing a Governmental Decision through:
 - Voting
 - Discussing
 - Lobbying

What is a
“Financial
Interest”?



4-Step Test: Is the Interest Disqualifying?

Is there a reasonably foreseeable effect on the financial interest?



Is the effect material?



Is the effect indistinguishable from the effect on the public generally?



Is there an exception that applies?

The “Public Generally” Exception (GC § 87103)

- Effect of decision on public official’s financial interest is **not unique** compared to effect on a significant segment of the public
- “Significant segment” includes:
 - 25% of businesses or entities in the jurisdiction
 - 15% OR 25% of all real property in the jurisdiction
 - 25% of all individual’s in the jurisdiction
- And no disproportionate effect on public official’s financial interest
- Examples: Assessments, taxes, fees, rates, charges that apply equally to public official’s financial interest or entire jurisdiction

What To Do If There Is a Conflict: In-Person Meeting

When the agenda item is announced, but before discussion of the item begins:

1. State that you have a conflict of interest;
2. Publicly identify each financial interest;
3. Recuse yourself from participation in discussion; and
4. Leave the room for the duration of the discussion
5. Only return once the next agenda item is called.

NOTE: FPPC recently closed a loophole

What To Do If There Is a Conflict: Tele- conferenced Meeting

When the agenda item is announced, but before discussion of the item begins:

1. State that you have a conflict of interest;
2. Publicly identify each financial interest;
3. Recuse yourself from participation in discussion;
and
4. Turn off your video and mute your mic
5. Only return once the next agenda item is called.

POLL!

Poll: A bakery needs to obtain a permit from the Planning Commission to operate within the City. Which of the Planning Commissioners can vote on the item?

1- Planning Commissioner A's wife works full-time at the bakery

2- Planning Commissioner B received a free breakfast bagel and coffee from the bakery

3- Planning Commissioner C lives within 750 feet of the bakery

4- Planning Commissioner D lent the owner of the bakery \$3,000 nine months ago

5- Planning Commissioner E owns a business next to the bakery

Political Reform Act Violations & Fines

- Criminal
- Civil
- The Court of Public Opinion



Incompatible Offices

Government Code Section 1099-



- Offices are incompatible when one:
 - Audits, overrules, or removes members of the other
 - Possibility of a significant clash of duties or loyalties
 - Public policy considerations make it improper
- Does not apply to an employment position
- Forfeit the first office upon acceding to the second
- Poll!

Poll: Which of these is not an incompatible office?

1) Planning Commissioner & City Councilmember

2) City Councilmember & School Board Member

3) City Councilmember & City Manager

4) City Councilmember & Local Agency Formation Commissioner

5) City Councilmember & County Board of Supervisor

Incompatible Activities Government Code § 1126

- Rule: “[A] local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed.”
- Agency must provide policy regarding which activities are incompatible
- Does not apply to elected officials, only employees and appointed officials

Statement of Economic Interest

- All local agencies must adopt conflict of interest code which designates certain employees as Form 700 filers
- Must file within 30 days of taking office and leaving office, and annually thereafter
- Check with your City Clerk to determine whether you are a Form 700 filer

CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION

SCHEDULE A-2
Investments, Income, and Assets
of Business Entities/Trusts
(Ownership Interest is 10% or Greater)

1. BUSINESS ENTITY OR TRUST

Name _____

Address (Business Address Acceptable) _____
Check one: Trust, go to 2 Business Entity, complete the box, then go to 2

GENERAL DESCRIPTION OF BUSINESS ACTIVITY

FAIR MARKET VALUE IF APPLICABLE, LIST DATE: / / 09
 \$2,000 - \$10,000
 \$10,001 - \$100,000
 \$100,001 - \$1,000,000
 Over \$1,000,000

ACQUIRED _____ DISPOSED _____

NATURE OF INVESTMENT: Sole Proprietorship Partnership Other _____

YOUR BUSINESS POSITION: _____

2. IDENTIFY THE GROSS INCOME RECEIVED (INCLUDE YOUR PRO RATA SHARE OF THE GROSS INCOME TO THE ENTITY/TRUST)

\$0 - \$499 \$500 - \$1,000 \$1,001 - \$10,000 OVER \$10,000

3. LIST THE NAME OF EACH REPORTABLE SINGLE SOURCE OF INCOME OF \$10,000 OR MORE (check & report what is increased)

4. INVESTMENTS AND INTERESTS IN REAL PROPERTY HELD BY THE BUSINESS ENTITY OR TRUST

Check one box: INVESTMENT REAL PROPERTY

Name of Business Entity & Street Address or Assessor's Parcel Number of Real Property: _____

Description of Business Activity & City or Other Precise Location of Real Property: _____

FAIR MARKET VALUE IF APPLICABLE, LIST DATE: / / 09
 \$2,000 - \$10,000
 \$10,001 - \$100,000
 \$100,001 - \$1,000,000
 Over \$1,000,000

ACQUIRED _____ DISPOSED _____

NATURE OF INTEREST: _____

Gift Restrictions: Is it a Gift?

- A “payment made by any person of any thing of value when the official does not provide full consideration for the value of the benefit received.”
- Includes gifts to spouse and dependent children
- Given as of the date the gift is received or promised

Exceptions to Gift Restrictions

- Informational material (electronic media ok)
- Gifts from family (includes distant relations and former family)
- Gifts from Close Friends (“long term, close, personal friendship, unrelated to the official’s position with the agency”)
- Reciprocal gifts (between friends during special occasions; not lobbyists)
- Ceremonial Role (2 tickets to entertainment event)
- Home hospitality (food, home entertainment, overnight lodging, etc.)

Exceptions to Gift Restrictions

- Gambling, Prizes, Awards (must report as income; not because of official status)
- Bereavement Gifts (those typically provided)
- Gifts of Human Compassion (charity from within social circle to offset medical or living expenses when in need)
- Acts of Neighborliness (free, ordinary services polite people provide without charge)
- Dating (unless lobbyist or matter pending before agency)
- Gifts for Attending Wedding (reportable and valued at ½ total value)

Gifts of Travel: Exceptions

- Government Pays for Government-Related Travel
 - Not Reportable, unlimited
- Private Entity Pays for Government-Related Travel
 - Reportable, unlimited
 - Form 801 or Form 700 Disclosure
- Private Entity Pays for Private Travel
 - Reportable and limited
 - Form 700 Disclosure

Gift Restriction Summary



Gifts aggregating \$50 or more in the reporting period must be disclosed on a Form 700



Gifts aggregating \$590 or more in the reporting period from a single source are a conflict of interest

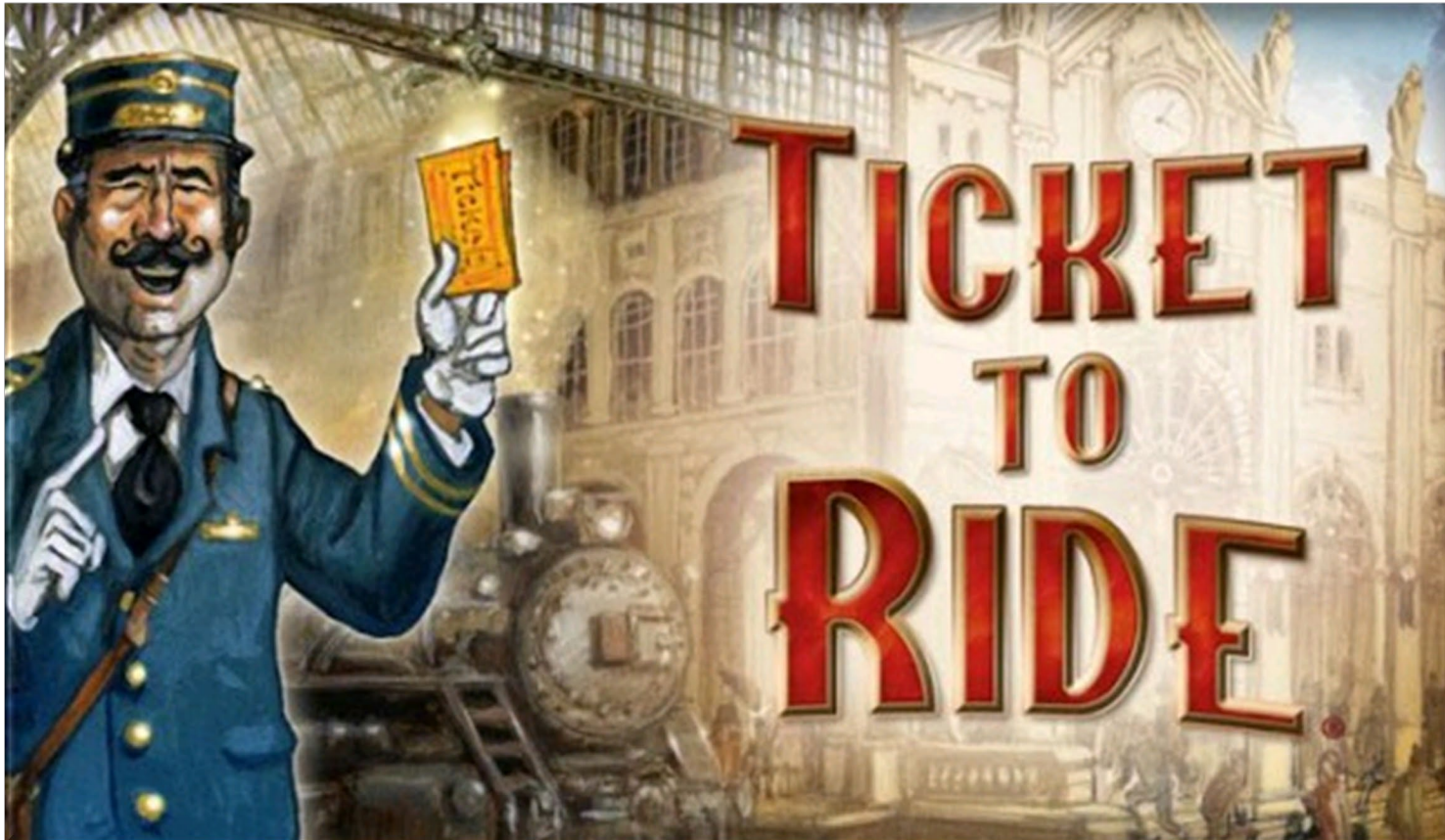


Return to donor within 30 days



Donate to a charity, but can't claim as a tax deduction

Travel Payments: Article XII, § 7



- A transportation company may not grant free passes or discounts to anyone holding an office in this State; acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office.
- Punishable by forfeiture from office



Mass Mailing Restrictions

Prohibition against mailing 200 pieces or more of mail at public expense.

Mailings cannot:

- Feature an elected officer affiliated with the agency; or
- Include the name, office, photograph, or other reference to an elected officer

Exceptions to Mass Mailing Rule

Press Releases

Inter/Intra-Agency
Communications

Payment/
Collection of
Funds

Letterhead/Roster
Listing

Essential Program
Mailings

Legal Notices

Directories

Meeting Notices



Bribery

- “Every officer...who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his or her vote, opinion, or action upon any matter then pending, or that may be brought before him or her in his or her official capacity” is guilty of bribery
- Penalties: prison, fine, loss of office, barred from office for life



Nepotism

- Favoritism based on kinship
- No specific state law concerning nepotism
- Agency may draft an anti-nepotism policy



Gift of Public Funds

- An appropriation benefiting a private party constitutes an unconstitutional gift of public funds if the agency receives no adequate consideration in exchange for the expenditure or if the expenditure does not fulfill a public purpose.

Honorariums

- No local elected office holder, candidate for local elected office, or designated employee may accept any honorarium.
- “Honorarium” means a payment for a speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.



Misuse of Public Resources

- **Rule:** No use of public funds or resources for personal, non-public purposes, including campaigns.
 - **“Public Resources”**
 - staff time,
 - office equipment,
 - supplies,
 - excludes incidental, or
 - minimal uses.
-
- **Campaigns.** a public agency may not expend public funds to promote a partisan position in an election campaign.
 - **Penalties:** disqualification from office, jail, civil penalties up to \$1,000 / day plus 3x the value of the unlawful use.

Competitive Bidding

- Competitive bidding is required for all “public projects” over \$5,000
- Violation
 - Contract is void and illegal;
 - Contract cannot be ratified; and
 - Contractor has no right to reimbursement for service or materials furnished, even if they were rendered in compliance with contract requirements
- Exceptions
 - In the event of emergency;
 - In contracts for professional services;
 - In contracts for special services;
 - When the design-build method is used; and
 - For renewable energy and energy efficiency projects.

Revolving Door Prohibitions

- Local elected officials, chief administrative officers, and city managers
- are prohibited, for 1 year after leaving their position,
- from appearing before or communicating with their former agency
- for compensation
- to influence legislative or administrative action or any matters involving a permit, license, grant, or contract or the sale or purchase of goods or property.

- Public official
- shall not make, participate in making, or use the public official's official position to influence,
- any governmental decision directly
- relating to any person with whom the public official is negotiating, or has any arrangement concerning, prospective employment.



Levine Act

- Levine Act is a subset of the Political Reform Act
- Applies to state and appointed local officials
- SB 1439 extends the Levine Act to local elected officers effective January 1, 2023

SB 1439's Prohibitions

- **Pre-decision:** Cannot make, participate in, or influence a proceeding involving a pending license, permit, or other entitlement for use if the officer willfully or knowingly received a contribution of more than \$250 within the preceding 12 months from any party, participant or their agent involved in the proceeding.
- **Pending Proceeding:** Cannot accept, solicit, or direct a contribution of more than \$250 from any party, participant, or their agent while a proceeding for a license, permit or other entitlement is pending
- **Post-decision:** Cannot accept, solicit, or direct a contribution of more than \$250 from any party, participant, or their agent involved in the decision for 12 months after decision

Pre- & Pending- Decision

- If a contribution of over \$250 is received within 12 months preceding a decision from a party, agent, or participant with a known financial interest, then recusal is required
- If a contribution of over \$250 is received during a proceeding from a party, agent, or participant whose financial interest was unknown to the officer, the officer may still participate in a decision if, within 30 days, he or she:
 - Discloses the contribution on the record;
 - Confirms that the contribution will be returned within 30 days from learning of the financial interest; and
 - Returns the contribution within that time frame.



Post-Decision

- If a contribution of over \$250 is received within 12 months after a decision is rendered, the officer must return the contribution within 14 days to cure the violation
- This remedy is not available to officers who knowingly or willfully accepted, solicited, or directed the prohibited contribution
- Controlled committees must record cured violations



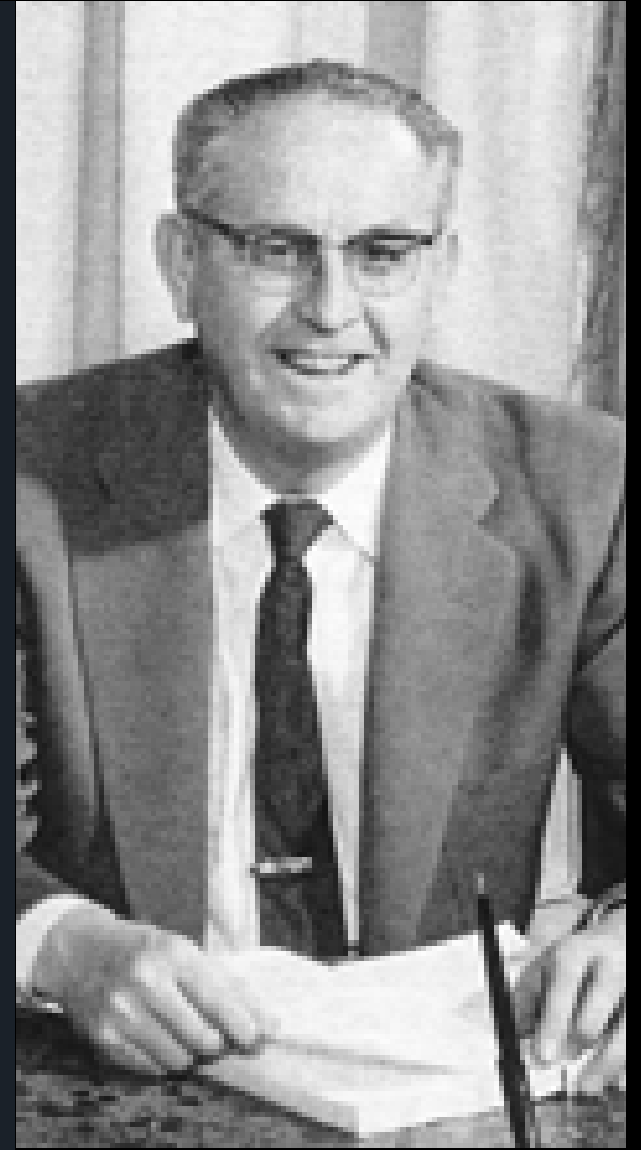
Broad Application

- Party: person who files an application for, or is the subject of, a proceeding
 - Agent: person who represents a party or participant for compensation and appears or communicates with officer to influence pending proceeding
 - Participant: person who supports or opposes a particular decision and who has a financial interest in a proceeding
- Proceedings include:
 - Business, professional, trade permits & licenses,
 - Land use permits, licenses, and other entitlements for use*,
 - Contracts*, and
 - Franchises



Ralph M. Brown Act: Historical Background

“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.”



Heart of the Brown Act

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



What is a “Legislative Body”?

- Governing body of a local agency
- A local agency created by state or federal statute
- Any sub-committee, board, or commission created by the local agency

Legislative Body: Exception

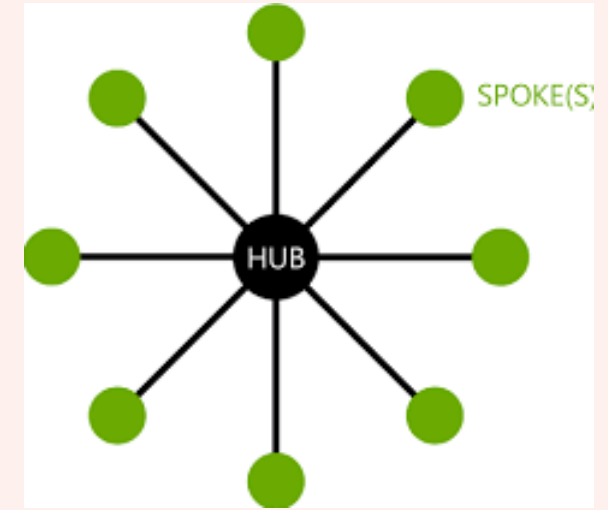
- Ad Hoc Committee:
 - Advisory to legislative body
 - Temporary
 - Limited Purpose
 - Composed of less than quorum legislative body's members
- Special advisory groups
 - Created by staff or a single member of the legislative body
 - Advisory to staff or the single member
- Public employees

What is a “Meeting”?

“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.”

Any use of 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.

Serial Meetings



- Hub and Spoke
- Daisy Chain



Examples of Serial Meetings + Polls



Serial Briefings



Email



Social Media

Serial Briefings: When does the Brown Act Violation first occur?

1) Planning Director meets with Commissioner A to discuss her concern regarding agenda item #1

2) Planning Director meets with staff and City Attorney to discuss Councilmember A's concerns

3) Planning Director meets with Commissioner B to discuss Commissioner A's concerns

4) Planning Director emails the entire Commission regarding Commissioner A's concerns

5) Planning Director meets with Commissioner C to discuss Commissioner A's concerns

Email: When does the Brown Act Violation first occur?

1) Planning Director emails the agenda to the entire Commission, placing their names in the "To" field of email

2) Commissioner A "Replies All" and asks whether the other Commissioner saw the Laker game

3) Commissioner B "Replies All" and asks whether the Commission can schedule a special meeting

4) Commissioner C "Replies All" and asks whether the Chair can move an agenda item to the next meeting

5) Commissioner D "Replies All" and presents her arguments in support of agenda item #3

Social Media: When does the Brown Act Violation first occur?

1) Commissioner A posts “Happy Birthday” on Commissioner C’s Facebook page

2) Commissioner B likes Commissioner A’s post

3) Commissioner B tags all the Commissioners in Commissioner A’s post

4) Commissioner C appreciates all the birthday love and likes an informative article that Commissioner B shared about a pair of handsome presenters who discuss the Brown Act

5) Commissioner A comments on Commissioner B’s article saying, “We should discuss this article at our next meeting!”

Can I post about City business on social media?

Yes,

- but members of a board cannot use social media to discuss among themselves “business of a specific nature that is within the subject matter jurisdiction of the legislative body.”
- CAN use social media to communicate with constituents
- CANNOT have one member post on discussions by other members
- CANNOT weigh in with “likes” or emoji’s; This counts as discussion.

(GC §54952.2(b)(3))



Garnier v. O'Connor-Ratcliff

- Do you have an official (as opposed to personal) social media account?
- May members of the public interact with your page?
- Are interactions limited to reactions and comments, or can people post content?
- Have you adopted an etiquette policy or incorporated your City's policy by reference?
- Consult legal counsel before deleting comments/posts or blocking users.



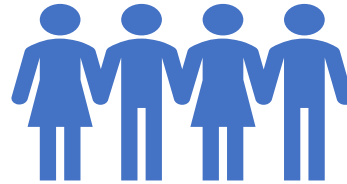
Exceptions to the Definition of Meeting



Individual
Contacts



Conferences



Community
Meetings



Meetings of
another
Legislative Body



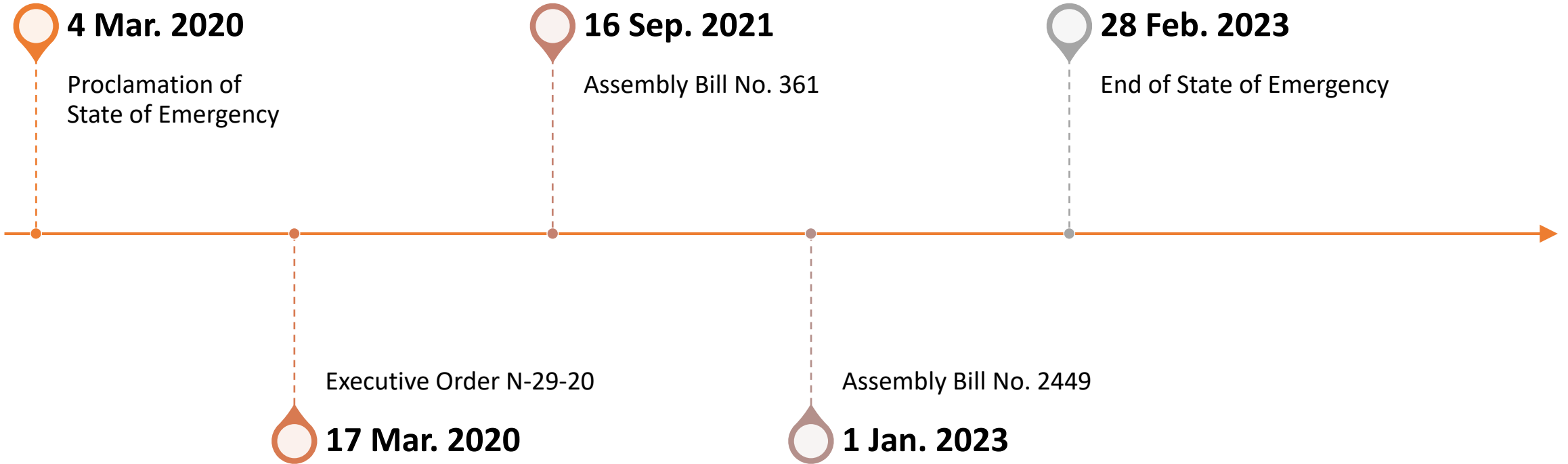
Social or
Ceremonial
Occasions

Meeting Location

Must occur within boundaries of the agency, except to:

- comply with a court order or attend a judicial proceeding
- inspect real or personal property
- attend a meeting with another legislative body or
- meet with a state or federal representative to discuss legislative or regulatory issues
- meet in a facility outside of, but owned by, the local agency if the topic relates to the facility
- visit independent legal counsel's office for a closed session

End of State of Emergency



Teleconferencing

	Default Rules	Subdivision E	Subdivision F	Subdivision F
Reason for Meeting	No Reason Required	State of Emergency	Just Cause	Emergency Circumstances
In-person Participation of Quorum of Members	Required	Not Required	Required	Required
Method of Member's Participation in Teleconferenced Meeting	Audio or Audio-Visual	Audio or Audio-Visual	Audio-Visual Only	Audio-Visual Only
Required Opportunities for Public Participation	Only In-Person Required	Call-In or Internet-Based	Call-In or Internet-Based & In-Person	Call-In or Internet-Based & In-Person
Required Course of Action if Disruption Prevents Broadcast of Meeting or Public's Ability to Comment	Meeting Proceeds	No Further Action Taken	No Further Action Taken	No Further Action Taken

Teleconferencing

	Default Rules	Subdivision E	Subdivision F	Subdivision F
Reason for Meeting	No Reason Required	State of Emergency	Just Cause	Emergency Circumstances
Reason Must be Approved by City Council	No	Yes	No	Yes
Votes Must be Taken by Roll Call	Yes	Yes	Yes	Yes
Teleconference Location Included on Agenda	Yes	No	No	No
Annual Limits	None	None	No More than 2 Meetings per Calendar Year	
			3 Consecutive Months; 20% of the Regular Meetings; or 2 Meetings if Body Meets Less than 10 Times Per Year	

Different Meetings and Requirements

Meeting Type	Publishing Agenda	Setting Meeting Date, Time, and Place	Public Comment for Items Not on Agenda
Regular	72 Hours Before Meeting	Set by resolution or ordinance of the majority during a meeting	Yes
Special	24 Hours Before Meeting	Set by presiding officer or majority vote during or outside of a meeting	No
Emergency	As soon as possible	Set by majority vote during or outside of a meeting	No
Adjourned	No agenda posted if meeting is adjourned for less than 5 days	Set by an order of adjournment adopted by any members present at a prior regular or special meeting	Depends on whether it is a regular or special meeting

Content of Agenda

- Must contain:
 - Public Comment for all items on agenda
 - Brief general description of each item (need not exceed 20 words)
 - Time and location of meeting
 - How to request disability-related modification or accommodation
 - Information regarding remote participation, as necessary
 - CEQA information, as necessary*
- Must be posted in accessible location on City website

Staff Reports and Presentations

- **Default Rule**
 - Documents other than the agenda (e.g. staff reports, presentations, agreements) do not need to be posted 72 hours in advance
 - But if public records are shared with the City Council less than 72 hours before the meeting, those public records needs to be made available for public inspection at a place designated by the City
- **AB 2647 Exception**
 - An initial staff report or similar document containing an executive summary and the staff recommendation is made available at least 72 hours before the meeting
 - City posts the public record that is distributed to the City Council on its website as soon as it is distributed
 - The website is listed on the City's agenda
 - Physical copies are available for inspection "beginning the next regular business hours for the local agency"

Public Comment

- Two types:
 - For items on the agenda
 - For items not on the agenda
- Never discuss public comments not on the agenda
- Exceptions
 - Emergencies (floods, fires, strikes)
 - Subsequent need (2/3 vote)

Right to Public Comment

- City may establish “reasonable regulations” to ensure intent if carried out
 - Can adopt reasonable regulation limiting time for speakers (GC §54953.3(b)(1))
 - Number of minutes per speaker per topic may be adjusted
 - Must provide at least twice the allotted time for persons using a translator (GC §54953.3(b)(2))
 - May require speaker cards; **CANNOT** require public to provide names or other information



Orderly Conduct at Meetings: SB 1100

- Prior Law:
 - Authorized the presiding officer of a meeting to order the removal of an individual disrupting the meeting;
 - Individual must be provided with a warning prior to removal;
 - But prior law did not define what constitutes disruptive behavior
- SB 1100 defines “disrupting” and provides two examples:
 - Failing to comply with reasonable and lawful regulations adopted by a legislative body related to public comment or any other law; and
 - Engaging in behavior that constitutes use of force or a true threat of force.

Right to Public Comment

- Speaker should not be interrupted, unless speech is not protected by First Amendment (e.g., threats, incitement of violence, extreme obscenity)
- [Public Comment at its Best](#)
- When should we cut this individual off?
 - When he gets loud?
 - When the Vice Mayor feels insulted?
 - When he gives silent nazi salute?
 - When he shows up in a KKK costume?
 - When he uses profanity?
 - When his 3 minutes are up?
 - When he causes a disruption of the meeting?





Public Rights

- Public right to photograph and record meetings
- Cannot limit public access
- Reasonable time, place, and manner restrictions permitted



Closed Sessions

- Exception to open meeting requirement
- Limited to topics identified in State law
- Limited to the City Council and necessary staff
- Specified agenda format and “reporting out” requirements
- Don’t go into closed session without legal assistance
- Don’t disclose closed session confidences

The City Council called a closed session to negotiate a settlement agreement to resolve a lawsuit. Who shouldn't be in the closed session?

1) City Attorney

2) City Manager

3) Opposing Party's Attorney

4) Councilmember opposed to the settlement agreement

5) Miniature horse (service animal) of the Councilmember opposed to the settlement agreement

Violation of the Brown Act

- What happens when the City violates the Brown Act?
 - Person alleging violation must send a letter within 30 or 90 days
 - City will have up to 30 days to cure alleged violation
 - Lawsuit must be filed within 15 days after the City's 30 days expires
- What happens when a court determines a Brown Act violation occurred?
 - Violative action is nullified
 - City pays plaintiff's attorneys' fees
 - Civil penalties
 - Criminal penalties

CA Public Records Act: Historical Background



- Modeled on Federal Freedom of Information Act
- Signed by Governor Reagan in 1968
- Requires inspection and disclosure of public records

CA Public Records Act: Purpose

82

- California Constitution: “the People have the right of access to information concerning the conduct of the people’s business”
- Government Code: “In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”

“Public Record”

- Any writing*
- Containing information relating to the conduct of the public’s business
- prepared, owned, used, or retained*
- by any state or local agency
- regardless of physical form or characteristics.*

CA Public Records Act: Process

City receives PRA request
(request can be in any form, including oral)

01

City Clerk has 10 days to provide records, make them available for inspection during business hours, notify requestor of exemption, or request extension

02

Upon request, City Clerk has additional 14 days to provide records, make them available for inspection during business hours, or notify requestor of exemption

Exemptions from Duty to Disclose

- “Preliminary drafts, notes or memoranda ... not retained ... in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.”
- Pending litigation
- “personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy”
- Certain public contract documents and architectural drawings/building plans*
- Councilmembers’ home addresses or phone numbers
- Records protected by legal privilege (attorney-client or work product)
- General public interest exemption*

Remedies



Requesters can sue to challenge denial of request



Burden is on the agency to justify withholding records



Agency cannot seek declaratory relief



Agency pays legal fees upon loss



Agency wins fees only if suit is “clearly frivolous”

Do's and Don'ts

Do

- Assist requester by helping narrow search by date range, sender, and subject matter
- Make documents available in electronic format
- Provide documents in native file format, upon request
- Adopt a retention schedule and delete documents pursuant to it

Don't

- Respond to a request for answers, instead of a request for documents
- Charge for anything other than a nominal copying fee
- Send or save public documents to personal devices
- Create unhelpful records



Questions
and Answers