



# **2022 New Mayors & Council Members Academy**

# **Resource Guide**

**This Resource Guide and other conference materials can be found at:**  
[New Mayors and Council Members Academy | Cal Cities](#)

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## **Your Cal Cities and How to Use It**

# CAL CITIES ROADMAP



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**CALIFORNIA  
CITIES**

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- Torch Program
- Conference Speaker

## BE A LEADER

### BE A LEADER

- Board of Directors
- Division Leadership
- Professional Department Executive Committee
- Policy Committees





Interested in getting involved with the League of California Cities? Want to be a leader not only in your city, but also statewide? We've created this roadmap of information to help you get started.

**Cal Cities Advocate:** Subscribe to the Cal Cities electronic newsletter. Read stories on legislative developments, conferences and education events, opportunities for cities, and more.

**Western City Magazine:** Read Cal Cities' monthly digital publication that provides lively, interdisciplinary analyses of issues affecting local governance.

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**Regional Divisions:** Work closely with one of the 16 public affairs managers in your region to develop informational programs and carry out grassroots activities to support specific legislative, regulatory, and ballot measure goals.

**Professional Departments:** Engage in one of Cal Cities' ten professional departments, which mirror cities' professional structures. Participate in educational and networking opportunities with your colleagues from throughout the state.

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**Mayors and Council Members Leadership Academy (Torch Program):** Honor the hard work of local elected officials who seek to enhance their knowledge and skills in order to better serve the public.

**Education:** Attend the annual conference, your department conference, webinars, and

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**Advocacy:** Help Cal Cities advocate on behalf of cities. Testify in legislative sessions, write letters to law and policy makers, and help communicate local issues to Sacramento and Washington, D.C. as only you know how.

**Policy Committees:** Help make Cal Cities policy by reviewing legislation, suggesting broad new policy guidelines and studying key issues impacting cities.

**Task Forces:** Lend your expertise on specific and major issues facing California cities.

**CitiPAC:** Support Cal Cities' political action committee, which guides ballot measure and other advocacy activities of importance to cities.

**Board of Directors:** Provide overall supervision, control and direction for Cal Cities activities and affairs.

**For more information on how to get involved,  
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# **Relationship Between City Council and City Manager Staff**

## **A Key Ingredient for Success: An Effective City Council/City Manager Relationship**

**Kevin C. Duggan**  
**ICMA West Coast Regional Director**

### **Introduction**

Mayors and councilmembers need to have effective working relationships with a number of key audiences in order to successfully undertake their responsibilities. These audiences include citizens/voters, community groups, the press, other governmental agencies, other elected officials, nonprofit organizations and many more. However, critical to a successful and satisfying career on the city council in a city council/city manager form of government is a successful and effective working relationship with the city manager. This article suggests the necessary ingredients for a mutually successful council/manager working relationship.

### **The City Council/City Manager Form of Local Government:**

The "Council/Manager Plan" is designed for the elected city council to set policy direction as the direct representatives of the community with the city manager providing the professional expertise to manage the organization and carry out the council's direction. Policy direction is provided in a variety of ways, including through local laws/ordinances, planning policies (general plan and zoning), financial policies, the annual budget and capital improvement plan, the adoption of city council policies and through numerous other program directives.

The city manager is responsible for carrying out the council's policy direction through the day-to-day management of city functions, including the oversight of city operating departments. Key tasks associated with this role include the hiring and supervision of department heads, the implementation of the annual budget and the assurance of quality service delivery. This "plan" is predicated on the philosophy that elected representatives are better able to make community value judgments on behalf of residents and translate these values into policy direction—the "what" in city government. It is also based on the belief that professional staff are best able to determine the "how" of implementing policies and delivering day-to-day services due to their experience and training. Since both roles are closely related, it is the city manager's responsibility to coordinate between both realms to assure the effective delivery of services consistent with city council direction.

This is often referred to as the policy/administration dichotomy (the separation of these responsibilities)—which, oftentimes, has a good deal of "gray" on the boundaries. When it works most effectively, the elected officials focus on the big picture of policy

development and minimize their role relating to administrative implementation while the staff works to avoid an undue influence on policy development while focusing on policy implementation and service delivery. While the line between the two can become blurred, the city council/city manager system is subject to failure if the line is disregarded.

If the city council and the city manager have an effective and mutually supportive working relationship, the likelihood of the policy and administrative roles being effectively coordinated increases significantly, resulting in a more successful city governance and management.

Among the issues to consider in trying to establish the best possible city council/city manager working relationship are the following:

- The relationship cannot be taken for granted and requires attention and work to establish and maintain. If not diligently pursued, it will not be accomplished.
- The work of city councils is not easy! Not only do you confront the typical challenges of group decision-making, but the "group" in this case may not have a great deal in common. Also, the issues can be weighty and controversial. The decision-making is also done in public, often on TV or the Web, scrutinized by the public and press, and anyone can join in on the deliberations.
- Among the factors that can get in the way of an effective relationship include:
  - Not understanding/appreciating/respecting each other's roles.
  - Differing philosophies.
  - Differing personalities.
  - Challenging issues.
  - External pressures from the media, community groups, employee organizations, etc.
- Fully appreciate that you need to establish a good working relationship with your fellow councilmembers and the city manager in order to maximize:
  - Organizational performance.
  - Organizational reputation.
  - Value to the community.

- Personal reputation.
- Community pride and confidence.
- Don't underestimate how important it is to a city manager to have a good working relationship with the city council. It has been reported that the relationship with the city council is the primary factor impacting a city manager's job satisfaction. Among the reasons for this are the following:
  - City councils are the source of formal performance feedback. Like almost everyone, positive feedback from supervisor(s) is very important.
  - City councils control the city manager's job security.
  - City councils determine the city manager's compensation.
  - City councils establish the city manager's "parameters of success."
  - City council support for the city manager, particularly during tough times, is of tremendous value.

**Recommended Practices:**

So while the stakes are high and the challenges significant, there are a variety of "best practices" and techniques that can improve the odds of your individual success as a mayor or councilmember, as well as the success of the city council and city as a whole.

The following are offered as ideas to consider in your efforts to establish and maintain a strong and effective working relationship with your city manager:

- **Recognize that you are now "different" than before you were elected (and more than you may realize):**

You are now viewed as a community/city leader and what you do and say can have a much greater impact. Your comments will now be viewed as representing "the city." What you do and say will also be more closely scrutinized. You should be aware that the city staff will view you much differently now that you are one of the organization's leaders. Even an offhand comment can be viewed as a directive for action. So even though you may not view yourself any differently than before you were elected, don't underestimate to what degree others are viewing you differently.

- **Understand and respect the city council/city manager plan of governance:**

It is critical for you to understand why your city is organized under this plan of governance and how it should operate. It is important to understand and appreciate the distinction between policymaking and implementation and the different roles played by individual councilmembers, the city council as a whole, the city manager and the city staff.

- **Allow time for you and the city manager to get to know each other and develop a working relationship:**

Try not to overly rely on what you have heard from others regarding what it will be like to work with the manager—others' views may or may not be accurate. Most city managers understand the need to work very hard to adjust to the issues, concerns and priorities of the new city council. Try to be open-minded to your ability to establish a productive and effective working relationship with the manager.

- **City managers will do their best to carry out the policy direction of the city council (even when there is a major change in policy direction):**

Professional city managers are committed to carry out the policy direction of the city council regardless if they personally agree or disagree with the policy as long as what they are asked to implement is:

- Legal.
- Ethical.
- Within their/the city's authority.

It is often misunderstood that when a city manager effectively implements a city council's policy, the manager personally agrees with the policy or can only implement city services consistent with that policy. City managers can change the organization's approach to an issue as may be directed by a new city council. Avoid overly associating the city manager with the policies that the city has previously implemented at the direction of the previous council.

- **Take your role seriously, but not yourself:**

This common advice is particularly important for mayors and councilmembers. While you are doing important and serious work on behalf of the community, you will do it better and more effectively if you keep the normal "ups and downs" and "wins and losses" in perspective. You were elected to make tough decisions on

oftentimes controversial issues. It's a given that you will be criticized and there will be those who vehemently disagree with your decisions. That is unavoidable. Develop a thick skin and do your best to not take personally the conflicts and disagreements that are a normal part of your new role. If you don't develop a thick skin, you will overreact to criticism.

Additionally, you are now part of an organization and will be blamed/criticized for the actions of the organization that you had nothing to do with. That is the reality of your new role and you should keep that in mind.

And remember, the city manager is not always to blame when things go wrong, though he/she should take appropriate responsibility for the organization's actions. It can be easy to focus your frustration on the city manager. You will be happier and more effective if you can experience the normal "ups and downs" of city life without needing to always find someone at fault.

Whatever the issue or encounter, try not to take it personally. Try to keep personal likes and dislikes out of the equation. Your fellow councilmembers and the city manager are not your family or personal friends; they are your "professional colleagues," and you need to work effectively with them even if you would not select them as friends.

Lastly, always "live to fight another day." There are always future issues to decide; focus on those versus the votes already taken. And always remember not to burn bridges due to a difficult defeat; you will need those "bridges" for future votes!

- **Appreciate the legitimate difference between the "community perspective" and the "professional/technical" perspective:**

While you will primarily view issues from your perspective as a resident/citizen in a manner similar to the other residents of the community, the city staff will often have a more "technical/professional" perspective. What might make a great deal of sense to the staff looking at an issue from a purely "business" point of view may not be the right answer based on community perspectives and values. While the city manager will do his or her best to bridge the gap between the two points of view, it is very helpful for councilmembers to understand that while the staff should be sensitive to community values, they will often raise issues based on their professional training that can differ from a purely community values point of view. An appreciation for these varied perspectives is critical to the council-staff relationship. That does not mean the one perspective is "right" while the other is "wrong"; but both parties should try to understand and appreciate the views of the other.

- **Don't fall into the trap of feeling you are VERY special:**

While being elected to a city council is an honor bestowed upon you by the voters, keep that "honor" in perspective. Citizens view electing you as showing trust in your judgment in representing their interests in community decision-making. They did not elect you because they felt you were personally deserving of special rights and privileges. Don't expect the city manager or staff to be able to assist you in ways outside your formal role on the city council. By and large, they will be required to treat you just the same as any other citizen on matters outside the realm of your official duties. Any compensation and "perks" of office should be visible and public.

- **Professional city managers will not "play favorites":**

Professional city managers will strive to have a positive working relationship with all the members of the city council regardless of personality, philosophy or positions on specific issues. They will also not let personal likes or dislikes affect how he or she interacts with councilmembers, and you should not expect the manager to act otherwise.

- **It is critical to city managers to have clear policy direction:**

The city manager and the city organization cannot carry out the policy direction of the city council if that direction is not clearly established. The clearer the direction, the more effectively the manager and staff can implement. Even when the council is split on an issue, the majority's will needs to be clearly stated. The manager should seek clarification from the city council when necessary.

- **Be sensitive to the need for city managers to sometimes tell you "what you don't want to hear":**

One of the least favorite tasks for a city manager is to tell an individual councilmember or the council as a whole something they don't want to hear. This could range from a mistake the organization has made to informing a councilmember that something they want done (or want to do) cannot be done or is not appropriate. While city managers try to be as flexible as possible in meeting the needs of the city council, you will not be well served by a manager who will not tell you when something is not appropriate or cannot be achieved simply to avoid appearing uncooperative. While the manager needs to be clear why the request cannot be fulfilled, it is very helpful to understand the manager has a professional obligation to give you advice contrary to what you would like to hear when he/she is so required.



- **Why managers can't always do what you want them to do:**

The manager can often be confronted with a situation of an individual council-member wanting something done that is not consistent with the wishes of the city council. The manager needs to respond to the direction of the city council as a whole. While managers try to be as responsive as possible to the needs/desires of individual members, on matters of any consequence, the direction of the city council will often be required.

- **Take your role to evaluate your city manager's performance seriously:**

Like any other employee, the city manager benefits from regular and thoughtful performance evaluations. Performance evaluations are an important communication tool between the manager and council. Working for multiple individuals is challenging enough without clear and consistent feedback on performance. At least annual evaluations should be conducted. This provides the opportunity to communicate how the council views the manager's performance, including areas of strength and areas for potential additional emphasis. This is also the only opportunity for the council as a whole to provide this input in private. Use this valuable communication tool effectively.

- **Tolerance for organizational imperfection (mistakes!):**

While no one likes mistakes, they are unavoidable in the context of organizational life. Cities are complex organizations dealing with a wide variety of services with unique and sometimes challenging clientele. It is not a matter of whether mistakes will be made, but when. It is critical as a leader of your city that you react to mistakes appropriately. While mistakes should be avoided to the greatest extent possible, overreacting can cause further damage. You should expect that mistakes will be addressed promptly, fully disclosed and that steps will be taken to avoid repeating the same mistakes again. You will need to trust the manager to follow up and effectively address the situation when organizational miscues occur. So, have high expectations but recognize that mistakes will occur, even in the best organizations and try not to overreact when they do.

- **Support of reasonable risk-taking:**

High-performing organizations will occasionally need to take "reasonable risks" in order to achieve community objectives. Sometimes these endeavors will not be successful. However, organizations that avoid ANY unnecessary risk are not likely to accomplish a great deal. While city councils need to be informed and concur that the risk being taken is reasonable for the potential benefit being gained, councils should also be understanding that projects and initiatives that have inherent unknowns may not always turn out as hoped. Intolerance for any

mistakes/risk will breed an overly conservative organization and will stifle creativity and flexibility and the benefits these values can bring.

- **Try to focus feedback on service quality, not individuals:**

An ongoing challenge is the difficulty of reconciling the ultimate responsibility of the city council for city service quality versus the need to avoid interfering in the daily management of the organization. It is much better for the city council to communicate service level or quality concerns to the city manager versus performance judgments regarding individual staff members. It is particularly inappropriate for individual members or the council as a whole to try to direct the manager to hire, fire, or promote members of the city staff.

- **Don't expect managers to take sides in councilmember disputes:**

Regardless of how they may personally feel, most city managers will avoid, at all costs, "taking sides" in disputes between councilmembers. While on occasion the manager might try to help reconcile councilmembers, don't expect the manager to take your side in a dispute with a fellow member. Even if they may agree with you, most managers will avoid taking part in public or private criticism of councilmembers unless professionally required to do so in extreme cases.

- **Don't jump to conclusions regarding citizen/customer feedback:**

While it is your responsibility to be available to listen to citizen and customer feedback regarding the city organization, be careful not to jump to conclusions based on what you are told. Oftentimes an individual may sound completely sincere and credible while providing you an inaccurate account of their experience with the city organization. It is best to not jump to conclusions, one way or the other, until the manager is able to provide you a response to the concern. It is embarrassing to criticize staff for poor performance only to find out that the information you relied on was not accurate. At the same time, the manager needs to not be overly defensive regarding staff performance until he or she also has heard "both sides of the story."

- **Don't expect the manager to exercise "political leadership":**

While managers are inherently leaders of their organizations and, to varying degrees, in their communities, their role is not to be political leaders. That is, it is not intended for the manager to be "out front" on community policy issues. Sometimes city councils want managers to take leadership (advocate publicly) on controversial issues to avoid potential political consequences to themselves. While tempting, this is contrary to the intent of the council/manager plan under which the elected officials are to take the lead on purely policy matters.

- **Disagree with the recommendation/don't attack the "messenger":**

When dealing with a difficult issue at a council meeting, it can be tempting to not only disagree with the recommendation being presented, but to challenge/discredit the manager or staff member presenting the recommendation. The best practice is to focus your comments on the recommendation, not the individual. Having a policy discussion devolve into a personal attack is uncomfortable and embarrassing to everyone involved. Even if you are frustrated by the recommendation, it is poor form to attack the presenter. If you do have concerns regarding how a recommendation was developed or presented, that should be provided privately to the manager.

P.S.: Don't play "stump the staff" by trying to ask questions at the meeting that you think staff will have difficulty answering on the spot. It doesn't really make you look smarter, nor is it helpful to the deliberations to ask a question that cannot be answered. While staff members should work diligently to anticipate questions, it is not possible to anticipate all possible questions. If you really want the answer, get the question answered before the meeting or provide a heads up regarding what you will be asking.

- **Conduct yourself at council meetings in a professional/businesslike manner:**

Even on very controversial topics with greatly varying opinions, the council deliberation can be and should be "businesslike" and professional. While it may be more entertaining (possibly from a reality TV perspective) to see councilmembers and citizens yelling and having temper tantrums, it gets in the way of thoughtful deliberations and only tends to lower the respect for the council and city in the eyes of your constituents.

- **Consider the use of council team-building and goal-setting workshops:**

Recognizing the importance of both effective councilmember/councilmember and council/city manager working relationships, often an investment of time in team-building workshops is very worthwhile. These workshops allow for a thoughtful conversation of working relationships outside the context of discussing specific issues. These discussions can help create a better understanding of work styles and perspectives.

Additionally, recognizing that clear direction and priorities are critical for effective council/manager relations, goal-setting workshops can be very effective forums for establishing city council and organizational priorities.

- **Have a clear understanding with the manager of the type and frequency of communication you prefer:**

While a fundamental value of city managers is to provide regular and complete information equally to each councilmember, councilmembers can vary significantly regarding the type and frequency of contact with the manager they desire. While the manager will use written reports in one form or another as a base line of information to all the members, it is important for the manager to understand your preference for how information should be communicated, including the frequency of personal contact. While some members prefer regular "face-to-face" contact with the city manager, others prefer less time-intensive information-sharing methods. While sharing the same information among all councilmembers, it is helpful for you and the manager to understand how much and what type of contact you prefer.

- **Do your homework:**

It takes time and effort to be a successful councilmember. It makes the manager's and staff's job a lot easier if you have reviewed the reports and related materials provided to you prior to the city council meeting. This facilitates efficient meetings, accelerates decision-making and gives the impression that staff and council are working well as a team. Additionally, it will avoid you appearing unprepared to your fellow councilmembers, the staff and your constituents.

- **Trust above all:**

As in all relationships, the city council/manager relationship must be based on trust. Other potential obstacles such as differing personalities, styles, philosophies, etc., can be overcome if there is mutual trust. Without trust, little else will be successful. Both parties need to treat each other with respect and be truthful and forthcoming in their dealings.

- **No Surprises:**

Both the manager and council should do their best to make sure that important information is not first learned from others. While in this age of instant communication this is more difficult, and in some cases impossible, the parties should do their best to make sure that noteworthy information to which they are privy is not communicated to other organizational leaders by third parties (particularly the media). The manager needs to work hard to make sure that the council is not taken off guard while councilmembers should keep the city manager in the loop as well. "Surprises" can have a very negative impact on the working relationship in that it speaks directly to the trust issue.

- **Work through the city manager to get things done:**

While practice and philosophy can vary to some degree between cities, councilmembers should generally work through the city manager to obtain action by staff. Individual councilmembers are not authorized to direct staff, though routine referral of citizen requests (or to simply request information) is sometimes appropriate depending on local practice. Coordinating through the manager will make sure the issue is sent to the right staff person for action and will allow the manager to confirm timely follow-up. This also helps the manager stay informed regarding issues of community concern.

- **Council/Mayor Role:**

It is also important to make sure there is clarity between the council, the manager and the mayor on respective roles. At times there can be a conflict between the role the mayor views themselves as playing and the expectations of the remainder of the council. It is difficult if the manager gets caught in a dispute over these respective roles. In particular, how the city manager relates to the mayor versus the other councilmembers needs to be clear.

- **Don't blame the manager or staff for carrying out the direction of the city council:**

The city manager and staff are required to faithfully carry out the direction of the city council, regardless if they did or did not recommend it and regardless if some councilmembers oppose it. Respect the staff for faithfully carrying out the will of the council, whether or not you share the view of the council majority.

- **If the council/manager relationship is not going well:**

If you or the council are having difficulty with the city manager, try your best to resolve the issue. First of all, find an appropriate way to communicate the concerns. The manager can't respond if he/she is not aware of the concern. As noted earlier, try to obtain clear council consensus for the expectations for the manager and communicate those expectations clearly. Try to be optimistic regarding the possibility of the manager making adjustments to satisfy the concerns of the council and give sufficient time to do so. Additionally, provide the manager opportunities to respond to the feedback and communicate how he/she will address the concerns.

- **If all else fails and there needs to be a "parting of the ways":**

A forced separation of the manager is not a good experience for the council, the manager or the city. It can be costly, controversial and can cast everyone in a negative light. It can also erode citizen confidence in the city. Assuming all

reasonable steps have been taken to avoid a forced transition and recognizing a parting based on "irreconcilable differences" is always better than an "ugly, contested divorce" (in an "ugly divorce," both parties end up looking bad), keep the following in mind:

- Keep it professional.
- Don't unnecessarily damage the manager's reputation—it is not needed to make a change.
- Provide a reasonable period of time for the manager to find another position or provide reasonable severance—it takes time to find a manager's job.
- Remember, how you handle the transition of the current manager will have an impact on the quality of the candidate pool for the next manager.

### **Summary/Concluding Thoughts:**

An unstable council/manager relationship has negative consequences for the city council, the manager, the organization and the community. A positive and mutually supportive relationship will increase the odds of having a high-performing and successful city. The councilmembers and manager need to make creating, supporting and sustaining the relationship a high priority. If made a high priority, the odds of success are great.

Remember that your service on the city council is a unique honor that has been bestowed on you by your fellow citizens. While it is often a challenge, with inherent difficulties, someone needs to do it and your community has selected you for that responsibility. You have been selected to serve in a professional and honorable manner, during good times and bad. Your service on the city council will be over soon enough. Conduct yourself in a manner that will allow you to look back with pride—not only for what you accomplished, but also the way in which you conducted yourself (which will likely be remembered the longest).

# Leadership & Governance: Tips for Success

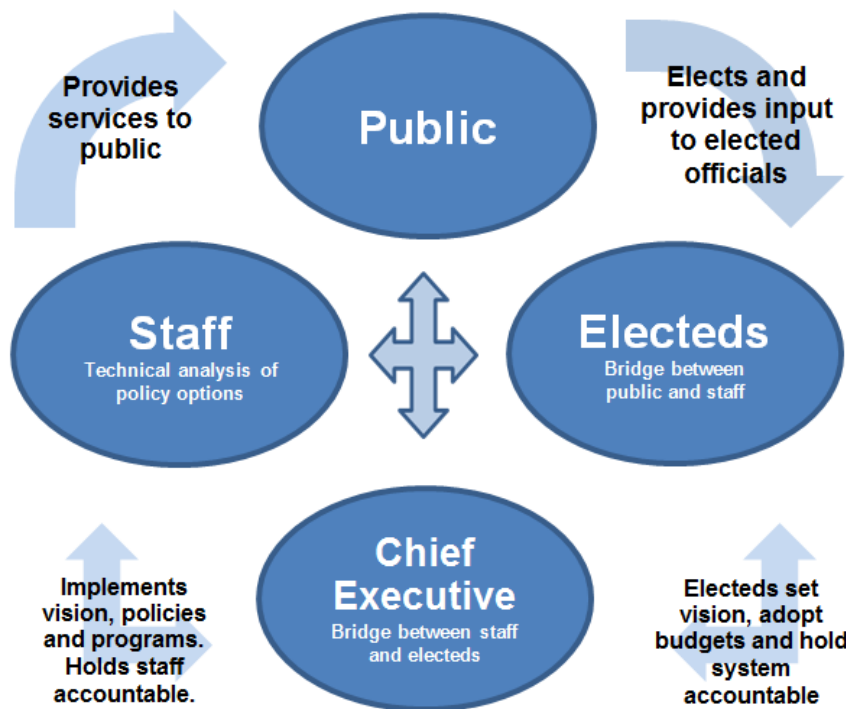
## Electeds and Staff Bring a Different & Necessary Perspective

Understanding and embracing different perspectives is part of what makes our democratic institution at the local level so great. Both perspectives are vital when making decisions in the community's interests.

- Elected officials focus on what their constituents value and need from the agency; and
- Staff has technical expertise in policy areas and what can work, given their day-to-day experiences with implementing agency policies, practices and service delivery that can help inform the decision-making process.<sup>1</sup>

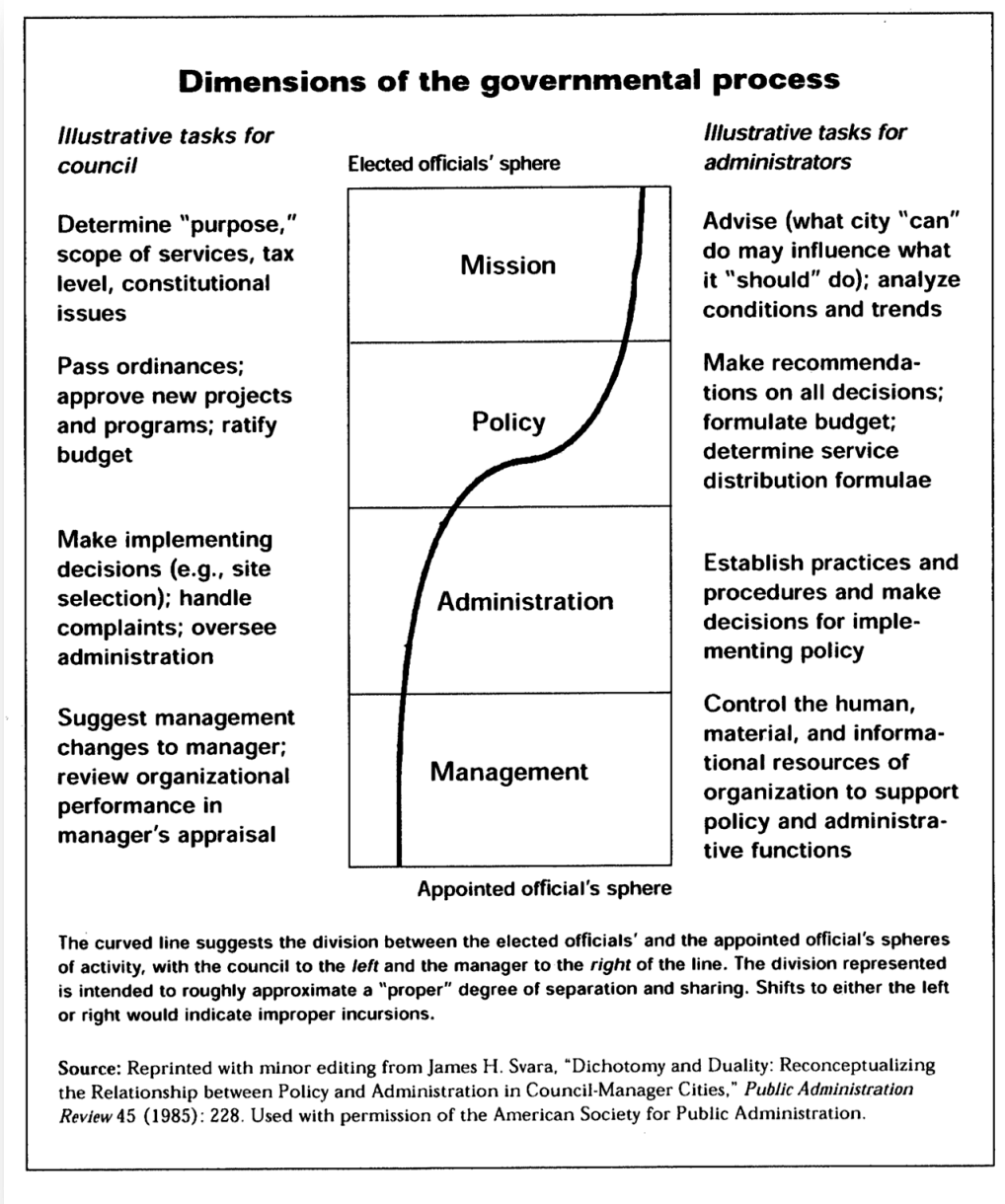
## Bridging Function

Elected officials play a key bridging function between the community needs and staff; the chief executive officer in turn plays a bridging function between elected officials and staff.



# Role Division

Current thinking is that elected and appointed officials operate in all four dimensions of the governance process: mission, policy, administration and management, although to differing degrees.<sup>2</sup> The graphic<sup>3</sup> below illustrates this phenomenon. The curved line illustrates the division of roles between governing boards and executive staff; how this line looks for each local agency varies.





## Role Clarity

A shared understanding of the chief executive's role and the governing board's expectations optimizes the working relationship. This understanding is informed by local charter and ordinance provisions that provide the overall framework for the relationship.

- The process of developing such a shared understanding begins with the hiring process and each participant in the process being forthright about their respective expectations.
- An annual evaluation process is an ongoing opportunity for such communication, particularly as governing board members change.

Staff will be most able to perform to expectations if those expectations are clear and mutually acceptable.

## Tips for Governing Board Members

**Setting Goals and Priorities.** A helpful practice is to have the governing board establish priorities and strategic goals for the organization; such goals and priorities are a tool to guide the chief executive and staff on where to focus their efforts.<sup>4</sup>

Establishing an annual time for board reflection on community priorities would also offer an opportunity to discuss decorum among members and the executive-board relationship.

**Limited Resources Means Difficult Trade-offs.** An unhappy reality is that there are likely insufficient resources to accomplish everything that the community and elected governing board members desire. This reality creates challenges for the chief executive in proposing a budget as well as well as managing the agency work force.

**Finding Common Ground.** A key skill for a governing board member is finding areas of agreement and common interests with other board members. Within the parameters of the state's open meeting laws, work with the other governing board members to find areas of agreement on what courses of action best serves the public's interests.

In the event that board members disagree, clear ground rules can quell acrimony before it becomes a public spectacle.

### When the Governing Board Changes

Staff's job is to implement the policies adopted by the governing body. This includes implementing changes in policy direction when the philosophy of the governing board changes.

New majorities on boards sometimes impute the policy preferences of the previous boards to staff. This causes them to worry that staff will not be as diligent in implementing changes to previous policies. They sometimes believe staff has to change in order for policies to change.

This is another area where frank and ongoing communication is helpful. Most professional staff understand that policy directions change and that their role is to implement that change, as long as the policy falls within the bounds of the laws and public service ethics.

Allow a certain amount of time for staff and the new majority to get to know one another and see if a productive working relationship can occur.

**Understanding that Public Policymaking Involves Value Choices.** Policy choices tend to be choices among different values, including the values of fairness, compassion, efficiency, individual rights, common good and others. The “correct” answer is likely to be an elusive goal,<sup>5</sup> particularly since members of the community as well as other members of the governing board are likely to give different values different weight.

**Chief Executive Works for the Entire Board.** All members of the body were elected by the community to participate in the agency’s decision-making processes. As a result, the chief executive’s responsibility is to strive for positive working relationships with all members of the body equally and provide information equally to all members of the body.

**Communications Needs.** Let the chief executive know what kinds of communications work for you. While the chief executive’s job is to share information with all members of the governing body equally (and typically through a combination of written communications and one-on-one meetings), governing body members will often have different communications preferences as to what combination of these two techniques work best for them.

**Transparent Decision-Making.** The governing board makes decisions (and gives staff direction) at open and well-publicized governing board meetings. These decisions occur after listening to, inquiring of and learning from interactions with all segments of the community and staff.

**The Benefits of Collaboration.** Be forthright on your objectives and goals with the chief executive, so he or she can do what is possible to help you achieve them (as opposed to “going around” him or her). A chief executive will try to be as responsive as possible to the needs of individuals on the governing board; however understand that significant tasks are likely to require governing body buy in and some tasks may conflict with priorities and policies adopted by the full governing body.

**Ground Rules.** A helpful practice is for the governing board as an entity to adopt, regularly review and update how the board will conduct its meetings and make decisions.<sup>6</sup> Such protocols typically address meeting procedures (agenda preparation, how to put issues on the agenda, debate and voting procedures (parliamentary rules) and standards of decorum (civility)).<sup>7</sup>

**Managing Difficult Board Members.** Staff’s role is to provide information to enable elected officials to knowledgeably participate in the decision-making process. However, from time to time, there will be difficult and divisive board members that create a challenging and uncomfortable environment for both the board and staff. There is no one-size-fits-all solution to solve such a problem. In the end, the board must manage its own behavior—not staff.<sup>8</sup>

**Staff Preparation.** If you have questions, concerns and/or information needs (or know that members of the community do), provide staff a heads up in advance of meetings so staff can be prepared to address them.

**Unwelcome Information.** One of staff’s least favorite roles is providing information and analysis that will make one or more governing board members unhappy. Typically, providing such information is part of staff’s job to avoid surprising the board. If pursuing a given course of action could have negative outcomes (a lawsuit, unintended consequences or a chance that a given goal will not be achieved), it is

staff's job to let the board know so the board can factor such information and risks into the decision. If possible, staff will also try to identify options and alternatives for reducing the risk of negative outcomes.

**Directing Questions and Criticisms.** Question, and if appropriate, criticize ideas, policies, programs or outcomes, but not the individuals involved (whether those individuals are fellow elected officials, staff or members of the public). Remember that staff is your tool to accomplish your objectives. Public praise for things you like will motivate; public criticism and embarrassment will discourage. Criticism or information regarding staff missteps should be directed to the chief executive to address.

**Responding to Mistakes and Disappointing Outcomes.** Mistakes are likely to happen in any organization. If something bad happened, ask what measures can and will be taken to prevent such missteps in the future.<sup>9</sup>

## Tips for Chief Executive & Staff

**Clear Goals and Priorities.** A key task is for the governing body and chief executive work together to assure staff has clear direction on the agency's goals and priorities.

Goal setting workshops can be useful forums for establishing governing board and organizational priorities. This includes holding annual workshops in which goals are set, reviewed, updated and/or retained, as well as direction on how the group wants to be kept updated on progress, goals and priorities.<sup>10</sup> Follow up, of course, is critical to maximizing a goal setting session's value.<sup>11</sup>

Such clarity enables staff to know where to devote scarce/limited resources in proposing budget and work program priorities for the governing board's consideration.

Documented goals and priorities serve as a reference point when issues and potentially competing priorities come up throughout the year. Priorities may need to change of course; the key is if a new priority is added, an old one must be subtracted.<sup>12</sup>

Engaging a broad range of the community in the conversation about hard choices can help the governing body in aligning agency goals with community wishes. Such processes offer important opportunities to inform and consult the community on what can be difficult tradeoffs due to scarce resources. Such engagement can also make the resulting decisions more enduring.

**Focus on the Core Functions.** For those areas over which the agency has discretion (for example, non-state mandated efforts without maintenance of effort requirements), the conversation can focus on identifying what is most important for the agency to accomplish. This tends to be an intersection of three things: what the community is passionate about, what the organization can be best at and what resources are available.<sup>13</sup>

Identifying this intersection does not necessarily mean that tasks outside the intersecting area will not get accomplished. Some functions may be more effectively accomplished by other agencies, community-based organizations or the private sector.

**Capacity Building.** The entire community benefits from well-prepared and knowledgeable local officials. Some tools for assisting with this goal include:<sup>14</sup>

- Leadership academies that help the public, including potential future governing board candidates, understand key elements of the agency's work and processes.
- Candidate orientations that provide information about agency functions, pending policy issues, including budget issues and any regulations that apply to the campaigning process.
- Newly elected official orientations conducted as soon as possible after election results are certified. Content should include the nuts and bolts of how to accomplish objectives in their new role, as well as briefings on current issues the agency faces, the status of long-range plans and capital projects, and the budget process. Connecting newly elected officials with former electeds who are respected in the community and can offer advice and share experience is also helpful.<sup>15</sup>
- Ongoing education through local workshops, references to helpful information about local governance and policy issues and conference attendance.

**Credit for Commitment to Elective Office.** One dimension of staff's role is to help governing board members receive the recognition they deserve for their actions as public servants.<sup>16</sup> As media opportunities occur, ensure the electeds are aware so they may receive recognition for their service on community issues.

**Evenhandedness.** A positive working relationship with all governing body members regardless of personality, philosophy, positions on issues or whether the member is in the majority or minority on the body (remember majorities can change) can be another important success strategy. Communication preference may require that you spend more time with certain members. "Evenhandedness" does not necessarily mean communicating with all decision-makers in the same way.

**A Sustained Effort.** Successful relationships require ongoing effort and attention. Communication is a central element of this effort.

- Staff's role is to present information and analysis objectively, fairly and without spin.
- This includes willingness, when necessary, to deliver unwelcome information and minimize surprises for the governing board.

**When Elected Officials Disagree with Staff Recommendations and Analysis.** Professionals recognize smart, conscientious and reasonable people can disagree on the best course of action (particularly given the differing perspectives that staff and electeds contribute to the analysis of what best serves the community's interests).

- Such disagreements are not and should not be taken personally.
- All governing board decisions must be faithfully implemented, even those which differed from what staff recommended.
- Staff should never speak ill of elected officials, even to seemingly sympathetic and discreet listeners. Word of what was said inevitably seems to get back.

**Attention to Detail.** Doing the small things well helps governing board members trust staff on the big items.

**Defining Success.** Enjoying good relationships with elected officials is a worthy goal, with a few caveats.

- Be clear on the lines (legal, ethical and professional) over which you are not willing to step, before finding yourself in a difficult situation.
- As difficult as it may be, your professional reputation for competence and integrity in the long term is a more valuable career asset than keeping a particular job.

## More Resources

International City/County Management Association and National League of Cities, *Working Together: A Guide for Elected and Appointed Officials* (1999)

International City/County Management Association and National League of Cities, *Leading Your Community: A Guide for Local Elected Leaders* (2008)

This resource reflects the insights and thoughts of a number of individuals, including: Kevin C. Duggan, West Coast Director, International City/County Management Association, Pete Kutras, Retired County Executive, Santa Clara, and Principal Consultant, Municipal Resource Group, LLC, Richard A. Haffey, County Executive Officer, Nevada County, and William Chiat, Director, CSAC Institute for Excellence in County Government.

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<sup>1</sup> International City/County Management Association and National League of Cities, *Working Together: A Guide for Elected and Appointed Officials* (1999) at 22.

<sup>2</sup> *Working Together: A Guide for Elected and Appointed Officials*, at 19-20.

<sup>3</sup> Based on the work of James H. Svara in "Dichotomy and Duality: Reconceptualizing the Relationship between Policy and Administration in Council-Manager Cities," *Public Administration Review* 45 (1998): 228. This material is reproduced with permission of John Wiley & Sons, Inc.

<sup>4</sup> Kevin C. Duggan, A Key Ingredient for Success: An Effective City Council/City Manger Relationship, at 9.

<sup>5</sup> Julia Novak and John Nalbandian, Preparing Councils for Their Work, *PM Magazine*, August 2009, available at <http://webapps.icma.org/pm/9107/public/feature3.cfm?author=Julia%20Novak%20and%20John%20Nalbandian&title=Preparing%20Councils%20for%20Their%20Work&subtile=>

<sup>6</sup> See International City/County Management Association and National League of Cities, *Working Together: A Guide for Elected and Appointed Officials* (1999), at 59. Mike Conduff, Council Relations, *PM Magazine* (June 2012), available at <http://webapps.icma.org/pm/9405/public/council.cfm?author=&title=Council%20Relations&subtile=>

<sup>7</sup> See International City/County Management Association and National League of Cities, *Leading Your Community: A Guide for Local Elected Leaders* (2008) at 30-33.

<sup>8</sup> Julia Novak and John Nalbandian, Preparing Councils for Their Work, *PM Magazine* (August 2009), available at <http://webapps.icma.org/pm/9107/public/feature3.cfm?author=Julia%20Novak%20and%20John%20Nalbandian&title=Preparing%20Councils%20for%20Their%20Work&subtile=>

<sup>9</sup> A Key Ingredient for Success: An Effective City Council/City Manger Relationship, at <http://webapps.icma.org/pm/9107/public/feature3.cfm?author=Julia%20Novak%20and%20John%20Nalbandian&title=Preparing%20Councils%20for%20Their%20Work&subtile=>

<sup>10</sup> Julia Novak and John Nalbandian, Preparing Councils for Their Work, *PM Magazine* (August 2009) available at <http://webapps.icma.org/pm/9107/public/feature3.cfm?author=Julia%20Novak%20and%20John%20Nalbandian&title=Preparing%20Councils%20for%20Their%20Work&subtile=>

<sup>11</sup> Mike Conduff, ICMA-CM, A Great Retreat!, *PM Magazine* (April 2012) available at <http://webapps.icma.org/pm/9403/public/council.cfm?author=&title=Council%20Relations&subtile=>

<sup>12</sup> Frank Benest, Ten New Rules for Elected Officials in Times of Economic Meltdown (2011) available at <http://www.ca-ilg.org/post/leadership-strategies-times-economic-meltdown>.

<sup>13</sup> Adapted from Jim Collins, *Good to Great in the Social Sectors*, 2005 at 19 (the "hedgehog concept"). Also recommended by Frank Benest in Ten New Rules for Elected Officials in Times of Economic Meltdown (2011) available at <http://www.ca-ilg.org/post/leadership-strategies-times-economic-meltdown>.)

<sup>14</sup> From Mike Conduff, Council Relations, *PM Magazine* (June 2012), available at <http://webapps.icma.org/pm/9405/public/council.cfm?author=&title=Council%20Relations&subtile=>

<sup>15</sup> Preparing Councils for Their Work, *PM Magazine*, available at <http://webapps.icma.org/pm/9107/public/feature3.cfm?author=Julia%20Novak%20and%20John%20Nalbandian&title=Preparing%20Councils%20for%20Their%20Work&subtile=>

<sup>16</sup> This concept is part of the International City/County Management Association's Code of Ethics:

Tenet 6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

# Board/Executive Staff Communications Strategies

## Establish Communication Priorities at the Beginning of the Relationship

Establishing rapport and communication styles early on will help throughout the board members' and executive's appointment tenure.

## Ongoing Communications/No Surprises

A mutual goal in executive/board member communications is for each to keep the other informed of developments relevant to the others' roles and responsibilities. Another important goal is to avoid situations in which either elected officials or the chief executives are surprised.

## Board Workshops

A board workshop, or series of workshops, can help to set goals and priorities for the agency. Workshops and communicating about decorum are key tools for the governing body. Such workshops enable the board to establish overall goals and priorities the community and objectives for the chief executive to pursue. Workshops can also create mutual expectations among board members on how they will work together to achieve goals.

## Role of the Chair

One member of the board may be selected to serve as chair of the board. The chair may handle issues among the electeds as they arise so staff is not in the middle of any situations. An executive can work directly with the chair on agenda setting and logistical priorities.

## Tailored Communications Methodologies

On a more day-to-day basis, regular communications between the chief executive and elected officials are advisable. How those communications occur will vary according to the preferences and styles of the individuals involved. Elected officials are likely to vary in how, when and where they want to engage in

communication with staff. As one former elected official observed, “One size does not fit all, but all need to feel fit.”

Although the mode of communication may vary; all board members should receive the same information. The method and amount of time for delivering and receiving communication may differ among members. Understanding the communication needs of each elected official is a key executive task.

## Regular in-Person Meetings

Experts suggest that one-on-one meetings between the agency chief executive and each governing body member should occur frequently - if not weekly, then biweekly or monthly.

- Regular meetings with governing board are especially important when the body is divided.<sup>1</sup> If the chief executive meets only with members of the majority, the executive may undermine perceptions of staff objectivity and neutrality.
- Although staff is bound to implement the policy adopted by the majority, the relationship the chief executive develops must be with the body as a whole as well as with each individual who makes up the body.

## Weekly Updates

Some agencies find a weekly newsletter/email from the chief executive to governing body is helpful practice.

- These should be informational only - not an effort to achieve consensus among decision-makers outside open and publicized meetings.<sup>2</sup>
- Executives and governing board members also need to be aware that such communications are public documents subject to disclosure to the media or in litigation.

## Voice-to-Voice for Sensitive Matters

Communications relating to confidential or sensitive matters are best accomplished in person or by telephone.

## Newly Elected Official Orientations

A helpful practice is for each newly-elected governing board member and the chief executive to meet individually early on. The meeting can include a tour of agency facilities and a briefing on key issues, as well as a preview of issues to be covered in any additional orientation sessions planned. It also offers elected officials the opportunity to get their most pressing questions answered.<sup>3</sup> For more information, visit ILG’s *New to Public Service* resources at: [www.ca-ilg.org/new-public-service](http://www.ca-ilg.org/new-public-service).



## Staff Reports

Another form of communication between staff and elected officials (and others) are the staff reports the governing body receives in preparation for meetings. Good communication between the governing board and staff about the board's needs and expectations is important. In general, the following are recognized as good practices.<sup>4</sup>

- **Complete Information.** Staff reports should contain all of the information necessary to make an informed decision. This includes options and alternatives when appropriate, as well as anticipating questions and concerns.
- **Usability.** Complete information is useful only if it is in useable form. Executive summaries, graphics, tables and decision-trees are ways to summarize complex information in an easier-to-understand manner.
- **Plain Language.** Acronyms, jargon and technical language should be avoided. Any term that is likely to be unfamiliar to the average resident should be either defined or avoided in favor of more easily understandable wording. Be succinct and prepare executive summaries for the members as often as possible.
- **Analytic Framework.** Agency staff should use a consistent framework for presenting policy analyses. Typical components include: problem definition, options and alternatives, evaluation of options, staff recommendation, implementation and evaluation.

## Subjects of Communication

Board/executive communications should include not only what is happening or needs to happen, but how decision-making processes occur. This can be especially important on major or potentially contentious issues. The governing body may feel it needs additional time to evaluate the difficult issues presented or engage in additional public engagement processes to hear and consider public input.



## More Resources

International City/County Management Association and National League of Cities, *Working Together: A Guide for Elected and Appointed Officials* (1999)

International City/County Management Association and National League of Cities, *Leading Your Community: A Guide for Local Elected Leaders* (2008)

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<sup>1</sup> Julia Novak and John Nalbandian, Preparing Councils for Their Work, *PM Magazine* (August 2009) available at <http://webapps.icma.org/pm/9107/public/feature3.cfm?author=Julia%20Novak%20and%20John%20Nalbandian&title=Preparing%20Councils%20for%20Their%20Work&subtitle>

<sup>2</sup> See *Wolfe v. City of Fremont*, 144 Cal. App. 4th 533 (2006); Cal. Gov't Code § 54952.2(b):

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or *through intermediaries*, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in *separate* conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

See also *Open and Public IV: A User's Guide to the Ralph M. Brown Act* (2010) at 17 (noting that chief executive officer briefings can be a violation of the state's open meeting laws when the process reveals information about governing body members' respective views).

<sup>3</sup> From Mike Conduff, Council Relations, *PM Magazine* (June 2012), available at <http://webapps.icma.org/pm/9405/public/council.cfm?author=&title=Council%20Relations&subtitle>

<sup>4</sup> International City/County Management Association, *Partnerships in Local Governance: Effective Council-Manager Relations* (1989) at 42-45 (chapter by Kevin C. Duggan and Terry Ellis "Preparing Staff to Work with the Council").

# Dealing with Bumps in the Road

At some point in the journey, the board/executive relationship may encounter difficulties. In fact, a consistently comfortable relationship could in itself be an indicator that one or both parties may be avoiding both testing ideas and possible conflict to the detriment of the agency and public they serve.

## Strategies to Try<sup>1</sup>

1. **Avoid Complacency.** Strong relationships require ongoing investment of time. The environment, challenging situations, changes in players, unanticipated demands and day-to-day politics all place stress on board/executive relationships. Take time to step back and assess relationships on an ongoing basis. Be prepared to adjust approaches if necessary.
2. **Communicate.** Often, communication is the first place where relationships begin to suffer. Something happens; human nature can be to avoid confrontation and uncomfortable discussions. When communication barriers emerge, schedule time for a private face-to-face and earnest discussion with the individual in question. Acknowledge any elephants-in-the-room, share perspectives of what happened, and explore how to improve the relationship.
3. **Address Issues Directly.** Avoidance tends to make problems fester; rarely does avoidance cause problems to go away.
4. **View the Relationship as a Partnership.** Work together to address community needs without focusing on distinctions between policy and administration. Each party to the relationship should feel that their contributions are valued and respected.
5. **Avoid Being a Barrier to Staff Contact with Electeds.** Electeds may prefer to deal with staff directly; staff should keep the chief executive in the loop when significant issues come up in their conversations with members of the governing body.
6. **Focus Credit and Attention on Elected Officials<sup>2</sup>.** The center of positive attention at governing body meetings or at community meetings should be elected officials, not staff.
7. **Try to See the Situation from Others' Perspectives.** Ask open-ended, non-judgmental and even-toned questions. Take a step back to assess what happened and is happening in the relationship. Ask clarifying questions to understand the perspective of the other person; share your own perspective in neutral terms. Examine the problem and not the individuals. Treat the situation as a learning opportunity to avoid future missteps.

8. **Delve Deeper.** Listen for the meaning behind the words. Try to identify the underlying issues, which may have both a logical and an emotional dimension. What are the values, beliefs and anxieties that might be at stake? Sometimes the issue is not more data and facts; it is about connecting on a more personal level. Sometimes people just want to be acknowledged and understood.
9. **Accept Responsibility.** You have surely contributed to the difficulties in a relationship, intentionally or unintentionally. Accept responsibility, apologize if necessary, discuss how to avoid a repeat and move on.
10. **DWYSYWD (“Do What You Say You Will Do”).** People may judge your commitment to a board/executive relationship by what you do, not what you say. If a relationship has been damaged, the first thing people will look for is evidence of commitment to rebuild the relationship. Do what you said you will do. It will be noticed. Start with simple steps (for example, gather information, arrange a meeting, resolve a problem, or create a follow-up plan). These can be immediate and observable demonstrations of your sincerity in wanting to address concerns.
11. **Find a Confidant.** Serving as an elected official or a chief executive can be a solitary world. Identify an objective sounding board to bounce ideas off of and test assumptions and theories. The best confidants are typically outside your organization. They say what you need to hear, not necessarily what you want to hear and can help you navigate through difficult issues.
12. **Take Care of Yourself.** Maintaining a balance in the demands of public service and personal life is challenging. Make time to get away, to decompress, to work off frustrations, to reflect, and create space between public service and your private life. Working through difficulties requires a certain mental and emotional stamina. In addition, people can overreact when they are tired and under stress. Even if it is only an hour at the gym or a long weekend, make time for yourself.

### Red Flags for Relationship Attention<sup>2</sup>

- **Instinct.** If your sense is something isn't as good as it might be, you may well be right. Don't hope it goes away.
- **Information Flows Diminish.** Sometimes one party will feel the other isn't keeping them properly informed or they aren't getting the information they need to do their respective jobs well. Other times, the issue may be that people communicate less and less frequently or information isn't being shared equally.
- **Interpersonal Relations.** Another warning sign is when the chief executive or board member stops being included in conversations that he or she would ordinarily be included in. Watch for any signs of changes in the relationship changes (less forthright/more evasive)
- **Performance Reviews.** Avoiding an annual review (the board doesn't want to give one or the chief executive doesn't want to receive one) can be a sign of trouble.
- **Badmouthing.** This usually signifies significant frustration levels.
- **Focal Point is the Staff.** Another potential sign of trouble is when the chief executive or other staff become the focus of media or election attention.
- **Dissatisfaction with Staff.** Governing board members are dissatisfied with key staff and the chief executive is perceived as not addressing the problem and/or being able to get things done.
- **Trust Diminishes.** The governing board regularly second guesses the executive's recommendations.

## About the Institute for Local Government

This tip sheet is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities, the California State Association of Counties and the California Special Districts Association.

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## References

<sup>1</sup> Heifetz, Ronald A. and Marty Linsky, *Leadership on the Line: Staying Alive through the Dangers of Leading*, 2002, Harvard Business School Press, Boston.

<sup>2</sup>International City/County Management Association and National League of Cities, *Working Together: A Guide for Elected and Appointed Officials*, 1999 at pages 63-71.

# Attributes of Exceptional Councils

Leading public organizations and governing with colleagues on a council is a challenging art of community service. The Institute recognizes that many aspects of leadership and governance are not intuitive. This piece is intended to provide councilmembers and city managers insight into the attributes of exceptional councils as well as provide practical tips to help them become exceptional.

## 1. Exceptional councils develop a sense of team – a partnership with the city manager to govern and manage the city

The mayor, councilmembers and city manager see themselves and work as a team as they undertake a series of tasks to further their common purpose. The individual team members work in a coordinated and collaborative manner with a high degree of respect, trust and openness. The team values diversity in style and perspective. The team thinks and acts strategically as it examines issues/situations and decides on a course of action serving their city's mission and goals.

### KEY CHARACTERISTICS

- Successfully transition from candidate to a member of the council.
- Become a champion of the city. Make decisions based on the needs and interests of the community at-large / the greater good.
- Develop, communicate and support policy goals and council decisions.
- Demonstrate a willingness to work collaboratively (as a team) and have a citywide perspective.

### BEST PRACTICE TIPS

Build capacity to create a more effective team. The governance team (mayor, councilmembers and city manager) should get to know each other; how each person approaches issues, decision making style and so on. This can be accomplished at annual meetings or workshops through-out the year. In the event that councilmembers disagree, clear ground rules (norms of behavior and practice) can help quell acrimony before it becomes a problem. It's important to remember that trust is built around understanding and respect, not necessarily agreement.

## 2. Exceptional councils have clear roles and responsibilities that are understood and adhered.

Exceptional councils understand their role is to serve as policy maker - to represent the values, beliefs and priorities of their community while serving in the community's best interest. They carry out a variety of responsibilities including: developing and adopting a vision for the city; focusing and aligning plans, policies, agreements and budgets in furtherance of this vision; and holding themselves and the city manager accountable for results.

Exceptional councils understand that the city manager is responsible for the day-to-day operations of the city. The city manager is responsible for undertaking and accomplishing the policy objectives of the council. Exceptional councils recognize the subject matter expertise of staff and utilize their knowledge and experience to guide and inform decision making.

### KEY CHARACTERISTICS

- Understand the role of local government and their responsibilities.
- Know their role- to set vision and policy, avoid micromanagement.
- Councilmembers should strive to be informed about the issues facing the city and be prepared to ask questions of staff and each other.

### BEST PRACTICE TIPS

Create a shared understanding of the city manager's role and the council's expectations to optimize the working relationships. This shared understanding is informed by local charter and ordinance provisions that provide the overall framework for the relationship. The council should make time to have conversations during retreats and or study sessions to define and/or reveal and refine their role and responsibilities. Since role clarity between the city council and city management is critical to mutual success, having clear protocols helps avoid misunderstandings.

### 3. Exceptional councils honor the relationship with staff and each other

Exceptional councils understand that a good working relationship with staff is vital for the city to be run successfully. Exceptional councils treat each other and staff with dignity and respect. They act with civility and a high level of professional decorum. Councilmembers build trust by not playing the “gotcha game” and strive to have a no secrets, no surprises approach as an operating norm. Finally, they respect the diversity of styles and perspectives among their colleagues and staff and are open to new ideas.

#### KEY CHARACTERISTICS

- Councilmembers have the ability to respectfully disagree (to disagree without being disagreeable). They are able to leave it at the dais; debates are about policy, not personality.
- Exceptional councilmembers reflect positive decorum/model of leadership by providing respectful tone with colleagues.
- Establish a set of behaviors ahead of time, potentially documented in a code of conduct, to help promote civility and respect.

#### BEST PRACTICE TIPS

Set council priorities and strategic goals at an annual meeting; these goals and priorities are a tool to guide the city manager and staff on where to focus their efforts. This annual meeting provides time for the council to reflect on community priorities as well as offer an opportunity to discuss their decorum and their relationship among each other and the relationship between the city manager/staff and the council.

### 4. Exceptional councils routinely conduct effective meetings

Open and public meetings are central to democratic decision-making. Exceptional councils master the art of effective meetings. They develop and adhere to meeting protocols and processes. They spend time planning and organizing the agenda with the aim of having a more focused meeting. They allocate the council’s time and energy appropriately (focused on the council’s role and responsibilities) and meeting short- and long-term priorities. They honor the public’s participation and engagement and they generally start on time and are held during reasonable hours.

Exceptional councils use public meetings not only for their intended purpose, information sharing and decision-making,

#### KEY CHARACTERISTICS

- Councilmembers are respectful of each other, the public and everyone’s time.
- Councilmembers use engaging body language as a way to demonstrate respect.
- Issues are not personalized, thoughtful dialogue is the objective.
- Agenda packets are read, councilmembers come prepared and have an open mind
- Respect is demonstrated for varied opinions.
- Everyone strives to be civil and act with decorum.

but they also use the meeting to demonstrate respect and civility for each other, staff and the public. Exceptional councilmembers prepare in advance of the meeting, remain focused on the city goals and objectives and mindful of their role and responsibilities.

### BEST PRACTICE TIPS

Develop and adopt (with regular reviews and updates), guidelines for conducting meetings and making decisions. These governance protocols typically address meeting procedures (agenda preparation, how to put issues on the agenda, debate and voting procedures (parliamentary rules) and standards of decorum (civility)). As part of a regular self-assessment, councils should evaluate their meetings and their effectiveness and adjust behavior and practices for better results.

## 5. Exceptional councils hold themselves and the city accountable

Exceptional councils operate openly, ethically and work to engage the community in a myriad of decisions impacting the prosperity and well-being of their community. Toward that end, exceptional councils consistently provide short- and long-term strategic direction and goals, as well as provide budget, program and policy oversight.

Exceptional councils hold themselves accountable for the conduct, behavior and effectiveness of the council. They establish clear priorities and goals and hold the city manager accountable for results. And finally, they embrace accountability as a process and tool to calibrate ongoing efforts to address and meet policy and program objectives.

### KEY CHARACTERISTICS

- Councilmembers operate ethically and with integrity.
- Councils conduct team building / goal setting exercise to track progress towards mutually agreed upon goals
- Councils taking responsibility for the results (good and bad).
- Councils celebrate success.
- Councilmembers hold themselves responsible for adhering to operating protocols and codes of conduct.

### BEST PRACTICE TIPS

Annually evaluate council and city manager performance toward achieving the city's priorities and goals (consider having this be part of an annual goal setting meeting). Council should consider assessing its own behavior and effectiveness as part of its annual self-assessment.



## 6. Exceptional councils have members who practice continuous personal learning and development

Governance is not intuitive. In addition, the policy and economic environment impacting cities are ever changing. Exceptional councils continually provide the opportunity to build their knowledge and skills, to enhance their understanding of key issues, increase their awareness of best practices and sharpen their leadership and governance skills.

### KEY CHARACTERISTICS

- Stay informed on key issues
- Gain key insights and knowledge on all aspects of governing, from budgets to plans and everything in between.
- Learning to listen is sometimes more important than learning to give a speech.

### BEST PRACTICE TIPS

Seek out national, state and local professional growth and educational opportunities. These opportunities can focus on the nuts and bolts of governing to helping you gain valuable information and/or insights on key policy issues facing your city. In addition, city run orientations for newly elected officials provide a good way to acclimate new members to the council's norms and protocols as well as the budget and key policy issues.



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# **Financial Responsibilities and City Revenues Workshop**

# THE CALIFORNIA MUNICIPAL REVENUE SOURCES HANDBOOK

FIFTH EDITION



Michael Coleman



# CHAPTER 1



## MILESTONES IN MUNICIPAL REVENUES: A Historical Perspective

The backdrop of any discussion of municipal revenues must be the state-local relationship and the provisions of the California Constitution that govern the relationship. This relationship has evolved over time, marked in recent decades by several landmark constitutional amendments. Consequently, today's municipal revenue landscape is not the same as your grandmother's or even your mother's.

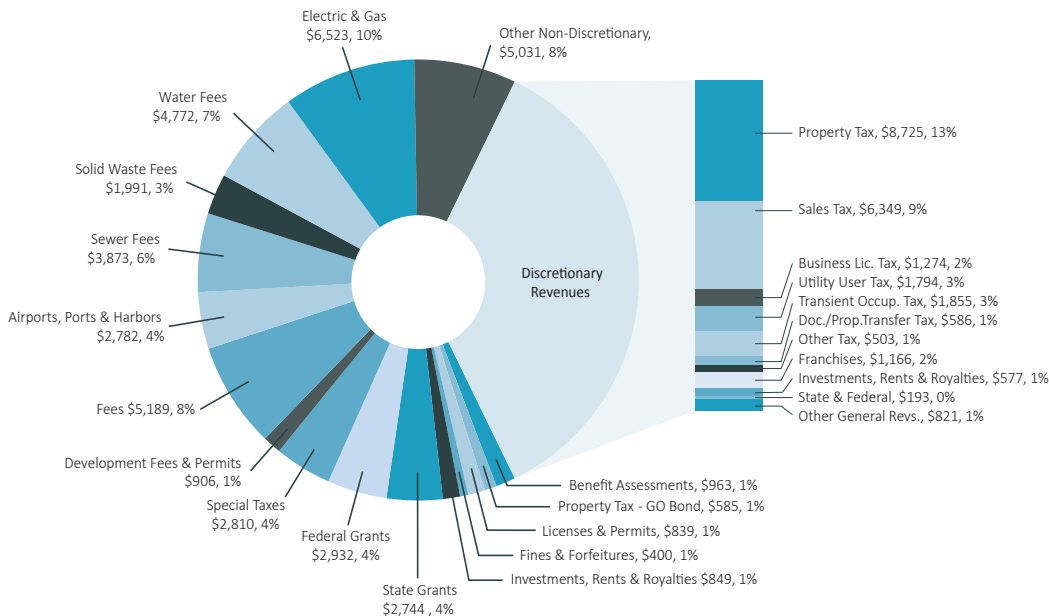
In California's early years of statehood, local government authority was strictly controlled by the state government, and local affairs were the frequent subject of meddling by the Legislature. California governors and legislators often displayed a deep distrust of local affairs, while local officials sought more latitude in municipal policy and public services.

## The 1879 California Constitution

Thirty years after California’s admission to the union, the second (and current) California Constitution was adopted by the Constitutional Convention during a turbulent period in the state’s political history. That adoption created, for the first time, substantial and meaningful home rule for California’s local governments. The 1879 Constitution included five provisions limiting the power of the Legislature to interfere with the affairs of cities and vested in cities extensive powers of self-government. This Constitution prohibited the state from imposing a tax for local purposes, but enabled the state to authorize local governments to impose them.

## California City Revenues

FY 2016–17 (excluding the city and county of San Francisco)



Source: Author’s computations of data reported to California State Controller.

Over the next several decades, local taxation authority was expanded to general law cities. In 1903, in a case upholding the City of Los Angeles’ business license tax, the California Supreme Court stated unequivocally that local taxation is a municipal affair under article XI, §5 of the California Constitution. Later, in 1982, the Legislature conferred on general law cities by statute the authority to adopt any tax that could be adopted by a charter city.

A 1910 ballot measure known as the “Separation of Sources Act” made the property tax a local government revenue source and established the principle of separate revenue sources for state and local governments. The property tax was ideally suited to fund critical local general services such as law enforcement, jails, fire protection, parks, libraries, schools, hospitals and public health. This concept of the property tax as the largest, most durable and essential source of local government funding would stand for 68 years, until Proposition 13 drastically altered California local government finance.

In 1914, the California Constitution was amended to provide charter cities with the authority to “make and enforce laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters.” It established the power of charter cities to adopt their own laws with respect to municipal affairs, including flexibility in organizational and program design, latitude to regulate certain activities and the authority to determine spending levels and priorities. But local authority in municipal affairs remained subject to state pre-emption as to matters of statewide concern. In the event of a conflict between a charter city law and state law, the court must decide whether the state law prevails (because it is a matter of statewide concern) or the local law prevails (because it is a municipal affair). Thus, the dynamic interpretation of “matters of statewide concern” and “municipal affairs” controls the scope of home rule.

## Statewide Concerns and Municipal Affairs

Although cities achieved greater local fiscal authority to determine service levels and levy local taxes and charges, state fiscal rules and constraints have often dominated. In 1935, the state pre-empted the local taxation of motor vehicles as real property and established a statewide uniform value-based tax on motor vehicles, known as the “motor vehicle in-lieu tax” or Vehicle License Fee (VLF), which it then allocated to cities and counties based on their share of county population.

In 1955, the Legislature passed the Bradley-Burns Uniform Sales and Use Tax Act, pre-empting then-existing local sales taxes and providing for a uniform, statewide system of sales taxation and collection. The Bradley-Burns Act authorized cities to adopt local sales and use tax rates up to 1 percent of taxable sales transacted in their jurisdictions to be administered and allocated by the state. The amounts of revenue remained intact, and the use of those revenues remained at local discretion.

These changes attempted to strike a balance between accommodating the needs of the modern industrial economy for uniform practices and procedures with California’s continuing commitment to meaningful local control of local government finance. They also attempted to address the important issues of taxpayer ease, uniformity and simplicity, but had the accompanying effect of centralizing fiscal authority with the Legislature and Governor while constraining local fiscal authority.

Through both Democratic and Republican administrations in the 1950s and 1960s, federal and state policy initiatives meant additional money and additional incentives, but also additional mandates for municipalities. In 1972, the Legislature responded to the vocal concern of local government over the costs of state mandates by passing SB 90 (Chapter 1406, Statutes of 1972), requiring the reimbursement of costs to local agencies for state-mandated programs. The following year, the Legislature required cost estimates of all legislation having a financial impact on local government. In 1979, mandated reimbursement, as required in SB 90, was added to Article XIII B of the California Constitution as a part of Proposition 4. The obligation to reimburse was further strengthened by Proposition 1A in 2004.

## Property Tax Limits and Voter Approval of Special Taxes: Proposition 13 (1978)

In 1978, a simple majority of California voters approved Proposition 13, seeking property-tax relief and uniformity, but with far-reaching consequences, some unintended. Proposition 13 reduced property tax revenues by more than half and effectively abolished any local control with regard to the property tax. Local governments still have wide latitude on the spending of the remaining revenues they receive, but the allocation of the tax is controlled by the Legislature. Occasional proposals by the Legislative Analyst or individual policymakers to delegate more authority over property tax allocation to local governments tend to be met with resistance from local officials who fear the local conflicts and power struggles that would ensue in nearly any discussion of revenue reallocation.

### Six Provisions of Proposition 13 Affecting Local Finance

- 1. One percent rate cap.** Proposition 13 capped, with limited exceptions, property tax rates at 1 percent of full cash value at the time of acquisition. Prior to Proposition 13, local jurisdictions independently established their tax rates and the total property tax rate was the composite of the individual rates.
- 2. Assessment rollback.** Proposition 13 rolled back property values as determined for tax purposes to their FY 1975–76 level.
- 3. Reassessment upon change in ownership.** Proposition 13 replaced the practice of annually reassessing property at full cash value with a system based on cost at acquisition. Under Proposition 13, property is assessed at market value for tax purposes only when it changes ownership. Subsequent annual values are limited to this “base year” amount plus an annual growth factor of 2 percent or Consumer Price Index (CPI), whichever is less.
- 4. Responsibility for allocating property tax transferred to the state.** Proposition 13 gave state lawmakers responsibility for allocating property tax revenues among local jurisdictions. Prior to Proposition 13, jurisdictions established their tax rates independently and their property tax revenues depended on the rate levied and the value of the property located within the boundaries of the jurisdiction.
- 5. Voter approval for special taxes.** Proposition 13 requires two-thirds voter approval for taxes raised by local governments for a designated “special” purpose.
- 6. Taxes imposed by the Legislature require a two-thirds vote of the Legislature.**

Prior to Proposition 13, effective total property tax rates varied, but averaged about 2.5 percent of market value. The 1 percent limitation and the rollback to FY 1975–76 assessed values resulted in an immediate 57 percent reduction in property tax revenues statewide.

In FY 1979–80, the Legislature used its authority to allocate property tax revenues to cushion the fiscal impact of Proposition 13 on local governments. In what is often called the “bailout,” the state was able to shift about \$2.7 billion of annual ongoing financial resources to local governments in part because of the state’s \$5 billion surplus (about 40 percent of annual revenues) and the \$1 billion-plus annual revenue boost it received from higher personal income taxes due to lower taxpayer deductions for property taxes. As a result, city property tax

losses from Proposition 13 were about 28 percent less than they might have been.

In addition to the bailout, the Legislature established a system for allocating property taxes. In what was intended as a permanent resolution to the issue of how to distribute significantly reduced property tax revenues, this solution, AB 8 (Chapter 282, Statutes of 1979), reduced school shares of property tax revenues and gave cities, counties and special districts greater shares. In return, the state assumed a larger financial responsibility for K-14 schools. The state also increased its share of costs for a number of social service and health programs operated by counties.

Effects of Proposition 13	Trends in California Municipal Finance
<ul style="list-style-type: none"> <li>• Lowered tax burden for elderly and low-income homeowners (proportionate to income)</li> <li>• Disparate treatment of similarly situated properties</li> <li>• Disconnect between service costs and revenues deters balanced planning</li> <li>• Local agency property tax revenues cut by nearly 60 percent</li> <li>• Tax rates and shares out of sync with service demands</li> <li>• Greater reliance on state General Fund for county and school spending</li> <li>• Cities and counties increased reliance on fees and local taxes</li> </ul>	<ul style="list-style-type: none"> <li>• Decline in predictable discretionary funding for key services</li> <li>• Sales tax revenues decreasing in service-oriented economy</li> <li>• Population growth increasing service demands</li> <li>• Public safety and homeland security costs increasing</li> <li>• Infrastructure cracking under neglect</li> <li>• New technologies leading to new infrastructure demands</li> <li>• Environmental degradation (air and water pollution) requiring expensive mitigation</li> <li>• Continued fragmentation of local finance among overlapping agencies</li> </ul>



Despite these efforts to cushion its impact, Proposition 13 dealt a major blow to local fiscal autonomy. As the California Supreme Court noted in its 1991 decision upholding AB 8's property tax apportionment system, Proposition 13 "prevails over the preexisting taxing power" of cities. In a 1994 ruling upholding the state's shift of property tax revenues from local governments (the infamous educational revenue augmentation funds (ERAF) shift), the court noted that the taxing powers of local governments are "derived from the Constitution upon authorization by the Legislature." The state was handed the authority to determine each local agency's share within the 1 percent umbrella for all taxing agencies. There is no local authority to reallocate property tax revenue among local agencies (even those providing "city" services such as fire, parks or libraries). Thus, where once a community could devote more or less property tax revenue to fire services versus libraries versus schools, now all communities are constrained by taxing decisions made by leaders of a generation ago, when California was a very different place socially, economically and politically.

By capping the property tax rate at 1 percent, Proposition 13 denied even local voters the authority to impose a higher property tax. The only exception to the 1 percent cap in Proposition 13 was for indebtedness approved prior to July 1, 1978. This effectively repealed the authority of a local agency to, with two-thirds voter approval, levy a rate to repay bonded indebtedness, authority which was established in the 1879 California Constitution. In 1986, California voters altered that aspect of Proposition 13 with the passage of Proposition 46, restoring the authority of local agencies, with two-thirds voter approval, to enact a property tax rate override to repay bonded indebtedness issued for the acquisition or improvement of real property.

### The Gann Limit

Following up on their success at limiting taxes, taxpayer advocates in 1979 convinced California voters to approve a measure aimed at limiting government spending. Conceived by tax activist Paul Gann, Proposition 4 set tax expenditure limits on the state and local governments based on the proceeds they received from taxes in FY 1978–79, increasing with changes in population and inflation. In any year, an agency may not appropriate tax proceeds in excess of this limit unless an override,

lasting a maximum of four years, is approved by a majority of voters. In 1990, voters approved Proposition 111, which, among other things, altered the spending limit, making the limit more accommodating of local revenue growth.

### The 1980s: State Fiscal Retrenchment, Local Fiscal Innovation

In the years following Proposition 13, local governments faced substantially constrained revenues both from reduced property tax revenues but also from substantial reductions in state and federal aid. The state, after shifting resources to cushion the local impact of Proposition 13, found itself at times in fiscal trouble and repealed various state aid programs and even shifted local revenues to state coffers. Over the fiscal years 1981–82, 1982–83 and 1983–84, the state shifted more than \$700 million of VLF revenues from cities, revenue that had never before gone to the state General Fund.<sup>1</sup> During these years, the state also repealed an assortment of local aid subventions including: the Highway Carriers Uniform Business Tax, Liquor License Fees, Financial Aid to Local Agencies (bank in-lieu subvention) and Business Inventory Exemption Reimbursements. Most of these payments had been put in place to reimburse local governments for the state establishing a uniform statewide tax in lieu of local taxes or the state exempting some category of taxpayers.

Local governments responded by increasing various fees to recover full costs and eliminate subsidies. They sought out ways to raise existing taxes such as business licenses and hotel taxes. Many adopted new taxes such as utility user taxes, admission and parking taxes. With statutory authorization from the Legislature, they adopted new forms of assessments to provide needed funds for such things as streets, parks, lighting and landscaping.

### The Courts Weaken Local Fiscal Authority

Meanwhile, local control over fiscal matters continued to weaken. Proposition 13 had shifted the power to allocate what had been the number one source of discretionary local revenue, property taxes, to the Legislature. Subsequent court decisions further weakened local fiscal



autonomy. In 1991, the California Supreme Court gave the state wider latitude to define a “matter of statewide concern” at the expense of home rule authority in fiscal affairs. In *California Federal Savings & Loan v. Los Angeles*, the court acknowledged that local taxation is generally a municipal affair, but declared the state’s system of taxation of financial institutions to be a matter of statewide concern. The court concluded that the conflicting charter city measure ceased to be a municipal affair and the Legislature was not prohibited by the Constitution from addressing the statewide dimensions of its own enactments. Assuming that financial institutions should be subject to a limited amount of taxation, the state decided that permitting local governments to receive a portion of these revenues through local taxation would interfere with the state’s ability to raise revenues for its own purposes.

### Majority Vote for Taxes in General Law Cities and Counties: Proposition 62 (1986)

Reacting to the various forms of new local taxes and increases in fees in the wake of Proposition 13, the Howard Jarvis Taxpayers Association and other taxpayer groups responded with several follow-up initiatives. Proposition 62, a statutory initiative, passed in November 1986, restating the super-majority vote requirement for special taxes, imposing a majority vote requirement for general taxes, and prohibiting the imposition of taxes on the transfer of real estate. For nearly a decade, the applicability of Proposition 62 remained uncertain in the face of various court cases. Most provisions were eventually superseded by Proposition 218 in 1996.

### Educational Revenue Augmentation Funds

The most dramatic example of the shift of power from local governments to the state is the Legislature’s use of local property tax to balance the state’s budget troubles beginning in the early 1990s.

Despite major changes in local priorities and needs, the apportionment formulas for property taxes had remained largely unchanged since AB 8. In 1978, neither the pundits nor the authors of Proposition 13 envisioned the Legislature using the power to allocate local property

tax revenue given to it by Proposition 13 as a means to take local tax revenues to meet its own financial needs. But in 1992, facing a serious state General Fund deficit, the state Legislature turned to these powers as a remedy.

To meet its obligations to fund education at specified levels under the Proposition 98 educational funding formulas, the state enacted legislation that shifted partial financial responsibility for funding education to local government (cities, counties and special districts). The state did this by instructing county auditors to shift the allocation of local property tax revenues from local government to educational revenue augmentation funds (ERAFs), directing that specified amounts of city, county and other local agency property taxes be deposited into these funds to support schools.

In FY 2011–12, the annual impact of the ERAF shift was a shortstopping of some \$7.3 billion from cities, counties, special districts and the citizens those entities serve. Counties have borne some 74 percent of this shift; cities have borne 16 percent.

The state has provided some funding to local governments that is considered by most to be mitigation of ERAF. However, the vast majority of these funds are earmarked for particular purposes. Moreover, a relatively small portion of these funds has gone to cities. In 1992, California voters approved Proposition 172, which provided sales tax funding for police, fire and other public safety programs. (See section 6.05 of Chapter 6.) In FY 2011–12, Proposition 172 funds provided only \$2.5 billion annually to local government, leaving a \$4.8 billion net ERAF gap. Considering all state subventions that the Legislative Analyst defines as “ERAF mitigation,” the net ERAF impact on cities was nearly \$900 million in FY 2017-18.<sup>2</sup>

As a part of the budget agreement that put Proposition 1A of 2004 on the ballot to protect city revenues from additional shifts and state takeaways, cities, counties and special districts agreed to contribute an additional \$1.3 billion per year in FY 2004–05 and FY 2005–06. Although these ERAF III shifts ended in FY 2006–07, the original ongoing shifts that began in fiscal years 1992–94 have not been reduced.<sup>3</sup>

## Voting on Taxes, Assessments and Property Related Fees: Proposition 218 (1996)

In November 1996, California voters approved Proposition 218, expanding restrictions on local government revenue raising by adding Article XIII C and Article XIII D to the California Constitution. The measure allows voters to repeal or reduce taxes, assessments, fees and charges through the initiative process; reiterates the requirement for voter approval for both “special taxes” and “general taxes;” and imposes procedural and substantive limitations on benefit assessments imposed on real property and on certain types of fees.

Proposition 218:

- Establishes a clear constitutional standard distinguishing locally imposed general taxes from special taxes and imposing a majority voter requirement for general taxes (which had already existed for general law cities under Proposition 62) and a supermajority requirement for special taxes (which had already existed under Proposition 13);<sup>4</sup>
- Provides citizens with the power to repeal taxes, assessments, fees and charges that are subject to Proposition 218;
- Establishes a formal balloting procedure for the adoption of benefit assessments imposed on property;
- Requires a distinction between special benefits and general benefits with regard to assessments and prohibits the funding of general benefits from property assessments;
- Requires the assessment of public property within an assessment district;
- Places the burden of proof for demonstrating special benefit on the local agency imposing the property assessment; and
- Establishes a new category of fees called “property-related fees” and requires new approval procedures and substantive provisions for those fees.

## Constitutional Protection of Local Revenues: Proposition 1A (2004) and Proposition 22 (2010)

Reacting to continued state shifts of local property tax revenues, the deterioration of local control of fiscal matters and the substantial limitations imposed by Proposition 218, the League of California Cities, the California State Association of Counties (CSAC) and the California Special Districts Association (CSDA) crafted a local revenue protection initiative, Proposition 65, and garnered enough signatures to qualify the proposition for the November 2004 ballot. Gov. Arnold Schwarzenegger, who had recently taken office in the November 2003 recall of Gov. Gray Davis, immediately signaled his opposition to the measure but a willingness to support a new mutually crafted local revenue protection measure as a part of a larger state-local fiscal restructuring package to include local contributions to assist the state budget problem over two years.

With the active involvement of legislative leadership, the Schwarzenegger Administration, the League, CSAC and CSDA worked on an alternative to Proposition 65 that became Proposition 1A. The Legislature placed the measure on the November 2004 ballot. As part of the 2004 state-local agreement, the state shifted \$1.3 billion of local property tax revenues in FY 2004–05 and again in FY 2005–06 (known as ERAF III). In addition, the state General Fund backfill to cities and counties for state cuts of the VLF was eliminated and instead cities and counties were given additional annual property tax revenues. See section 6.01 of Chapter 6. Finally, local government associations agreed to abandon support of Proposition 65 and Governor Schwarzenegger agreed to actively support Proposition 1A.

In November 2004, the voters of California approved Proposition 1A with an unprecedented 84 percent of the yes vote, constitutionally protecting major city revenues from additional shifts to the state and strengthening local governments’ ability to get reimbursement for unfunded mandates. In 2010, voters passed another measure to protect local government finances. Proposition 22 prohibits the state from borrowing, delaying or taking certain funds allocated to local

governments and eliminated a provision of Proposition 1A allowing the state to borrow a limited amount of property tax revenue under certain conditions. Together, these measures:

- Strengthen prohibitions against unfunded state mandates by requiring the state to suspend state mandates in any year the Legislature does not fully fund those laws.<sup>5</sup>
- Expands the definition of state mandate to include transfer of responsibility of a program for which the state previously had full or partial responsibility.
- Prohibits the state from:
  - Reducing the local Bradley-Burns Uniform Sales and Use Tax rate or altering its method of allocation. Exception to comply with federal law or an interstate compact;
  - Decreasing VLF revenue from the 0.65 percent rate without providing replacement funding to cities and counties;
  - Shifting property taxes from cities, counties or special districts;
  - Failing to reimburse cities and counties for the 0.25 percent local sales tax shifted under the Proposition 57 Sales Tax Triple Flip; and
  - Borrowing, delaying or taking motor vehicle fuel tax allocations, gasoline sales tax allocations, public transportation account funds or redevelopment agency property tax increment.

**Sales and Use Tax Rate and Allocation Method.** Generally, revenue from the 1 percent Bradley-Burns Local Sales and Use Tax is allocated to the city in which the sale occurs, or, if in an unincorporated area, the county. Proposition 1A prohibits the Legislature from reducing the local sales tax rate or changing the method of allocation of local sales tax revenues. Proposition 1A permits the Legislature to change the method of allocation in order to comply with federal law or an inter-state compact.

**Local Transactions and Use Tax Authority.** Proposition 1A prohibits the state from restricting the authority of a local government to impose transactions and use taxes pursuant to Revenue and Taxation code §7251 or altering the method of allocation of these tax revenues.

**Local Sales Tax Reduction Under the Proposition 57 Triple Flip.** In March 2004, California voters approved Proposition 57, the California Economic Recovery Bond Act. Legislative provisions implementing Proposition 57 authorized the state to reduce local sales tax and replace it with a state special fund sales tax to repay the bonds effective July 1, 2004. The so called “triple flip”:

1. Reduced the Bradley-Burns Local Sales and Use Tax Rate by one-quarter cent and simultaneously increased the state’s sales tax rate by one-quarter cent to fund fiscal recovery bond repayment;
2. Repaid to cities and counties with additional local property tax previously allocated to local schools; and
3. Repaid to local schools with state General Fund.

Proposition 1A prohibits the Legislature from extending this reduction in local authority to impose the full Bradley-Burns Sales and use tax rate beyond the period necessary to repay the Proposition 57 bonds. The Proposition 57 Sales Tax Triple Flip ended when the economic recovery bonds were fully paid in 2016.

**Vehicle License Fee.** Proposition 1A requires the Legislature to provide replacement revenue to cities and counties if it reduces the VLF rate below 0.65 percent. California Constitution Article XI §15 requires that VLF revenue be allocated to cities and counties. The state may charge for administrative costs (DMV, Controller) and the Legislature retains the power to change state law allocating the VLF among cities and counties. See section 6.01 for more on the VLF.

**Property Tax.** Proposition 1A prohibits the Legislature from reducing the share of property tax revenues going to cities, counties and special districts, and shifting those shares to the schools or any other non-local government function. However, the Legislature may alter the allocation of property taxes among cities, counties and special districts with two-thirds approval in each house. Proposition 1A also contained provisions allowing the state to borrow up to 8 percent of city, county and special district property tax revenues in one year under specific conditions. The Legislature invoked this option as a part of the 2009 Budget Act. The loan, used to finance annual operations in FY 2009–10 was fully repaid with interest according to law in June 2013. Proposition 22 (2010) prevented this from occurring again by eliminating this property tax loan option. See section 2.01 for more on the property tax.

Proposition 1A did not provide local governments with any new revenue nor reduce or alter the ERAF I and II shifts.

### Refining the Definition of “Tax” Proposition 26 (2010)

In November 2010, California voters passed Proposition 26, which added a definition of “tax” to the California Constitution. The new provisions state that a government-imposed charge, levy or exaction of any kind is a tax unless it falls into one of seven express exceptions. The effect of the measure was to particularly tighten the definition of regulatory fees and certain assessments.

### The Great Recession and the Dissolution of Redevelopment

Despite the substantial protections provided to local governments by Propositions 1A and 22, threats to local finances continued. Local budgets struggled from the impacts of the great recession, mounting costs of pensions and unfunded public employee retiree health benefits. Three large cities, unable to balance their budgets without violating legal payment obligations and unable to garner sufficient concessions from labor and other creditors, entered into bankruptcy proceedings. Others cut public services to unprecedented low levels.

Meanwhile, the State Budget Act of 2011 included a major realignment of corrections and law enforcement programs to counties with potential crime impacts in local communities. Counties sought assurances that adequate funding would also be provided. In last minute “gut-and-amend” legislation, all remaining city VLF funds were shifted to pay for state law enforcement grants to locals that had previously been funded by the state general fund. This wiped out allocations to new cities and annexations that had compensated for a flaw in the 2004 VLF-Property Tax swap.

With the 2011 Budget Act, Gov. Jerry Brown also signed into law two bills aimed at extracting revenues from redevelopment agencies to help remedy the state’s ongoing budget deficit. The legislation provided that each redevelopment agency must agree to make substantial annual payments to aid the state or dissolve as of October 1, 2011.

On December 29, 2011, the California Supreme Court upheld the constitutionality of dissolution of redevelopment while striking down the payment scheme. Approximately 400 redevelopment agencies dissolved on February 1, 2012, with the assets and liabilities transferred to successor agencies and successor housing agencies.

But in November 2012, the state’s fiscal woes took a major turn for the better. Following substantial cuts in state programs, voters approved Proposition 30, temporarily increasing state sales and income tax rates. The state budget was more easily balanced and the Legislature began fully paying down over \$30 billion in accumulated budgetary debt. In 2016, voters approved Proposition 55 to extend Prop 30 through 2030.

## The Road Ahead for California Local Finance

Local revenues are now more stable and protected than ever before. Substantial constitutional limits have been placed on the Legislature’s ability to take or shift local revenues. The state’s fiscal condition has improved thanks to major program reductions in many areas, an infusion of temporary taxes that will pay off a mountain of accumulated budgetary debt and a gradually improving economy.

But major risks and uncertainties persist. While Proposition 30 and Proposition 55 have seemingly provided a reprieve, the state continues to struggle with the funding of corrections, health care, education, public employee benefits and major infrastructure. Substantial unbudgeted liabilities loom in teacher and state employee retirement systems. The state’s long term budgetary balance remains cloudy.

The finances of local agencies face similar challenges. Many local agencies are grappling with major unbudgeted liabilities in the areas of post employment benefits (especially healthcare) — pension plan cost increases due to lower investment earnings, greater longevity and unsustainable benefit levels previously granted, especially in the areas of police and fire. Local public works systems face major improvement needs in many areas.

Threats to the ability of communities to finance local services through locally levied taxes and other sources of revenue are likely to continue. Local governments will continue to grapple with evolving local public service needs and a local revenue portfolio that fluctuates with economic and socio/technical changes. Rather than make necessary effective reforms, the Legislature usually chooses expedient, ineffective “band-aid” remedies to serious local finance issues.

While local revenues are returning on the heels of a slowly recovering economy, public employee pensions and retiree health care costs are outpacing this revenue growth. The specter of a recession in the next decade also foreshadows more municipal insolvencies. Municipal fiscal sustainability is a critical issue.

As always, skilled finance and management is essential to move forward through this. This handbook is designed to help you find your way.

### For More Information:

*Financing California Cities - Overviews and Primers.* <http://www.californiacityfinance.com/#FINCITIES>

*Proposition 26 and 218 Implementation Guide.* League of California Cities. May 2017. <http://www.calcities.org/Prop218andProp26>

*Proposition 218 Implementation Guide for Special Districts.* Kelly Salt. California Special Districts Association. 2013. [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/pricing/docs/csda\\_guide\\_proposition\\_218.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/pricing/docs/csda_guide_proposition_218.pdf)

*Current Developments Under Propositions 13, 62, & 218* by Michael G. Colantuono. <http://www.cllaw.us/papers-library/#Finance>

*California Municipal Law Handbook*, Chapter V., League of California Cities.

*Proposition 26 and Proposition 218 Implementation Guide*, League of California Cities, 2019 Edition.

*Guide to Local Government Finance in California, Second Edition*, Multari, Michael, Michael Coleman, Kenneth Hampian, and Bill Statler, Solano Press Books, 2017.

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### Endnotes

- 1 Subsequently, in 1986, the voters approved Proposition 47 which requires that VLF revenues be allocated to local governments.
- 2 Cities not including the city and county of San Francisco.
- 3 Subsequent to the transfer of these funds, they are reallocated within each county back to cities and counties to compensate for the state’s repeal of the VLF backfill in 2004 and the temporary one-quarter cent sales tax shift to support the state deficit reduction bonds. However, this mechanism does not alter the existence or real effect of the ERAF I and II shifts.
- 4 In 1982, the State Supreme Court decided *City and County of San Francisco v. Farrell*, which defined the term special tax as any tax earmarked for a specific purpose. Under Proposition 13, a special tax requires the approval of two-thirds of voters.
- 5 Proposition 1A does not apply to mandates affecting local schools or mandates related to employee relations and collective bargaining.



# CHAPTER 2

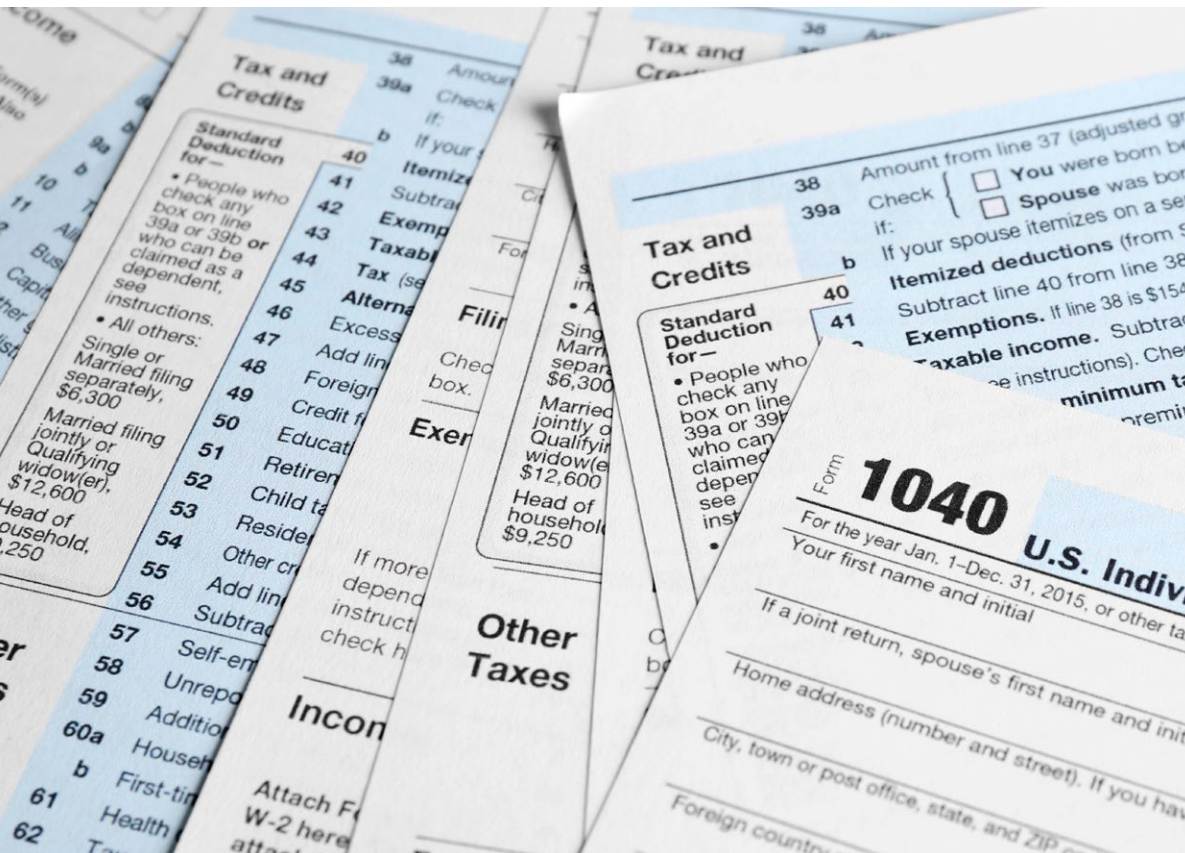
## TAXES

A tax is a monetary imposition by a government on persons or property for the purpose of raising revenue to support the purposes of the government.<sup>1</sup> In contrast to an assessment or a fee, a tax need not be levied in proportion to specific benefit to a person or property. Fees or charges will be considered taxes to the extent they exceed the reasonable cost of the service, commodity or facility for which they are imposed.

California cities do not have an inherent power to tax. Charter cities are given the power to tax pursuant to Article XI, §5 of the California Constitution and may levy taxes for municipal purposes without specific authorization from the Legislature. As authorized in state statute, a general law city, with certain exceptions, may levy any tax that a charter city may levy.<sup>2</sup> State law may set certain limits and procedures and may exempt certain activities from taxes levied by general law cities. These laws apply to charter cities in matters that the courts have determined are of statewide concern.

*"The nation should have a tax system that looks like someone designed it on purpose."*

— WILLIAM SIMON



### General and Special Taxes

The passage of Proposition 13 in 1978 created a distinction between “general” and “special” taxes. Proposition 218, in 1996, further defined and established procedures for general taxes.<sup>3</sup>

- A *general tax* is a tax imposed for general governmental purposes, the proceeds of which are deposited into the General Fund. A majority vote of the electorate (those voting on the measure) is required to impose, extend or increase any general tax.
  - » An election on a general tax must be consolidated with a regularly scheduled general election of city council members, except in cases of emergency, declared by a unanimous vote of the city council.<sup>4</sup>
  - » Single-purpose special districts (special purpose districts) may not impose general taxes.

	General Tax	Special Tax
<b>Use of Revenues</b>	<ul style="list-style-type: none"> <li>• Unrestricted</li> </ul>	<ul style="list-style-type: none"> <li>• Specific purpose</li> </ul>
<b>Governing Body Approval</b>	<ul style="list-style-type: none"> <li>• General law cities: two-thirds</li> <li>• Charter cities: majority</li> <li>• Counties: two-thirds</li> <li>• Transactions and Use Taxes: two-thirds See section 2.03 of this chapter.</li> </ul>	<ul style="list-style-type: none"> <li>• Majority</li> </ul>
<b>Voter Approval</b>	<ul style="list-style-type: none"> <li>• Majority</li> </ul>	<ul style="list-style-type: none"> <li>• Two-thirds</li> </ul>
<b>Other Rules</b>	<ul style="list-style-type: none"> <li>• A general tax election must be consolidated with a regularly scheduled general election of members of the governing body, unless an emergency is declared by unanimous vote (among those present) of the governing body.</li> </ul>	<ul style="list-style-type: none"> <li>• Special tax funds must be deposited in a separate account. The taxing agency must publish an annual report including: 1) the tax rate; 2) the amounts of revenues collected and expended and 3) the status of any project funded by the special tax.<sup>5</sup></li> </ul>

- A *special tax* is a tax that is collected and earmarked for a specific purpose and deposited either into a separate account or the General Fund. A two-thirds vote of the electorate is required to impose, extend or increase any special tax.

### Proposition 26: Defining a Tax By What it is Not

California voters approved Proposition 26 in November 2010, placing new rules into the California Constitution stating that a government-imposed charge, levy or exaction of any kind is a tax unless it falls into one of seven express exceptions.

1. *A charge imposed for a specific benefit conferred or privilege granted directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.*

**Specific Benefit Exception** examples include fees for planning permits, restricted neighborhood parking permits and entertainment and street closure permits.

2. *A charge imposed for a specific government service or product provided directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.*

**Government Service or Product Exception** examples include user fees for parks and recreation classes, utilities (other than those covered under number 7), public records copying fees, DUI emergency response fees and emergency medical and ambulance transport service fees.

3. *A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections and audits, enforcing agricultural marketing orders and the administrative enforcement and adjudication thereof.*

**Permits and Inspections Exception** examples include health and safety permits, building licenses, police background checks, pet licenses, bicycle licenses and permits for regulated commercial activities (such as massage establishments, card rooms, taxicabs and tow-truck operators).

For exceptions 1 through 3, the fee imposed must not exceed the agency's reasonable costs.

4. *A charge imposed for entrance to or use of local government property or the purchase rental or lease of local government property.*

**Local Government Property Exception** examples include facility room rentals; equipment rentals; park, museum and zoo entrance fees; golf greens fees; on and off-street parking; and tolls.

5. *A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government as a result of a violation of law, including late payment fees, fees imposed under administrative citation ordinances, parking violations, etc.*

**Penalty for Illegal Activity Exception** examples include parking fines, code enforcement fees and penalties, late payment fees, interest charges and other charges for violation of the law.

6. *A charge imposed as a condition of property development.*

**Property Development Exception** examples include planning fees, building permit fees, construction and grading permits, development impact fees, fees imposed by California Environmental Quality Act mitigation requirements and Quimby Act and park

mitigation fees.

7. *Assessments and property-related fees imposed in accordance with the provisions of Article XIII D (Proposition 218).*

**Proposition 218 Exception** examples include assessments on real property for special benefit conferred, fees imposed upon a parcel or a person as an incident of property ownership, and fees for a property related service such as many retail water and sewer fees.

### When is a Tax Imposed, Increased or Extended?

Under Proposition 218, no local government may impose, extend or increase any general tax until such tax is submitted to the electorate and approved.<sup>6</sup>

A tax is “*imposed*” when the local tax ordinance is adopted, and each time a tax is collected.<sup>7</sup> “*Extend*” means a decision by an agency to extend the stated effective period for the tax or fee or charge, including amendment or removal of a sunset provision or expiration date.<sup>8</sup>

A tax is “*increased*” when an agency either 1) increases the rate used to calculate the tax, or 2) revises the methodology by which the tax is calculated if that revision results in an increased amount being levied on any person or parcel.<sup>9</sup> A tax is not “*increased*” if 1) it is imposed at a rate no higher than the maximum rate previously approved, or 2) it is adjusted in accordance with a schedule of adjustments, including a clearly defined formula for inflation that was adopted prior to November 6, 1996.<sup>10</sup> However, a tax which is calculated by using a percentage is “*increased*” when it is adjusted for inflation even if the voters approve the tax.<sup>11</sup>



*“The power of taxing people and their property is essential to the very existence of government.”*

— JAMES MADISON,  
U.S. PRESIDENT

### Additional Aspects of Municipal Taxation in California

- A local tax can be reduced or repealed by initiative unless it supports bonded debt. Many taxes can be imposed or increased by initiative as well.
- Certain types of local taxes are specifically pre-empted by state law. These include taxes on cigarettes, alcohol and personal income.<sup>12</sup>
- State law provides various additional procedural requirements for the enactment of some taxes depending on the type of tax.
- If a local agency wants to collect a previously approved tax at a rate lower than was authorized by the voters, the agency should make it very clear in its official actions that the rate is being “suspended” for a certain period of time and not being permanently lowered. An agency that collects a previously approved tax at a rate lower than was authorized by the voters without a statement clarifying the intent and purpose of the suspension may trigger a Proposition 218 vote requirement when it begins collecting the tax at the previously approved rate.<sup>13</sup>

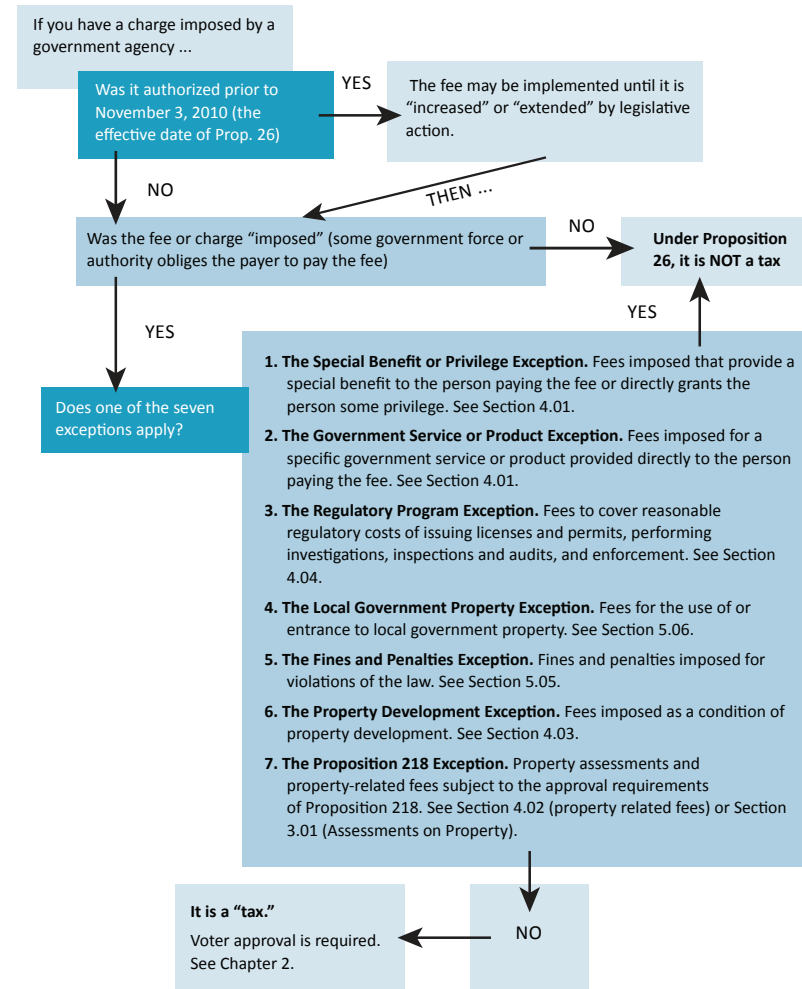
#### For More Information:

*Proposition 218 Implementation Guide*, League of California Cities, 2007 Edition.

*California Municipal Law Handbook*, Chapter V, League of California Cities.

*Proposition 26 Implementation Guide*, League of California Cities, 2011 Edition. [www.calcities.org/Prop26Guide](http://www.calcities.org/Prop26Guide).

### Applying Proposition 26



# CHAPTER 3

## BENEFIT ASSESSMENTS

Benefit assessments (also called “special assessments”) are levied to pay for specifically identified public improvements or services that specially benefit the properties or businesses subject to the assessment.

A number of state laws permit the imposition of assessments for various purposes. General law cities may impose an assessment under one or more of these laws, following the procedures and limitations set forth in that law. Charter cities may also use state laws, but often choose to enact and proceed under their own assessment laws. Local assessment laws adopted by charter cities are typically drafted to incorporate one or more of the statewide laws, but may include revisions to the incorporated law streamlining procedures or permitting the financing of additional improvements or services.<sup>1</sup> Generally, such local laws must comply with California Constitution Article XVI, Section 19.



*“If it's a penny for your thoughts and you put in your two cents worth, then someone, somewhere is making a penny.”*

— STEVEN WRIGHT

## Assessments Versus Fees and Taxes

The key distinction between a benefit assessment and other types of revenue measures, such as fees and taxes, is that an assessment is based upon the special benefit that a property (or business) will derive from the improvement or service provided by the assessment.

Benefit assessments may also be distinguished from “nuisance abatement assessments,” which are legally a form of regulatory fee (see Chapter Four, section 4.04) or other “assessments,” which are in the nature of a fine or penalty (see Chapter 5, section 5.05).

## Proposition 218

Since the passage of Proposition 218 on November 5, 1996, (California Constitution Article XIII D), most special assessments are imposed on real property in five principal ways:

1. Subjects assessments to repeal or reduction by initiative unless they have been bonded, triggering the protection of the federal constitutional contract clause;

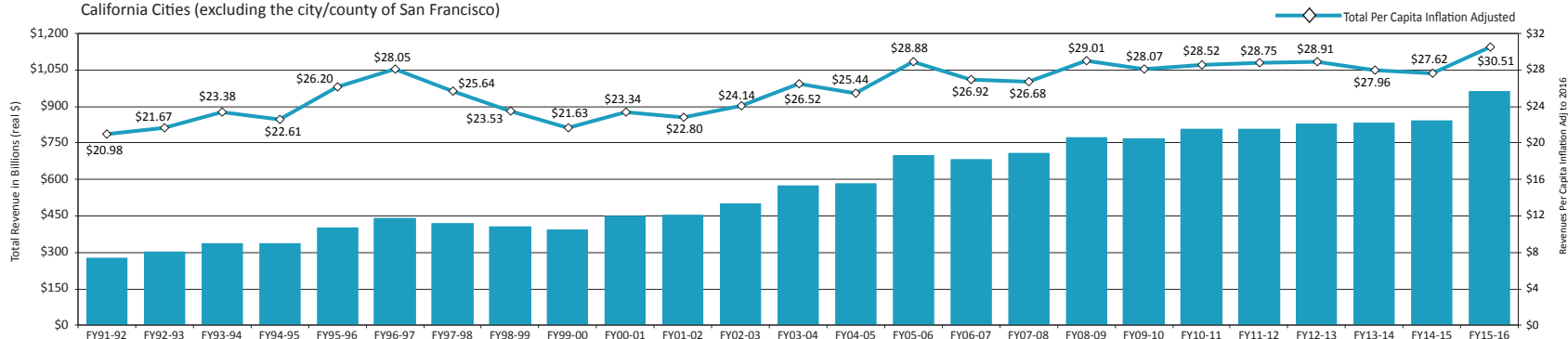
2. Establishes procedural requirements for the levy of assessments, including the requirement for majority property owner approval by a mailed ballot process;
3. Requires the local agency to separate the general benefits from the special benefits conferred on a parcel, and to only assess for the special benefit;
4. Forbids the use of assessments on private property to fund the portion of the special benefit of a project or program which accrues to public agency property and can be argued to limit the general rule of intergovernmental tax immunity to allow assessment of government property; and
5. Shifts the burden of proof in legal actions to contest the validity of an assessment to the assessing government.

## Use of Initiatives to Reduce or Repeal Assessments

Proposition 218 provides that the initiative power may be used to reduce or repeal any local tax, assessment, fee or charge.<sup>2</sup>

## Benefit Assessment Revenues

California Cities (excluding the city/county of San Francisco)



Source: CaliforniaCityFinance.com computations from data from California State Controller (revenues), California State Dept of Finance (population, CPI)

# CHAPTER 4

## FEES, CHARGES AND RATES

Fees comprise a broad category of locally imposed revenues generally intended to recover all or a portion of a government's costs for providing a service or access to public property or for mitigating the impacts of the fee payer's activities on the community. A fee may not exceed the estimated reasonable cost of providing the service or facility for which the fee is charged. Fees are sometimes called charges and are often called rates in the context of utility services. The term "fee" is used in this chapter.

The list of fees is extensive, and includes: user fees, such as for document processing or for recreation programs; enterprise service fees, such as water, sewer or refuse collection fees; regulatory fees, such as plan check fees, inspection fees, permit application fees and other fees imposed on regulated activities; and mitigation fees, such as those imposed to offset impacts resulting from new development. Fees in one category may have attributes of fees in another. Certain fees imposed for a property-related service are subject to specific procedural and substantive requirements of Proposition 218.



*A fee may not exceed the estimated reasonable cost of providing the service or facility for which the fee is charged.*

*Thanks to Betsy Strauss, Dan Hentschke and Michael Colantuono for their contributions to this chapter.*



Generally speaking there are two broad categories of fees and charges: user fees and regulatory fees. User fees are charged for the use of a public service or program such as fees charged for recreation programs or public document retrieval. User fees for property-related services are referred to as property-related fees.

Regulatory fees are charged either to pay for the cost of a government program which regulates the activities of the fee payers or, if enacted prior to November 3, 2010, to mitigate the impact of the fee payer's activities on the community. A development impact fee is a common fee which imposes a charge to defray the cost of the development on a public facility such as streets or schools.

All user fees and regulatory fees are subject to the same limitation: The amount of the fee may not exceed the "estimated reasonable cost" of providing the service, facility or program or (as in the case of regulatory fees) of mitigating the impact of the fee payer's activity. "Estimated reasonable cost" may include reasonable administrative expenses and overhead. Revenues collected in excess of the service cost may be categorized as "taxes," which require voter approval.<sup>1</sup>

Regulatory fees must be reasonable, fair and equitable in nature and proportionately representative of the costs incurred by the regulatory agency for administrative enforcement and related adjudicatory activities.

The distinction between fees and taxes is frequently blurred, especially in the media and common discussion, but generally fees are imposed in return for a benefit conferred or privilege granted, while taxes are simply intended to collect revenue (see Chapter 2 for taxes). The legal distinction is important, however, because adoption procedures and other rules vary depending on the proper classification of the revenue. Fees must also be distinguished from assessments, which are levied strictly based on "special benefit" conferred, and fines, which are collected because of a violation of a law (see Chapter Three for assessments).

Although they are often called "fees," charges for the use of public facilities such as for off-street parking, marina berth rates and facility rental are paid for the use of public property and are more similar to rent. Fees for the use of public property are considered rent and are generally set at the discretion of the public agency and are not subject to the requirement that revenues not exceed the costs of service (see Chapter 8, section 5.06).

### Proposition 26: Defining a Tax By What it is Not

Proposition 26, approved by the voters on November 2, 2010, provides further distinctions among these categories of revenues. The constitutional measure stipulates that a government-imposed charge, levy or exaction of any kind is a tax unless it falls into one of seven express exceptions.

1. *A charge imposed for a specific benefit conferred or privilege granted directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.*

**Specific Benefit Exception** examples include fees for planning permits, restricted neighborhood parking permits and entertainment and street closure permits.

2. *A charge imposed for a specific government service or product provided directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.*

**Government Service or Product Exception** examples include user fees for parks and recreation classes, utilities (other than those covered under number 7), public records copying fees, DUI emergency response fees, and emergency medical and ambulance transport service fees.

3. A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections and audits, enforcing agricultural marketing orders and the administrative enforcement and adjudication thereof.

**Permits and Inspections Exception** examples include health and safety permits, building licenses, police background checks, pet licenses, bicycle licenses and permits for regulated commercial activities (such as massage establishments, card rooms, taxicabs and tow-truck operators).

For exceptions 1 through 3, the fee imposed must not exceed the agency’s reasonable costs.

4. A charge imposed for entrance to or use of local government property or the purchase, rental or lease of local government property.

**Local Government Property Exception** examples include facility room rentals; equipment rentals; park, museum and zoo entrance fees; golf greens fees; on and off-street parking; and tolls.

5. A fine; penalty or other monetary charge imposed by the judicial branch of government or a local government as a result of a violation of law, including late payment fees, fees imposed under administrative citation ordinances, parking violations, etc.

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**Property Development Exception** examples include planning fees, building permit fees, construction and grading permits, development impact fees, fees imposed by California Environmental Quality Act mitigation requirements, and Quimby Act and park mitigation fees.

7. Assessments and property-related fees imposed in accordance with the provisions of Article XIII D (Proposition 218).

**Proposition 218 Exception** examples include assessments on real property for special benefit conferred, fees imposed upon a parcel or a person as an incident of property ownership and fees for a property-related service such as many retail water and sewer fees.

Fees enacted prior to November 3, 2010 are unaffected by Proposition 26 until they are extended or increased. That is, even if a fee enacted prior to November 3, 2010 does not fit within any of the tax exceptions under Proposition 26, it may nonetheless be valid provided that the legislation authorizing it is not amended so as to extend or increase the fee.

Laws governing fees vary based on the particular type of fee imposed. It is extremely important to discuss any new fee, or increase or adjustment of any existing fee, with the city attorney or agency counsel. In this manual, the categories of revenues are organized as follows:

Revenue Category			Reference
Fees and Rates	User Fees	Utility Rates	Section 4.01
		Service and Program Fees	Section 4.01
		Property-Related Fees	Section 4.02
	Regulatory Fees	Development Impact Fees	Section 4.03
		Regulatory Program Fees	Section 4.04
Rents	Franchises	Chapter 5, Section 5.01-5.03	
	Facility Use Fees	Chapter 5, Section 5.06	
Fines, Penalties			Chapter 5, Section 5.05
Assessments			Chapter 3
Taxes			Chapter 2

**For More Information:**

The California Municipal Law Handbook, League of California Cities.

Propositions 26 and 218 Implementation Guide. League of California Cities. May 2017. <http://www.calcities.org/Prop218andProp26>

## Admissions Tax

A tax is imposed on the consumer for the privilege of attending a show, performance, display or exhibition. See Section 2.08.

## Advance Refunding

When restructuring or retiring outstanding bonds, the refunding is an “advance refunding” if the outstanding bonds will not be paid off until later than 90 days after sufficient funds have been deposited with a trustee. Generally, federal law limits advance refundings to one occurrence. See also “current refunding.”

## Ad Valorem Tax

A tax assessed based on the dollar value of an item or activity. Typical examples are property and sales taxes. Ad valorem taxes contrast with per-unit taxes, such as alcoholic beverage and cigarette taxes, which are assessed at a fixed dollar per unit purchased.

## Appropriation

A legal authorization granted by the city council to expend moneys, and incur obligations for specific purposes.

## Appropriations Limit

A maximum amount of revenues that may be appropriated by a government agency determined under California Constitution Article XIII B and implementing legislation. See Chapter 10.

## Appropriations Subject to Limit

Revenues defined as “proceeds of taxes” under California Constitution Article XIII B and implementing legislation. See Chapter 10.

## Arbitrage

A technique used to take advantage of price differences in separate markets. This is accomplished by either by selling debt instruments at a low interest rate and investing the proceeds at a higher rate or by purchasing securities, negotiable instruments or currencies in one market for immediate sale in another market at a better price.

## Assessed Valuation

The value of real property for the purpose of taxation. See Section 2.01.

## Assessment District

Not a separate governmental entity, but rather a defined area of land which will be benefited by the acquisition, construction or maintenance of a public improvement.

## Banker’s Acceptance

A highly liquid and safe money market instrument created to facilitate international trade transactions whereby the risk of trade transaction is transferred to the bank which “accepts” the obligation to pay the investor. Local agencies in California may invest up to forty percent of their portfolio in this type of security for a term of 180 days or less.

## BANs

See bond anticipation notes.

## Benefit Assessment

Charges levied on parcels to pay for public improvements or services provided within a pre-determined district or area according to the benefit the parcel receives from the improvement or services.

## Benefit Assessment Act of 1982

The 1982 Act allows cities, counties and special districts to finance a variety of improvements. The act requires majority voter approval if the proposed assessment area has 12 or more registered voters. If fewer than 12, the owners of at least 60 percent of the land in the assessment area must give written consent to the assessment.

## Benefit Assessment Bonds

Bonds levied by cities, counties and special districts to acquire or construct public improvements which convey a special benefit to a defined group of properties.

## Block Grant

Federal grant allocated according to predetermined formulas and for use within a pre-approved broad functional area such as the CDBG (Community Development Block Grant).

## Bond Anticipation Notes (BANs)

BANs are short-term borrowings by a public entity appropriate to obtain financing for a project for which bonds are authorized but not yet issued. BANs permit the issuance of debt in increments as work on a project progresses and before some or all of the bond proceeds are available.

## Bond Resolution

A legal order or contract by a governmental unit to authorize a bond issue. A bond resolution carefully details the rights of the bondholders and the obligations of the issuer.

## Bonds

A certificate of debt issued by an entity, guaranteeing payment of the original investment, plus interest, by a specified future date.

## Broughton Act

Restricts city collection of franchise payments to 2 percent of the franchise’s gross annual receipts arising from use of the franchise.

## Business Improvement District

A public-private partnership in which businesses in a defined area pay special taxes, fees and/or assessments to fund public facility improvements and programs in the area. See Section 3.02.

## Business Operations Tax

Commonly called a “Business License Tax,” a type of excise tax imposed on businesses for the privilege of conducting business within the city. The tax is most commonly based on gross receipts or levied at a flat rate.

## California State Board of Equalization (BOE)

California state agency responsible for the collection and administration of the state’s alcohol and insurance taxes. In addition, the BOE assesses the value of railroad and utility properties for the purpose of property taxation and provides oversight of property tax assessment practices. In 2017, many BOE tax administration responsibilities were transferred to a new Department of Tax and Fee Administration and to an independent Office of Tax Appeals.

## California Department of Tax and Fee Administration (CDTFA)

California state agency within the Governor’s Administration, created by the Taxpayer Transparency and Fairness Act of 2017, responsible for the collection, administration and distribution of sales, transactions and use, timber yield, tobacco, cannabis, motor vehicle fuel, jet fuel, prepaid mobile telephony and other taxes, as well as various state environmental and occupational health fees and surcharges.

## California State Controller

The Controller is the chief fiscal officer of the state and is elected every four years. The Controller is responsible to: account and disburse all state funds; determine the legality and accuracy of claims against the state; pay the state's bills; audit and process all personnel and state payroll transactions; audit various state and local government programs; administer the Unclaimed Property Law; and inform the public of financial transactions of city, county and district governments.

## Capital Improvement Program (CIP)

Annual appropriations in the city's budget for capital improvement projects such as street or park improvements, building construction and various kinds of major facility maintenance.

## Capital Outlay

Expenditures which result in the acquisition of, or addition to, fixed assets.

## Categorical Grant

Grant typically allocated either to qualifying applicants according to a formula or to applicants competing for project grants through an application process. Categorical grants are the most common form of federal aid.

## Certificates of Participation (C.O.P.)

Debt instrument, commonly called C.O.P., that provides long-term financing through a lease (with an option to purchase) or through an installment agreement.

## Charter City

Charter cities have authority over "municipal affairs," trumping state law governing the same topic. In contrast, a general law city is a city that has not adopted a charter and is therefore bound by the state's general laws, even with respect to municipal affairs.

## Citizens Option for Public Safety (COPS)

A state subvention for local law enforcement initiated in 1996. See Section 6.03.

## Community Facilities District (CFD)

See Mello-Roos Community Facilities District.

## Community Rehabilitation District Law of 1985

Allows cities and counties to fund the renovation and repair (but not maintenance) of an existing structure.

## Concessions

Revenues received from concessionaires for privilege of operating a concession on city property.

## Construction/Development Tax

Excise tax imposed on the privilege or activity of development and/or the availability or use of municipal services. See section 2.10.

## Consumer Price Index (CPI)

A statistical description of price levels provided by the U.S. Department of Labor. The change in this index from year to year is used to measure the cost of living and economic inflation.

## COPS

See Citizens Option for Public Safety.

## C.O.P.

See certificates of participation.

## County Assessor

An elected official whose main duty is to set values on real property for the purpose of taxation within the county. The Assessor is responsible for the creation and maintenance of assessor parcels from final subdivisions, parcel maps, lot line adjustments, record of survey, deeds and miscellaneous documents.

## County Auditor-Controller

The chief accounting officer of the county established to provide various accounting and property tax administration services to the county and other local governments within the county. The Auditor Controller is responsible for budget control, disbursements and receipts, financial reporting and for audits of certain agencies within the county. Auditor-Controllers are nonpartisan elected officials serving four year terms, except in four counties with appointed officers: San Francisco, Santa Clara, Los Angeles and San Diego.

## County Treasurer-Tax Collector

Administers the billing, collection and reporting of property tax revenues and conducts Tax Defaulted Property Sales for real property tax delinquencies remaining after five years. Treasurer-Tax Collectors are nonpartisan elected officials serving four-year terms except in three counties with appointed officers: Los Angeles, Sacramento and Santa Clara.

## Countywide/Statewide Pools

A system used to allocate local sales and use tax payments that cannot be identified with a specific place of sale or use in California. Local tax reported to the pools is distributed to the local jurisdictions in proportion to taxable sales.

## Current Refunding

When restructuring or retiring outstanding bonds, if bonds are paid off within 90 days of depositing either cash on hand or refunding bond proceeds, the refunding is a "current refunding." See also "advance refunding."

## Debt Financing

Issuance of bonds and other debt instruments to finance municipal improvements and services.

## Debt Instrument

Written pledge to repay debt such as bills, notes and bonds.

## Debt Service

Payment of principal and interest on long-term indebtedness.

## Dedication

The donation "dedication" of certain lands (or money) to specific public uses as a requirement for the approval of a development project. The dedications are typically justified as an offset to the future impact the development will have on existing infrastructure. Also called an "exaction." See section 4.03.

## Development Impact Fees

Fees placed on the development of land or conditions required for the approval of a development project such as the donation "dedication" or "exaction" of certain lands (or money) to specific public uses. The fees are typically justified as an offset to the future impact that development will have on existing infrastructure. See Section 4.03.

## D.I.V.C.A.

"The Digital Infrastructure and Video Competition Act of 2006" [AB 2987 (Nunez/Levine)] effectively replaced locally issued franchise agreements for video service with a system of state-issued franchises subject to certain limited, locally imposed conditions and requiring franchise fees to be paid to local agencies where services are provided. See Section 5.01.



## Documentary Transfer Tax

Tax imposed on documents recorded in the transfer of ownership in real estate as distinguished from a Real Property Transfer Tax which may only be imposed by charter cities. See section 2.07.

## Encumbrance

An anticipated expenditure committed for the payment of goods and services not yet received or paid for.

## Earmarked funds

Funds that have been tagged or “earmarked” for a specific purpose.

## ERAF: Educational Revenue Augmentation Fund

Accounts established by the state Legislature to receive shifts of property tax revenues from cities, counties, special districts and redevelopment agencies. The additional ERAF property tax revenues to schools enable the state to reduce support from the state general fund, thereby saving the state billions of dollars annually.

## Exactions

See dedications.

## Excise Tax

Tax placed on a person for a voluntary act, making the tax avoidable. Includes sales and use tax, business operations tax, transient occupancy tax, utility users tax, etc. Phrase “excise tax” is most commonly used to refer to a parcel tax.

## Exemption

The exclusion from the tax base of certain types of transactions or objects. For example, federally-owned land is exempted from property tax.

## Expenditure

The actual payment for goods and services.

## Fee

A charge to the consumer for the cost of providing a particular service. California government fees may not exceed the estimated reasonable cost of providing the particular service or facility for which the fee is charged, plus overhead.

## Forfeiture

See fines, forfeitures and penalties.

## Fines, Forfeitures and Penalties

Revenues received and/or bail monies forfeited upon conviction of a misdemeanor or municipal infraction.

## Fiscal Year

The period designated by the city for the beginning and ending of financial transactions. Nearly all city fiscal years begin on July 1 and end June 30 of the following year.

## Franchise Act of 1937

Like the Broughton Act, restricts franchise collections to 2 percent of gross annual receipts, but includes a minimum fee of one-half percent of gross annual receipts for electric franchises or 1 percent of gross annual receipts for gas or water franchises operating within the city limits.

## Franchises

Fee paid to a municipality from a franchisee for “rental” or “toll” for the use of city streets and rights-of-way.

## Functional Revenue

Revenues that can be associated with and allocated to one or more expenditure functions and which meet one of the following criteria: 1) the revenue is generated from direct services, such as revenues from fees or charges; 2) the revenue is associated with a specific service by external requirements, such as grant conditions, bond sale agreements or statutory or charter requirements.

## Fund

Accounting entity with a set of self-balancing revenue and expenditure accounts used to record the financial affairs of a governmental organization.

## Fund Balance

Difference between the assets (revenues and other resources) and liabilities (expenditures incurred or committed to) of a particular fund.

## Full Faith and Credit

Pledge by issuer of general obligation bonds to bondholders that issuer guarantees “all available funds” be used to pay bondholders should the project go into default.

## Full Service City

A city that is financially responsible for the major categories of municipal services including police, fire, planning and parks services.

## GANs

See grant anticipation notes.

## Gann Initiative

See Appropriations Limit and Chapter 10.

## Gann Limit

See Chapter 10.

## Gasoline Tax

See Motor Vehicle Fuel Tax.

## General Fund

Fund used to account for all financial resources except those required to be accounted for in another fund (e.g., enterprise or grant funds). Usually, the General Fund is the largest fund in a municipality.

## General Law City

A city that has not adopted a charter and is therefore bound by the state’s general laws, even with respect to municipal affairs. In contrast, charter cities have authority over “municipal affairs,” trumping state law governing the same topic. See also “charter city.”

## General Obligation (GO) Bonds

Bonds issued through a governmental entity which has the legal authority to levy a tax on real and personal property located within the governmental boundaries at any rate necessary to collect enough money each year to pay for principal and interest due.

## General Revenue

Those revenues that cannot be associated with a specific expenditure, such as property tax (other than voter approved indebtedness), sales tax and business operations tax.

## General Revenue Sharing Program

Federal program established in 1972 to share federal monies with state and local governments. The program was extended in 1976 and again in 1980, but was ended in 1986.

## General Tax

A tax imposed for general governmental purposes, the proceeds of which are deposited into the general fund. A majority vote of the electorate is required to impose, extend or increase any general tax. See also “special tax.”

# GLOSSARY

## **G.O. Bonds**

See general obligation bonds.

## **Grant Anticipation Notes (GANs)**

GANs are short-term borrowings of a public entity to eliminate cash flow deficits in anticipation of the receipt of a federal or state grant or loan. By issuing GANs, the public entity is better prepared to pay all project costs, particularly up front processing and managerial costs.

## **Grants**

Contributions of cash or other assets from another governmental agency to be used or expended for a specified purpose, activity or facility.

## **Highway Users Tax Account (HUTA)**

State transportation revenues from motor vehicle fuel taxes allocated to state and local governments by formula. See Section 6.02 of Chapter 6.

## **Homeowner's Property Tax Relief Reimbursement**

Revenue from the state to offset city loss of property tax for state-imposed \$7,000 per dwelling homeowner exemption.

## **Improvement Bond Act of 1915**

Act which allows cities, counties, and "public" districts to issue assessment bonds and bond anticipation notes. The 1915 Act does not authorize assessments.

## **Investment Earnings**

Revenue earned from the investment of idle public funds.

## **Joint Powers Authority**

The Joint Exercise of Powers Act authorizes local public agencies to exercise common powers and to form joint powers authorities (JPAs) for the purpose of jointly receiving or providing specific services.

## **JPA**

See joint powers authority.

## **Landscaping and Lighting Act of 1972**

The 1972 Act allows cities, counties and special districts to levy assessments for land purchase and the construction, operation, and maintenance of parks, landscaping, lighting, traffic signals and graffiti abatement.

## **Lease Revenue Bonds**

Bonds similar to certificates of participation and used for the same types of projects with main exceptions that: 1) lessor must be either a governmental entity with the power to issue revenue bonds or a nonprofit corporation that issues bonds on behalf of a political subdivision; and 2) the bonds constitute a direct debt of the lessor.

## **Levy**

(Verb) To impose taxes, special assessments or service charges for the support of governmental activities; (noun) the total amount of taxes, and/or special assessments and/or service charges imposed by a governmental agency.

## **Library Services Special Tax**

Special tax for providing public library facilities and services.

## **Licenses and Permits**

Charge designed to reimburse city for costs of regulating activities being licensed, such as licensing of animals, bicycles, etc.

## **Lien**

A claim on assets, especially property, for the payment of taxes or utility service charges.

## **Limited Obligation Bonds**

Similar to general obligation bonds except that security for the issuance is limited exactly to the revenues pledged in the bond statement and not to the full faith and credit of the city.

## **Liquidity**

The ability to convert a security into cash promptly with minimum risk of principal.

## **Local Agency Investment Fund (LAIF)**

A special fund in the state treasury. Local governments may deposit in this fund through the state treasurer for investment purposes. See Section 5.07.

## **Maintenance of Effort (MOE)**

A requirement, often as a condition of an intergovernmental subvention or supplemental tax, to maintain a level of spending at a certain level. Maintenance of Effort requirements are intended to prevent or limit the use of the additional revenues to supplant existing revenues such that the new revenues result in an increase in the level of program spending and services.

## **Marks-Roos Bonds**

Bonds authorized by the Marks-Roos Local Bond Pooling Act of 1985 which provides local agencies with extremely flexible financing powers through participation in joint powers authorities.

## **Market-Based Pricing**

Recent trend in pricing public services which uses the marketplace to regulate individual consumer behaviors consistent with overall societal goals by including the true cost of the service on society.

## **Mello-Roos Bonds**

Bonds allowing cities, counties, school districts and special districts to finance certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation. Property owners in the Mello-Roos district pay an annual special tax which is included on the property tax bill.

## **Mello-Roos Community Facilities Tax**

Special non ad valorem tax imposed to finance public capital facilities and services in connection with new development. See Section 2.11.

## **Mello-Roos Community Facilities District**

A distinct entity of government for the purpose of imposing and collecting the Mello-Roos Community Facilities Tax. The governing body and the boundaries of the district may be the same as for the city. See Chapter 2, Section 2.11.

## **Motor Vehicle Fuel Tax**

An excise tax, applied per gallon, on fuel used to propel a motor vehicle or aircraft. Use of tax is limited to research, planning, construction, improvement, maintenance and operation of public streets and highways or public mass transit guideways. Also called Highway Users Tax.

## **Motor Vehicle License Fee (VLF)**

VLF is a fee for the privilege of operating a vehicle on public streets. VLF is levied annually at 2 percent of the market value of motor vehicles and is imposed by the state "in lieu" of local property taxes. VLF is also called Motor Vehicle in-Lieu Tax.

## **Municipal Improvement Act of 1913**

The 1913 Act allowing cities, counties and special districts to fund everything included in the 1911 Act plus power and public transit facilities; assessments can be levied before construction begins.

**Off-Highway Motor Vehicle License Fee**

Fee imposed for the issuance or renewal of identification for every off-highway motor vehicle.

**Nexus**

In general, a minimum threshold of connection necessary within a taxing jurisdiction to allow taxing authority over out-of-state individuals or businesses. Requirement of Government Code Sections 66000 et seq. that there be a reasonable connection “nexus” between required development impact fees and the development project in question.

**Ordinance**

A formal legislative enactment by the governing board of a municipality. If it is not in conflict with any higher form of law, it has the full force and effect of law within the boundaries of the municipality to which it applies.

**Parcel Tax**

Special non ad valorem tax on parcels of property generally based on either a flat per-parcel rate or a variable rate depending on the size, use and/or number of units on the parcel.

**Parking Tax**

General tax imposed on occupant of off-street parking space for the privilege of renting the space within the city. See Section 2.09.

**“Pay As You Use”**

Concept that debt financing enables the public entity to spread the cost of a capital project over time, as the project is being utilized.

**“Pay As You Go”**

Concept of paying for capital projects when the initial cost is incurred, rather than over time through the use of debt financing.

**Penalties**

See fines, forfeitures and penalties.

**Police and Fire Special Tax**

Special tax on parcels of property in support of police and/or fire protection services.

**Portfolio**

The collection of securities held by an individual or institution.

**Possessory Interest**

Taxable private ownership of interests in tax-exempt public property.

**Property-Related Fee**

A levy imposed on a parcel or upon a person as an incident of property ownership for property-related service.

**Property Tax**

An ad valorem tax imposed on real property (land and permanently attached improvements) and tangible personal property (movable property).

**Property Tax In Lieu of VLF**

Property tax shares and revenues allocated to cities and counties beginning in FY 2004–05 as compensation for Vehicle License Fee (VLF) revenues, previously allocated to cities and counties by the State. Referred to in statute as “Vehicle License Fee Adjustment Amounts.” See Section 2.01.

**Property Tax Increment**

See Tax Increment Financing.

**Proposition 1A (2004)**

Voter-approved state constitutional amendment protecting most major city, county and special district revenues from reduction or shifting by the state Legislature. See Chapter 1.

**Proposition 1A (2006)**

Voter-approved state constitutional amendment protecting the local allocation of state transportation sales tax revenues under Proposition 42 from reduction or shifting by the state Legislature. See Section 6.03.

**Proposition 4 (1979)**

Also called the Gann Initiative, this initiative, now Article XIII B of the state Constitution, was drafted to be a companion measure to Proposition 13, California Constitution Article XIII A. Article XIII B limits growth in government spending to changes in population and inflation. See Chapter 10.

**Proposition 8 (1978)**

An amendment to Proposition 13, passed in November 1978 to allow Assessors to recognize declines in value for property tax purposes. Revenue & Taxation Code §51 requires the Assessor to annually enroll either a property’s Proposition 13 base year value factored for inflation, or its market value as of January 1, whichever is less. See Section 2.01.

**Proposition 13 (1978)**

Article XIII A of the California Constitution, commonly known as Proposition 13, which limits the maximum annual increase of any ad valorem tax on real property to 1 percent of the full cash value of such property.

**Proposition 26 (2010)**

A voter-approved amendment to articles VIII A and XIII C of the California Constitution defining the term “tax” to mean all government imposed charges, levies or exactions except for seven specified exceptions. Any locally imposed charge that falls outside of the exceptions is a tax and requires voter approval.

**Proposition 30 (2011)**

Voters approved temporary increases in the state personal income tax and sales tax. Proposition 30 also provides certain guarantees of funding to counties for programs realigned from the state.

**Proposition 42 (2002)**

Voter-approved measure that directs the Legislature to allocate revenues derived from the taxable sales of gasoline to certain transportation programs including to cities and counties. See Section 6.03.

**Proposition 62 (1986)**

A 1986 proposition which, among other things, implemented a majority vote requirement for general taxes. This portion of Proposition 62 was later ruled unconstitutional.

**Proposition 98 (1990)**

This measure establishes a minimum level of funding for public schools and community colleges and provides that any state revenues in excess of the appropriations limit be spent on schools.

**Proposition 111 (1994)**

Voter-approved measure that increased the state Motor Vehicle Fuel Tax by 9 cents per gallon and made certain adjustments to the spending limits under Proposition 4 (1979). See Section 6.02 regarding the Motor Vehicle Fuel Tax and Chapter 10 regarding Proposition 4 spending limits.

**Proposition 172 (1993)**

A 1993 measure which places a one-half cent sales tax for local public safety in the constitution, effective January 1, 1994. The tax is imposed by the state and distributed to cities and counties.

## Proposition 218 (1996)

A voter-approved state Constitutional amendment, self-titled “Right to Vote on Taxes Act” expanded restrictions on local government revenue-raising, allowing the voters to repeal or reduce taxes, assessments, fees and charges through the initiative process; reiterating the requirement for voter approval for both “special taxes” and “general taxes,” and imposing procedural and substantive limitations on assessments of real property and on certain types of fees.

## Principal

“Face” or “par value” of an instrument. It does not include accrued interest.

## Rating

The designation used by investors’ services to rate the quality of a security’s creditworthiness.

## Real Property

Land and permanently attached improvements.

## Real Property Transfer Tax

Tax imposed on the transfer of ownership in real estate. Typically imposed instead of a Documentary Transfer Tax. Only Charter cities may impose a Real Property Transfer Tax. See Chapter 2, Section 2.07.

## Reimbursement for State Mandated Costs

Article XIII B, Section 6 of the California Constitution which requires the state to reimburse local agencies for the cost of state-imposed programs. Process is commonly called “SB 90” after its original 1972 legislation.

## Regulatory Fee

A charge imposed on a regulated action to pay for the cost of public programs or facilities necessary to regulate a business or other activity or mitigate the impacts of the fee payer on the community. A regulatory fee does not include a charge on a property or a property owner solely due to property ownership.

## Rents

Revenues received through the rental of public properties to private parties such as convention space and library facilities.

## Resolution

A special or temporary order of a legislative body requiring less formality than an ordinance.

## Revenue

Annual income received by the city.

## Revenue Bonds

Bonds issued to acquire, construct or expand public projects for which fees or admissions are charged. Bonds are repaid solely from the income generated by use of that project.

## Road Maintenance and Rehabilitation Account (RMRA)

Certain state tax revenues for local streets and roads and other transportation uses are allocated through RMRA from the Road Repair and Accountability Act of 2017 (SB1 Beall). See Section 6.02 of Chapter 6.

## Rough Proportionality Test

Specific determination by the city for a specific development project that the dedication to be required is related both in nature and extent to the development’s impact (*Dolan v. City of Tigard* (1994) 94 D.A.R. 8803).

## Royalties

Revenues received from private companies for privilege of extracting natural resources from city property. Also revenues from bets placed at horse racing tracks that are located within the city, currently set by statute at one third of 1 percent.

## Sales Tax

A tax imposed on the total retail price of any tangible personal property. See also “use tax.” See section 2.02.

## SB 90

Reimbursement process for state mandated costs, named after its original 1972 legislation.

## SB 1977

1992 bill (Government Code, Section 54945.6 as amended) requiring local officials to mail notice of new and increased benefit assessments and to hold public hearings prior to imposing benefit assessments.

## Secured Property

As the property tax is guaranteed by placing a lien on the real property, secured property is that real property in which the value of the lien on the real property and personal property located thereon is sufficient to assure payment of the tax.

## Secured Roll

That property tax list containing all assessed property secured by land subject to local taxation.

## Securities

Investment instruments such as bonds, stocks and other instruments of indebtedness or equity.

## Service Charges

Charges imposed to support services to individuals or to cover the cost of providing such services. The fees charged are limited to the cost of providing the service or regulation required (plus overhead).

## Short-Term Financing Methods

Techniques used for many purposes, such as meeting anticipated cash flow deficits, interim financing of a project and project implementation. Using these techniques involves issuance of short-term notes. Voter approval is not required.

## Special Tax

A tax that is collected and earmarked for a special purpose and deposited into a separate account. A two-thirds vote of the electorate is required to impose, extend or increase any special tax. See also “general tax.”

## Standby Charge

A compulsory charge levied upon real property to defray in whole or in part the expense of providing, operating or maintaining public improvements. The charge is “exacted for the benefit which accrues to property by virtue of having water [or other public improvement] available to it, even though the water might not be used at the present time.” Proposition 218 classifies standby charges as “assessments” which must be imposed in compliance with Section 4.25 of California Constitution Article XIII D.

## Street Lighting Act of 1919

Act authorizing cities to fund the maintenance and operation of street lighting.

## Subvention

Subsidy or financial support received from county, state or federal government. The state and county currently levy certain taxes that are “subvened” to cities, including motor vehicle license fees, state mandated costs and motor vehicle fuel tax.

**Supplemental Law Enforcement Services Fund**

County level fund to contain monies from the Citizens Option for Public Safety state subvention for local law enforcement initiated in 1996. See Section 6.04.

**Supplemental Property Tax**

In the event a property changes ownership, the county collects a supplemental property tax assessment in the current tax year by determining a supplemental value. In future tax periods, the property carries the full cash value.

**Tangible Personal Property**

Movable property.

**Tax**

Compulsory charge levied by a government for the purpose of financing services performed for the common benefit.

**Tax Allocation Bonds**

Bonds issued by redevelopment agencies to revitalize blighted and economically depressed areas of the community and to promote economic growth.

**Tax Base**

The objects or transactions to which a tax is applied (e.g., parcels of property, retail sales, etc.). State law or local ordinances define the tax base and the objects or transactions exempted from taxation.

**Tax Equity Allocation (TEA)**

Supplemental property tax allocations shifted to certain "no and low property tax cities" from counties. TEA is also used in reference to other supplemental allocations of Vehicle License Fee (VLF) revenues provided to certain no and low property tax cities. These VLF-TEA allocations now flow to those cities as a part of Property Tax in lieu of VLF payments.

**Tax and Revenue Anticipation Notes (TRANS)**

TRANS are short-term borrowings by a public entity to meet cash flow needs in the general fund and other unrestricted funds of a public entity. TRANS are issued before expected receipt of taxes and other revenues during the same fiscal year.

**Tax Increment Financing**

A tax incentive designed to attract business investment by dedicating to the project area the new property tax revenues generated by redevelopment. The increase in revenues (increment) is used to finance development-related costs in that district.

**Tax Rate**

The amount of tax applied to the tax base. The rate may be flat, incremental or a percentage of the tax base, or any other reasonable method.

**Teeter Plan**

Enacted in 1949, an alternative method for allocating delinquent property tax revenues, authorized by Revenue and Taxation Code section 4701, in which the county Auditor allocates property tax revenues based on the total amount of property taxes billed, but not yet collected. The county government then collects and keeps the delinquency, penalty and interest payments.

**Traffic Congestion Relief Program (TCRP)**

Revenues from state sales taxes on vehicle fuels dedicated to transportation purposes by Proposition 42 (2002) and allocated to state and local governments. See Section 6.02 of Chapter 6.

**Traffic Safety Fund**

All fines and forfeitures received as a result of arrests by city officers for Vehicle Code violations must be deposited in a special city "Traffic Safety Fund" to be used for traffic control devices; maintenance of equipment and supplies for traffic law enforcement and traffic accident prevention; the maintenance, improvement or construction of public streets, bridges or culverts; and the compensation of school crossing guards who are not regular full-time members of the police department.

**TRANS**

See tax and revenue anticipation notes.

**Transactions and Use Tax**

Also, known as an "add-on local sales tax," a tax imposed on the total retail price of any tangible personal property and the use or storage of such property when sales tax is not paid. See Section 2.03.

**Transient Occupancy Tax**

Tax levied by cities on persons staying 30 days or less in a room(s) in a hotel, inn, motel, tourist home, non-

membership campground or other lodging facility. Also called Transient Lodging Tax or Hotel Tax. See Section 2.06.

**Transportation Improvement Fee**

State tax on motor vehicle registrations adopted under the Road Repair and Accountability Act of 2017 (SB1 Beall). See Section 6.02 of Chapter 6.

**Triple Flip**

A mechanism used to repay state fiscal recovery bonds pursuant to Proposition 57 of 2004. Under the Triple Flip, the local sales and use tax rate was reduced from 1.00 percent to 0.75 percent with the 0.25 percent diverted to repay state fiscal recovery bonds. Cities and counties were reimbursed for the lost revenue from a shift of property tax revenue.

**Tideland Revenue**

Revenues granted by the state for use of city tideland in production of oil, gas and other hydrocarbons.

**Transportation Tax**

Special tax imposed by counties for county transportation needs. Typically collected with the sales and use tax, some cities receive a portion of the transportation tax usually in .25 percent tax rate increments.

**Unsecured Property**

As the property tax is guaranteed by placing a lien on the real property, unsecured property is that real property in which the value of the lien is not sufficient to assure payment of the property tax.

**Use Tax**

A tax imposed on the use or storage of tangible personal property when sales tax is not paid. See also "sales tax." See Section 2.02.

**User Fee**

Fees charged for the use of a public service or program such as for recreation programs or public document retrieval. User fees for property-related services are referred to as property-related fees. See Chapter 4.

**Utility Connection Fee**

Utility connection fees or capacity fees are imposed on the basis of a voluntary decision to connect to a utility system or to acquire the right to use additional capacity. See Chapter 4.

# GLOSSARY

## **Utility Rate**

A category of user fee paid by the user of utility services. See Chapter 4.

## **Utility Users Tax**

Tax imposed on the consumer (residential and/or commercial) of any combination of electric, gas, cable television, water and telephone services. See Section 2.05.

## **Vehicle Parking District Law of 1943**

The 1943 Act allows cities and counties to purchase land for parking structures, construct and maintain parking lots and pay for related planning.

## **VLF**

See Motor Vehicle License Fee.

## **VLF — Property Tax Swap**

The trade of most city and county Vehicle License Fee revenue for additional property tax share and revenue. See Section 2.01 and Section 6.01.

## **Vehicle Registration Fees**

See Vehicle Registration Taxes, Chapter 2, Section 2.13.

## **Vehicle Registration Taxes**

A special tax on vehicle registration imposed countywide for specific purposes authorized in state law. See Chapter 2, Section 2.13.

## **Voter Approved Property Tax for Indebtedness**

Includes ad valorem property taxes levied in addition to the 1 percent rate for voter approved debt, approved prior to July 1, 1978 or after July 1, 1986.

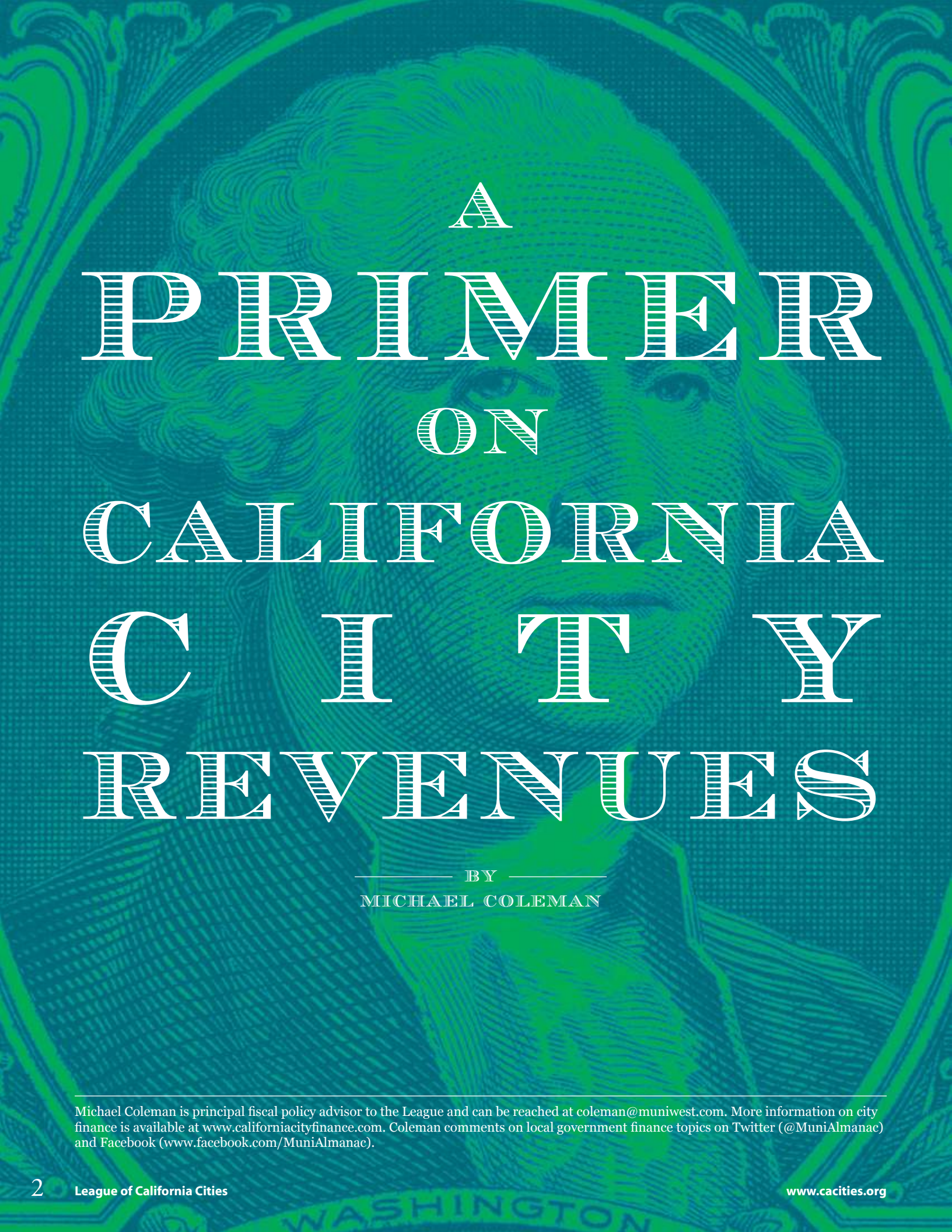
## **Williamson Act and Open Space Subvention**

State subvention to foster preservation of open-space by lowering cost of property tax.

## **Yield**

The total amount of revenue a government expects to receive from a tax, determined by multiplying the tax rate by the tax base. Also, the annual rate of return on an investment, expressed as a percentage of the investment.-





A  
PRIMER  
ON  
CALIFORNIA  
CITY  
REVENUES

BY  
MICHAEL COLEMAN

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# REVENUE BASICS

You don't have to scratch any local government issue very deeply to find the question of money: What's this going to cost? What are we going to get for that price? Is this project worth it?

How does your city pay its bills? What does the future hold for city service costs and funding? Though every city is different — each with its own needs, local economy, expectations, protocols, responsibilities and finances — some essential elements of city revenues and spending are common to cities throughout California.

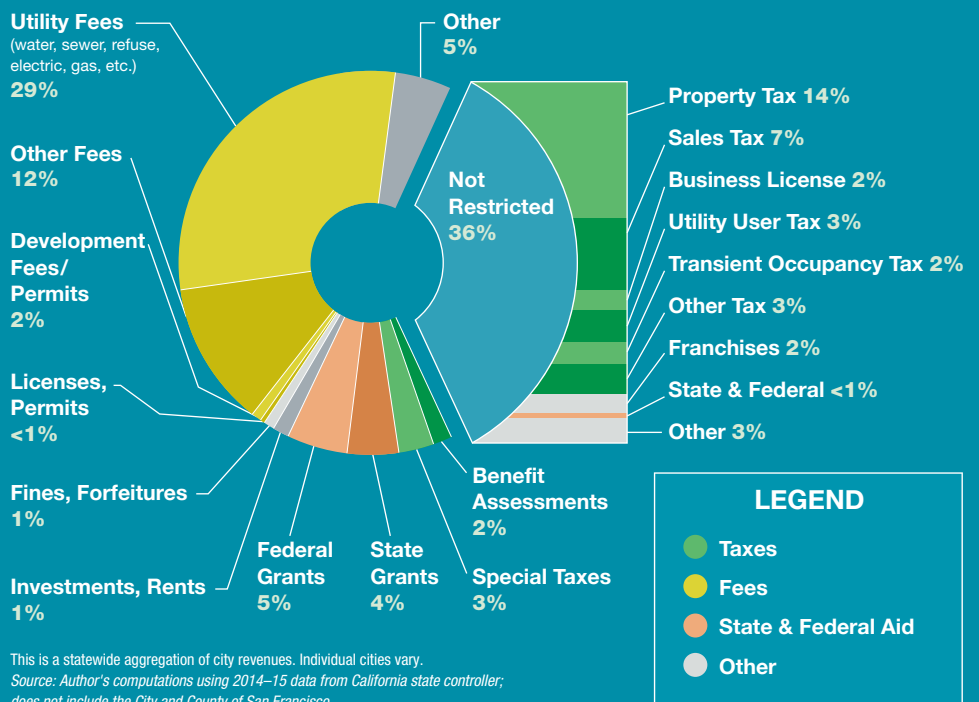
## AN OVERVIEW OF CITY REVENUE SOURCES

Revenue, the bread and butter of city budgets, comes from a variety of sources. Some revenue is restricted by law to certain uses; some revenue is payment from customers for a specific service. Other revenue requires voter approval for rate increases. Still other revenue comes from state and federal agencies, almost all of it with strings attached.

The California Constitution and state law provide some specific distinctions among municipal revenue sources.

*continued*

## CALIFORNIA CITY REVENUES





## TAXES

A tax is a charge for public services and facilities. There need not be a direct relationship between the services and facilities used by an individual taxpayer and the tax paid. Cities may impose any tax not otherwise prohibited by state law (Gov't. Code Section 37100.5). The state prohibits local governments from taxing certain items, including cigarettes, alcohol and personal income; the state taxes these for its own purposes.

The California Constitution distinguishes between a general tax and a special tax. General tax revenues may be used for any purpose. A majority of voters must approve a new general tax, its increase or extension in the same election in which city council members are elected. Special tax revenues must be used for a specific purpose, and two-thirds of voters must approve a new special tax, its increase or extension.

## Overview of General Tax and Special Tax Requirements

	GENERAL TAX	SPECIAL TAX
<b>Use of Revenues</b>	Unrestricted	Specific purpose
<b>Governing Body Approval Required</b>	<ul style="list-style-type: none"> <li>• General-law cities: two-thirds approval is required.</li> <li>• Charter cities: majority approval is required.</li> <li>• Transactions and use taxes: two-thirds approval is required.</li> </ul>	Majority
<b>Voter Approval Required</b>	Majority	Two-thirds
<b>Other Rules</b>	A general tax election must be consolidated with a regularly scheduled general election of members of the governing body, unless an emergency is declared by unanimous vote (among those present) of the governing body.	Special tax funds must be deposited in a separate account. The taxing agency must publish an annual report including the tax rate, the amounts of revenues collected and expended and the status of any project funded by the special tax.

## Local Tax and Revenue Limitations: Proposition 13 and Its Siblings

Local officials have limited choices in governing, managing their finances and raising revenues to provide services needed by their communities. Voters have placed restrictions as well as protections in the state Constitution. The Legislature has acted in various ways both to support and provide and to limit and withdraw financial powers and resources from cities, counties and special districts.

Significant limitations on local revenue-raising include:

- Property taxes may not be increased except with a two-thirds vote to fund a general obligation bond (most local school bonds can now be passed with 55 percent voter approval);
- The Legislature controls the allocation of local property tax among the county, cities, special districts and school districts within each county;
- Voter approval is required to enact, increase or extend any type of local tax;
- Assessments to pay for public facilities that benefit real property require property-owner approval;
- Fees for services and the use of local agency facilities may not exceed the reasonable cost of providing those services and facilities; and
- Fees for services such as water, sewer and trash collection are subject to property-owner majority protest.

## FEES, CHARGES AND ASSESSMENTS

A fee is a charge imposed on an individual for a service that the person chooses to receive. A fee may not exceed the estimated reasonable cost of providing the particular service or product for which the fee is charged, plus overhead. Examples of city fees include water service, sewer service connection, building permits, recreational classes and development impact fees.

Cities have the general authority to impose fees (as charges and rates) under the cities' police powers granted by the state Constitution (Article XI, Sections 7 and 9).

State law sets specific procedures for fee and rate adoption. Proposition 218 provides special rules for property-related fees used to fund property-related services.

Special benefit assessments are charges levied to pay for public improvements or services within a predetermined district or area, according to the benefit the parcel receives from the improvement or services. The state Constitution requires

continued on page 6

A FEE MAY NOT EXCEED THE ESTIMATED REASONABLE COST OF PROVIDING THE PARTICULAR SERVICE OR PRODUCT FOR WHICH THE FEE IS CHARGED, PLUS OVERHEAD.

property-owner approval to impose a benefit assessment. Other locally raised revenues include licenses and permits; franchises and rents; royalties and concessions, fines, forfeitures and penalties; and investment earnings.

### INTERGOVERNMENTAL REVENUE

Cities also receive revenue from other government agencies, principally the state and federal governments. These revenues include general or categorical support monies called subventions, as well as grants for specific projects and reimbursements for the costs of some state mandates. Intergovernmental revenues provide 10 percent of city revenues statewide.

### OTHER CITY REVENUES

Other sources of revenue to cities include rents, franchises, concessions and royalties; investment earnings; revenue from the sale of property; proceeds from debt financing; revenues from licenses and permits; and fines and penalties. Each type of revenue has legal limitations on what may be charged and collected as well as how the money may be spent.

### PUTTING MONEY IN ITS PROPER PLACE

The law restricts many types of city revenues to certain uses. As explained earlier, a special tax is levied for a specific program. Some subventions are designated by law for specific activities. Fees are charged for specific services, and

fee revenue may fund only those services and related expenses. To comply with these laws and standards, finance departments segregate revenues and expenditures into separate accounts or funds. The three most important types of city funds are special revenue funds, enterprise funds and the General Fund.

Special revenue funds are used to account for activities paid for by taxes or other designated revenue sources that have specific limitations on use according to law. For example, the state levies gasoline taxes and allocates some of these funds to cities and counties. A local government deposits gasoline tax revenue in a special fund and spends the money for streets and road-related programs, according to law.

## Local Revenue Protections

The Legislature has enacted many complicated changes in state and local revenues over the past 30 years, which at times have had significant negative fiscal impacts on city budgets. In response, local governments and their allies drafted — and voters approved — state constitutional protections limiting many of these actions. At times, these protections have resulted in the Legislature undertaking even more complex maneuvers in efforts to solve the financial problems and protect the interests of the state budget.

In response to actions of the Legislature and the deterioration of local control of fiscal matters, local governments placed on the ballot and voters approved Proposition 1A in 2004 and Prop. 22 in 2010. Together, these measures prohibit the state from:

- Enacting most local government mandates without fully funding the costs (the definition of a state mandate includes the transfer of responsibility for a program for which the state was previously fully or partially responsible);

Enterprise funds are used to account for self-supporting activities that provide services on a user-charge basis. For example, many cities provide water treatment and distribution services to their residents. Users of these services pay utility fees, which the city deposits in a water enterprise fund. Expenditures for water services are charged to this fund.

The General Fund is used to account for money that is not required legally or by sound financial management to be accounted for in another fund. Major sources of city General Fund revenue include sales and use tax, property tax and locally adopted business license tax, hotel tax and utility user taxes.

- Reducing the local portion of the sales and use tax rate or altering its method of allocation, except to comply with federal law or an interstate compact;
- Reducing the combined share of property tax revenues going to the cities, county and special districts in any county; and
- Borrowing, delaying or taking motor vehicle fuel tax allocations, gasoline sales tax allocations or public transportation account funds.

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# MAJOR CITY REVENUES

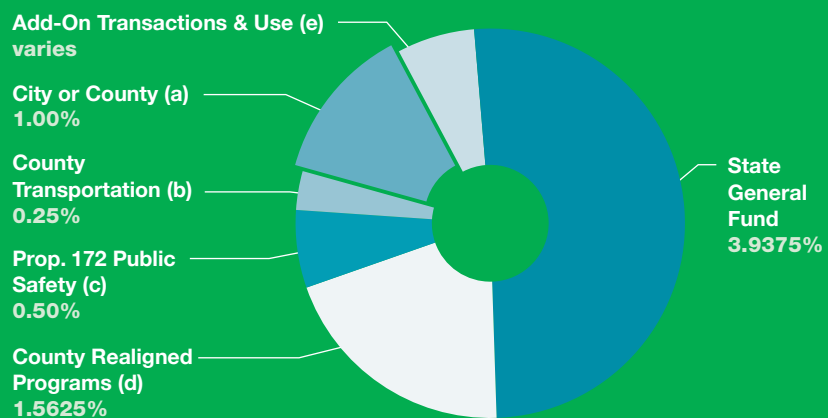
## MAJOR CITY REVENUES

**Sales and Use Tax.** The sales tax an individual pays on a purchase is collected by the state Board of Equalization and includes a state sales tax, the locally levied Bradley-Burns sales tax and several other components. The sales tax is imposed on the total retail price of any tangible personal property. State law provides a variety of exemptions to the sales and use tax, including resale, interstate sales, intangibles, food for home consumption, candy, bottled water, natural gas, electricity and water delivered through pipes, prescription medicines, agricultural feed, seeds, fertilizer and sales to the federal government. A use tax is imposed on the purchaser for transactions in which the sales tax is not collected.

Sales and use tax revenue received by cities is general purpose revenue and is deposited into a city's General Fund.

*continued*

## SALES TAX: HOW MUCH GOES TO YOUR CITY?



- The local 1 percent rate is allocated based on a "point of sale" or "situs" of the sales transaction. The local rate goes to the city or unincorporated county area where the transaction occurs.
- The 0.25 percent rate for county transportation programs is allocated to the county in which the transaction occurs.
- Proposition 172 of 1993 established a 0.5 percent state sales tax to fund public safety programs (sheriff, police, fire, district attorney, etc.) to mitigate the impacts on those programs of state shifts of property tax revenues.
- In 1991 the California Legislature enacted a realignment of state and county programs, assigning various health and welfare program responsibilities to counties and providing funding for those programs including a 0.5 percent portion of the state-imposed sales and use tax rate. In 2011 the California Legislature enacted another realignment of state and county programs, assigning various corrections and rehabilitation program responsibilities to counties and providing funding for those programs, including a 1.0625 percent portion of the state-imposed sales and use tax rate.
- Some counties and some cities have imposed additional "transactions and use" tax rates, which may total no more than 2 percent in counties other than Los Angeles, Contra Costa and Alameda. In Los Angeles, Contra Costa and Alameda counties, the maximum combined additional rate is 2.5 percent.

Although cities vary widely, sales and use tax revenue provides on average 30 percent of city general purpose revenue — and often as much as 45 percent.

Cities and counties may impose additional transaction and use taxes in increments of 0.125 percent with two-thirds city council approval and majority voter approval for a general tax; a special tax requires two-thirds voter approval. The combined rate of the city and county transaction and use taxes is capped at 2 percent in most counties.

**Property Tax.** The property tax is an ad valorem (value-based) tax imposed on real property and tangible personal property. State law provides a variety of exemptions to the property tax, including most government-owned property; nonprofit, educational, religious, hospital, charitable and cemetery properties; the first \$7,000 of an owner-occupied home; business inventories; household furnishings and personal effects; timber; motor vehicles, freight and passenger vessels; and crops and orchards for the first four years. California Constitution Article XIII A (Proposition 13) limits the property tax to a maximum 1 percent of assessed value, not including voter-approved rates to fund debt. The assessed value of property is the base year value plus the value of any improvements, plus annual inflation capped at 2 percent per year. The base year value is the value at the most recent sale or the 1975–76 market value. Property that declines in market value may be temporarily reassessed at the lower value. Property is reassessed to current full value upon change in ownership (with certain exemptions). Property tax revenue is collected by counties and allocated according to state law among cities, counties, school districts and special districts.

The share of property tax revenue allocated to a city varies depending on a variety of factors, including:

- The service responsibilities of the city (for example, in a city where fire services are provided by a special district, the city receives a lower share, with a portion of the property tax revenues going instead to the special district); and

- The historic (1978) tax rates of the city in relation to other local taxing entities. City property tax revenues are also affected by local property values.

**Property Tax in Lieu of Vehicle License Fee (VLF).** The VLF is a tax imposed by the state on the ownership of a registered vehicle in place of taxing vehicles. Cities receive additional property tax to replace VLF revenue that was cut when the state permanently reduced the VLF in 2004. This property tax in lieu of VLF grows with the change from the prior year in gross assessed valuation of taxable property in the jurisdiction. Property tax in lieu of VLF allocations is in addition to other property tax apportionments.

Property tax revenue (including property tax in lieu of VLF) accounts for more than one-third of general revenue for the average full-service city. For cities that do not fund fire service, property tax revenue represents on average 25 percent of general revenue.

**Business License Tax.** Most cities in California levy a business license tax. Tax rates are determined by each city, which collects the taxes. Business license taxes are most commonly based on gross receipts or levied at a flat rate but are sometimes based on the quantity of goods produced, number of employees, number of vehicles, square footage of the business or some combination of factors. In all cases, cities have adopted their tax as a general tax. On average, the business license tax provides about 3 percent of city general revenue and often as much as 6 percent. For businesses that operate in more than one city, state or county, cities can impose a business license tax on only that portion of the business transacted in that city.

**Transient Occupancy Tax (TOT) or “Hotel Bed” Tax.** More than 400 cities in California impose TOT on people staying for 30 days or less in a hotel, inn or other lodging facility. Rates range from

## Responsibilities Differ Among Cities — and Consequently, So Do Budgets

Comparing revenues and expenditures of different cities can be difficult because cities vary according to the needs of their constituents, the nature of the local economy and the city’s service and financial responsibilities. Less than 25 percent of California cities are full-service cities, responsible for funding all of the major city General Fund-supported services such as police, fire, library, parks and recreation and planning. In about three out of 10 California communities, a special district provides fire services with property tax revenue that would otherwise go to the city. In six out of 10 California cities, another public agency provides and funds library services.

Allocations of property taxes among local agencies vary from place to place due to differences in the service responsibilities among agencies serving different areas and differences in the tax rates enacted by those agencies prior to Prop. 13, which passed in 1978. Full-service cities generally receive higher shares than those that do not provide the complete range of municipal services. For example, in a city where fire services are provided by a special district, the city gets a lower share, and a portion of the property tax revenues goes instead to the special district.

Property tax revenues among jurisdictions are also, of course, dramatically affected by differences in the assessed value of properties.



3.5 to 15 percent of the lodging cost. In nearly all cases, cities have adopted these as general taxes, but some cities make a point of budgeting the funds for tourism or business development-related programs. Among cities that impose a TOT, it provides 7 percent on average of a city's general revenues and often as much as 17 percent.

**Utility User Tax (UUT).** More than 150 cities (collectively representing a majority of the state's population) impose a utility user tax. UUT rates vary from 1 to 11 percent and are levied on the users of various utilities, which may include telephone, electricity, gas, water and cable television. For cities that impose the UUT, it provides an average of 15 percent of general revenue and often as much as 22 percent.

*continued*

SALES AND USE TAX REVENUE  
PROVIDES ON AVERAGE  
30 PERCENT OF CITY  
GENERAL PURPOSE REVENUE –  
AND OFTEN AS MUCH AS  
45 PERCENT.

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**Parcel Tax.** This is a special non-value-based tax on property, generally based on either a flat per-parcel rate or a variable rate depending on the size, use or number of units on the parcel. Parcel taxes require two-thirds voter approval and are imposed for a variety of purposes, including police and fire services, parks, libraries and open space protection. Parcel taxes provide less than 1 percent of city revenues statewide.

**Rents, Royalties and Concessions.**

Examples of revenues generated through the use of city property include royalties from natural resources taken from city property, the sale of advertising in city publications, payments from concessionaires operating on city property, facility rentals, entry charges, on- and off-street parking charges and even golf fees.

**Franchises.** In lieu of rent, franchise fees are collected from refuse collectors, cable television companies and utilities for the use of city streets. Some franchise charges are limited by statute.

**Fines, Forfeitures and Penalties.** Cities receive a share of fines and bail forfeitures from misdemeanors and infractions committed within city boundaries. State law determines the distribution and use of state-imposed fines and forfeitures, but cities determine penalties for violations of their municipal codes.

**Service Charges and Fees.** Cities have authority to impose fees, charges and rates for services and facilities they provide, such as plan checking or recreation classes. Use of these revenues is limited to paying for the service for which the fees are collected, but may include overhead, capital improvements and debt service.

Regulatory fees pay for the cost of issuing licenses and permits, performing investigations, inspections and audits and the administrative enforcement of these activities. Examples include a fee to pay for the cost of processing pesticide license

applications or a fee to inspect restaurants for health and safety compliance.

City utilities and enterprises supported by service fees constitute a substantial portion of most city budgets. These include water, sewer, electricity and solid waste services. In some cities, a public or private agency other than the city provides and funds these services.

**AND THERE'S MORE**

City budgets can be bewildering. Myriad laws and limitations make city funding a very complicated subject. Understanding the essentials of city finance is critical for any city decision-maker. Elected officials find their job is made easier when they are able to explain the basic elements of municipal finance to their constituents. ■

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**More Resources Online**

For additional information and links to related resources, read the online version of this publication at [www.westerncity.com](http://www.westerncity.com).

**Trends in California City Finance**

- State and federal aid to California cities is declining, down from 21 percent of a city's budget in 1974-75 to less than 10 percent today. Nearly all state and federal aid today is earmarked for specific purposes;
- The sales tax base is declining relative to population and inflation growth, due to the gradual shift toward a service-oriented economy;
- Voter-approved provisions in the state Constitution limit the types, approval procedures and use of local taxes, fees and other charges;
- State population growth is higher in cities than in unincorporated areas;
- Cities must respond to residents' demand for a greater array of services that bring with them additional costs and new challenges (high tech, cable, transit, pollution control, etc.);
- Spending on police and fire services is up largely due to employee pension and retiree health-care costs; and
- Infrastructure improvements and maintenance are lagging.



# Understanding the Basics of Municipal Revenues in California: Cities, Counties and Special Districts

2016 Update



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# OVERVIEW

Each one of California's 39 million residents lives within the boundaries of one of the state's 58 counties. Nearly 33 million people also live in one of California's 482 cities.<sup>i</sup> Californians are also served by 2,156 independent special districts.

Counties, cities and special districts provide a vast array of municipal services to residents and businesses. These services include public safety (police, fire and emergency services), parks and recreation, roads, flood protection, sewers, water, electricity, refuse disposal, recycling and other utilities. Counties have an additional role as a provider for many state-mandated services, such as foster care, public health care, jails, criminal justice and elections.<sup>ii</sup>

These municipal local governments rely on a variety of revenues to pay for the services and facilities they provide. The amount and composition of revenues:

- Differ between cities, counties and special districts largely because of differences in responsibilities; and
- Vary among cities, among counties and among special districts depending in part on differences in governance responsibilities.

There is a complex web of legal rules for collecting and using the variety of revenues available to municipal governments in California. These rules derive from the state constitution, state statute and court cases further interpreting those laws.

This guide provides an overview of the sources of county, city and special district revenues in California. It is an introduction to a complex topic. You can find further information in the resources listed on the last page.

## How To Use This Information

These materials are not technical or legal advice. You should consult technical experts, attorneys and/or relevant regulatory authorities for up-to-date information and advice on specific situations.

# CITY REVENUES IN CALIFORNIA

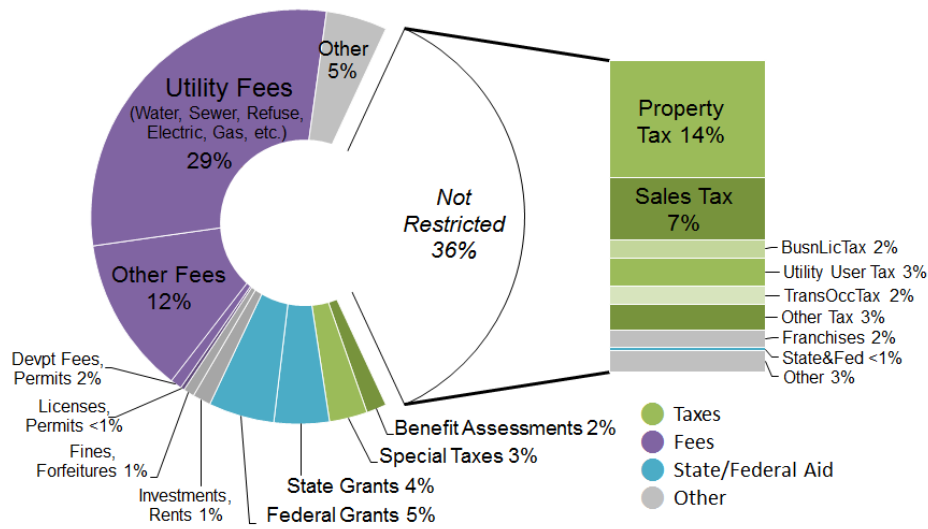
Incorporated cities (including those that refer to themselves as “towns”) are responsible for a broad array of essential frontline services tailored to the needs of their communities. These include:

- Law enforcement and crime prevention,
- Fire suppression and prevention, natural disaster planning and response, emergency medical response and transport,
- Land use planning and zoning, building safety,
- Local parks and open spaces, recreation,
- Water supply, treatment and delivery,
- Sewage collection, treatment and disposal,
- Storm water collection and drainage,
- Solid waste collection, recycling and disposal,
- Local streets, sidewalks, bikeways, street lighting and traffic controls, and
- Public transit.

Cities that are responsible for providing all or most of these functions are called “full service” - the services can be provided in-house or contracted through a private entity or another public agency. In other cities, some of these functions are the financial responsibility of other local agencies such as the county or special districts. For example, in about thirty percent of California cities, a special district provides and funds fire services. In sixty percent, library services are provided and funded by another public agency such as the county or a special district.

The mix of service responsibilities and local choice regarding service levels affects the amount and composition of revenues of each city.

California City Revenues



This is a statewide mash-up of city revenues. Individual cities vary.  
 Source: Author's computations from data from California State Controller 2014-15.  
 Does not include the City/County of San Francisco.

# COUNTY REVENUES IN CALIFORNIA

California counties are responsible for three general areas of municipal services: 1) delegated state and federal programs, 2) countywide public services and 3) essential frontline services for residents not receiving those services from a city or special district, often in unincorporated areas (outside city boundaries).

In unincorporated areas, counties provide the essential frontline services that cities provide that are not provided by a special district. These can include police protection (through a county sheriff), roads, planning and building safety.

Counties also provide public services to all county residents, whether they live in or outside of cities. These countywide functions include:

- Public assistance (notably welfare programs and aid to the indigent),
- Public health services (including mental health and drug/alcohol services),
- Local elections,
- Local corrections, detention and probation facilities and programs (including juvenile detention), and
- Property tax collection and allocation for all local agencies, including school districts.

Funding from the federal and state government, primarily for health and human services, is the largest source of county revenues. Property taxes and sales and use taxes are the primary funding sources for many county services that do not have a dedicated state or federal funding source.

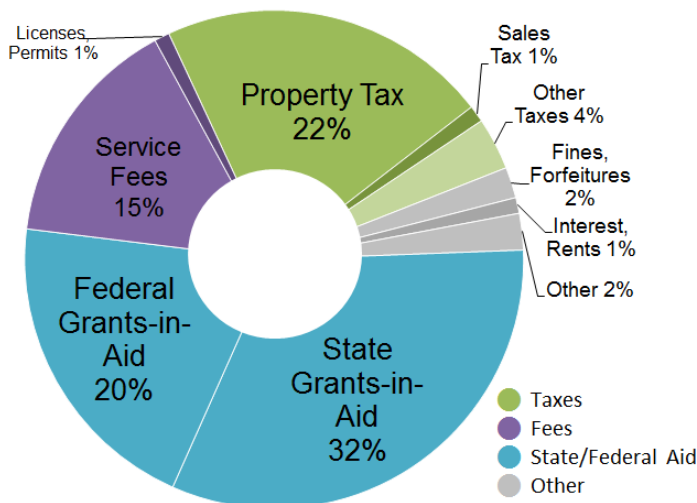
## General and Functional Revenues

Municipal revenues may be viewed as falling into two broad categories: general revenues and functional revenues.

**General revenues** can be used for any legitimate public purpose. General purpose taxes, especially property and sales taxes, account for most general city revenues statewide.

**Functional revenues** are restricted by law to a particular use. These include funds derived from fees or rates that the local agency charges for public services, including municipal utilities such as water, sewer, and garbage collection, airports, marinas, harbors and water ports. Functional revenues also include most state or federal grants as they are usually restricted for particular programs.

California County Revenues



Source: Author's computations from data from California State Controller 2014-15. Includes the County/City of San Francisco.

# SPECIAL DISTRICT REVENUES IN CALIFORNIA

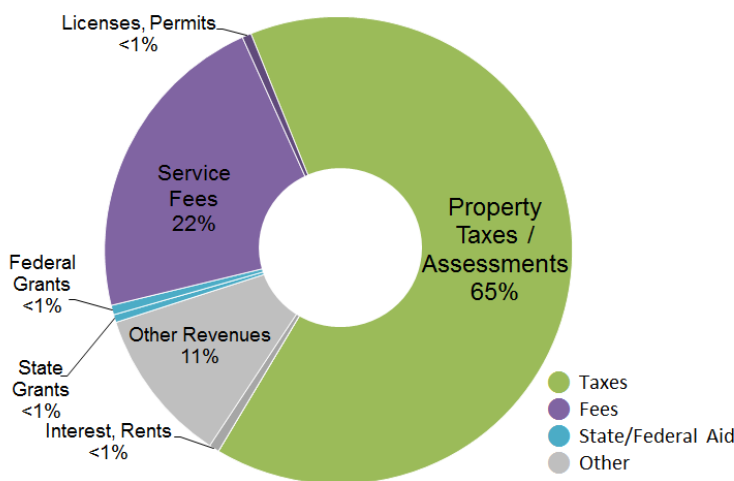
Most special districts provide one or a few municipal services to a particular geographic area. These include both enterprise and non-enterprise services. Enterprise services are funded primarily through charging a fee for service. For example, water and irrigation districts charge utility rates and fees from consumers of those services. Non-enterprise services generally do not lend themselves to fees and are primarily funded by property taxes, with relatively small amounts of fee and state and federal grant revenue. Library and fire protection services are examples of non-enterprise services.

Other districts are multifunction, providing a number of municipal services. Community services districts (CSDs) can provide as many as 32 different types of services, approximating the scope of some cities. Multifunction districts have both enterprise and non-enterprise elements and may, like cities or counties, use an array of different revenue sources.

## Types of Special Districts

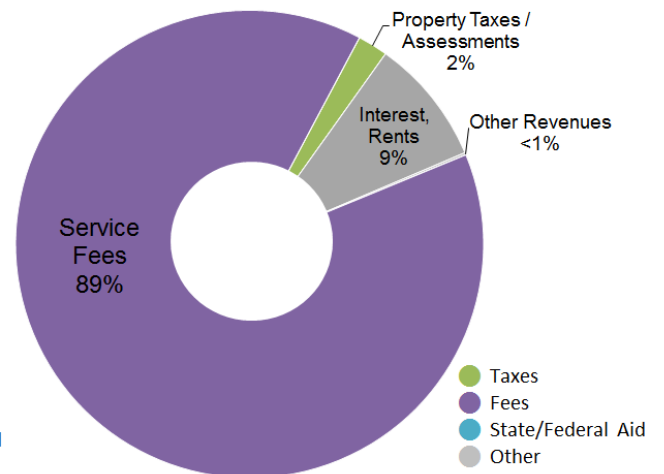
- Air Quality Management / Air Pollution Districts
- Airport Districts
- Cemetery Districts
- Community Services Districts
- Flood/Drainage Districts
- Fire Districts
- Harbor Districts
- Healthcare Districts
- Irrigation Districts
- Library Districts
- Memorial Districts
- Municipal / Resort Improvement Districts
- Open Space Districts
- Parks and Recreation Districts
- Police Protection / Ambulance Districts
- Public Utility Districts
- Reclamation Districts
- Resource Conservation Districts
- Sanitary Districts
- Waste Management Districts
- Water Districts

California Special District Revenues  
Typical District (fire) Providing Non-Enterprise Services



Source: Author's computations from data from California State Controller 2014-15.

California Special District Revenues  
Typical District (water) Providing Enterprise Services



Source: Author's computations from data from California State Controller 2014-15.



# THE STATE LEGISLATURE, LOCAL GOVERNMENTS AND THE VOTERS

The options available to local officials in governing, managing their finances and raising revenues to provide services needed by their communities are limited. Voters have placed restrictions as well as protections in the state constitution. The state's voters and the California Legislature have acted in various ways, to support and provide, and to limit and withdraw financial powers and resources from cities, counties and special districts.

Some of the most significant limitations on the local revenue-raising include:

- Property taxes may not be increased except with a two-thirds vote to fund a general obligation bond.
- The allocation of local property tax among a county, and cities, special districts and school districts within each county is controlled by the Legislature.
- Voter approval is required prior to enacting, increasing or extending any type of local tax.
- Assessments to pay for public facilities that benefit real property require property owner approval.
- Fees for the use of local agency facilities and for services may not exceed the reasonable cost of providing those facilities and services.
- Fees for services such as water, sewer and trash collection are subject to property owner majority protest.

The Legislature has enacted many complicated changes in state and local revenues over the past 30 years. Voters have approved state constitutional protections limiting many of these actions at times followed by even more complicated maneuvers by the Legislature in efforts to solve the financial troubles and interests of the state budget.

Reacting to actions of the Legislature and the deterioration of local control of fiscal matters, local government interests placed on the ballot, and voters approved, Proposition 1A in 2004 and Proposition 22 in 2010. Together, these measures prohibit the state from:

- Enacting most local government mandates without fully funding their costs. The definition of state mandate includes a transfer of responsibility or funding of a program for which the state previously had full or partial responsibility.
- Reducing the local portion of the sales and use tax rate or altering its method of allocation, except to comply with federal law or an interstate compact.
- Reducing the combined share of property tax revenues going to the county as well as cities and special districts in a county.
- Borrowing, delaying or taking motor vehicle fuel tax allocations, gasoline sales tax allocations, or public transportation account funds.

# TAXES

According to the California Constitution, every local agency charge is a “tax,” unless it falls into a list of specified exceptions:<sup>iii</sup>

- User fees for a specific benefit, privilege, service or product provided to the payor. Items include: fees for parks and recreation classes, some utilities, public records copying fees, DUI emergency response fees, emergency medical and ambulance transport service fees.
- Regulatory fees for reasonable regulatory costs of issuing licenses and permits, and performing inspections and enforcement such as health and safety permits, building permits, police background checks, pet licenses, bicycle licenses and permits for regulated commercial activities.
- Rental fees imposed for entrance to or use of government property. These include: facility room rentals, equipment rentals, park, museum and zoo entrance fees, golf greens fees, on and off-street parking and tolls.
- Fines or penalties such as parking fines, code enforcement fees and penalties, late payment fees, interest charges and other charges for violation of the law.
- A charge imposed as a condition of property development such as building permit fees, construction and grading permits, development impact fees and fees for California Environmental Quality Act requirements.
- Benefit assessments and property related fees imposed in accordance with the provisions of Article XIII D (Proposition 218) such as a lighting and landscape assessment and fees for property related services such as many retail water and sewer fees.<sup>iv</sup>

In contrast to an assessment or a fee, a tax need not be levied in proportion to specific benefit to a person or property. Tax revenues are an important source of funding for both county and city services and for many special districts. In addition to local taxes, counties rely significantly on tax dollars allocated from the state and federal governments.

	TAX- General	TAX- Parcel or Special (earmarked)	G.O. BOND (w/tax)	Fee / fine / rent
City / County	Majority voter approval	Two-thirds voter approval	Two-thirds voter approval	Majority of the governing board*
Special District	n/a	Two-thirds voter approval	Two-thirds voter approval	Majority of the governing board*
K-14 School	n/a	Two-thirds voter approval (parcel tax)	55% voter approval**	Majority of the governing board*
State	For any law that will increase the taxes of any taxpayer, two-thirds of each house of the Legislature - or approval of majority of statewide voters.		Statewide majority voter approval	Majority of each house
<small>* Additional procedures apply for property related fees.            ** Per Proposition 39 (2000), maximum tax rate limits and other conditions apply for a 55% threshold school bond or threshold is two-thirds.</small>				

Counties and cities may impose a variety of taxes. Taxes fall into one of two categories: general or special.

A general tax is imposed to raise general-purpose revenues. Counties and cities may use revenues from a general tax for any lawful public purpose. A majority of voters must approve the decision to impose, increase or extend a general tax. A general tax may only be submitted for voter approval at an election for city council or board of supervisors unless a unanimous vote of the governing board declares an emergency.

A special tax is a tax imposed for a specific purpose. For example, a city may increase the sales and use tax by adding a special use tax for public safety, the acquisition of open space or transportation projects. All taxes imposed by special districts are considered special taxes. Since the tax is for a specific purpose, the revenues may only be used for that purpose. Two-thirds of voters must agree to enact, increase or extend a special tax.

## County Property Tax Administration

### County Assessor.

The assessor sets values on property and produces an annual property tax assessment roll.

### County Auditor-Controller.

The auditor-controller receives the assessed values from the assessor and calculates the amount of property tax due.

### County Treasurer-Tax Collector.

The treasurer-tax collector administers the billing, collection, and reporting of property tax revenues levied annually throughout California for not only the county, but also cities, schools and special districts.

	General Tax	Special Tax
Use of Revenues	Unrestricted	Specific purpose
Governing Body Approval	<ul style="list-style-type: none"> <li>Counties and general law cities: two-thirds</li> <li>Charter cities: majority</li> <li>Transactions and use taxes: two-thirds</li> <li>Special districts may not adopt general taxes.</li> </ul>	Majority
Voter Approval	Majority	Two-thirds
Other Rules	A general tax election must be consolidated with a regularly scheduled general election of members of the governing body, unless an emergency is declared by unanimous vote (among those present) of the governing body.	Special tax funds must be deposited in a separate account. The taxing agency must publish an annual report including: 1) the tax rate; 2) the amounts of revenues collected and expended; and 3) the status of any project funded by the special tax.

# PROPERTY TAXES

All counties and cities in California receive property tax revenues. Many special districts do too. For all counties and most cities and non-enterprise special districts, property taxes are the largest source of discretionary revenues.

## How Property Taxes Are Calculated in California

The property tax is imposed on “real property” (land and permanently attached improvements such as buildings) and tangible personal property (movable property such as boats, aircraft and business equipment).

The maximum tax rate permitted on real property for general purposes is one percent of the property's assessed value plus voter approved rates to fund indebtedness (general obligation bonds, requiring two-thirds voter approval).

The tax rate is applied to the assessed value (AV) of the property. The assessed value of real property is the “full cash value” of the property in 1975-76 or at change of ownership, whichever is more recent, adjusted annually by the change in the Consumer Price Index (CPI), not to exceed an annual increase of two percent. The value of new construction is additional. If a property changes hands, then the assessed value becomes the full cash value upon change in ownership.

If a property's market value falls below its factored base year value, it may be temporarily reassessed to its lower actual value but in future years may be reassessed at the lesser of its actual value or its factored base year value. This can result in increases of more than two percent as a property's actual value returns to its earlier value, as when the housing market rebounds from a slump.

## Property Tax Revenue Distribution

Counties allocate property taxes to the county as well as cities, special districts and school districts within the county according to state law. Allocations among local agencies vary from place to place due to differences in the service responsibilities among agencies serving different areas and differences in the tax rates enacted by those agencies prior to Proposition 13 in 1978. Full-service cities generally receive higher shares than those that do not provide the complete range of municipal services. For example, in a city where fire services are provided by a special district, the city will get a lower share, with a portion of the property tax revenues going instead to the special district.

Property tax revenues among local governments are, of course, also dramatically affected by differences in the assessed value of properties among jurisdictions. A ten percent share in a community of average property values will result in less revenue than in a similar size wealthy bedroom community, or a community that also has a sizable business/industrial area.

### **Property Tax in Lieu of Vehicle License Fee**

In addition to their regular apportionment of property taxes, cities and counties receive property tax revenues in lieu of Vehicle License Fees (VLF). In 2004, the Legislature permanently reduced the VLF rate from two percent to 0.65 percent and compensated cities and counties for their revenue loss with a like amount of property taxes, dollar-for-dollar. Each agency's property tax in lieu of VLF allocation increases annually in proportion to the growth in gross assessed valuation in that city or county.

### **What is "ERAF?"**

The property tax revenues received by school districts in each county include amounts from the county "Educational Revenue Augmentation Fund" (ERAF) created by the California Legislature in 1991 as a way to reduce state general fund spending on schools. These funds receive some property tax that was previously allocated to counties, cities and special districts.

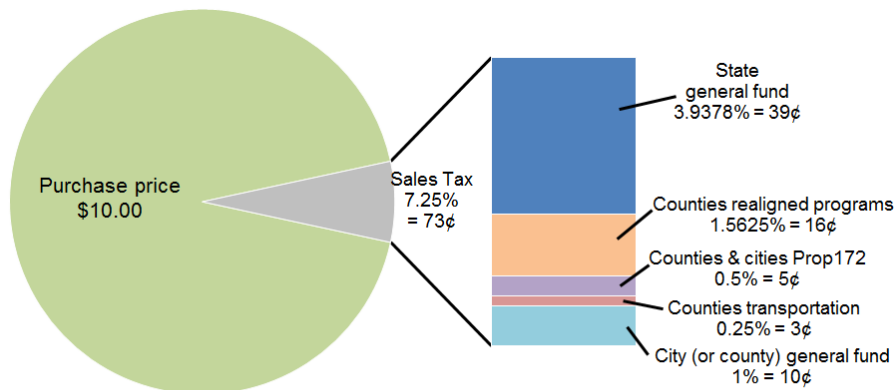
Since 2004, California's Constitution has prohibited the Legislature from increasing the amount of property tax shifted from counties, cities and special districts to ERAF or similar schemes. The state Constitution requires a two-thirds vote of the Legislature to change the allocation of property tax among the county, cities and special districts within a county.

# SALES AND USE TAXES

Consumers are familiar with the experience of going to a store, buying something and having an amount added for sales tax. Services are generally exempt from the sales tax as well as certain items, like most groceries and medicine. The sales tax is assessed as a percentage of the amount purchased.

The “base” statewide sales tax rate of 7.25 percent includes amounts to:

- The state general fund (3.9375 percent),<sup>v</sup>
- County realignment programs (state health/ welfare and corrections / law enforcement programs shifted from the state, 1.5625 percent),
- Supplemental local law enforcement grants (0.50 percent),<sup>vi</sup>
- Transportation programs in the county where the transaction occurs (0.25 percent), and
- The city where the transaction occurs (1.00 percent).<sup>vii</sup> If the transaction occurs in an unincorporated area, the 1.00 percent amount goes to the county.



*Rates effective January 1, 2017 after the expiration of the 0.25% Proposition 30 temporary rate.*

*In addition to the base, statewide rate of 7.25 percent, local voters may authorize additional “transactions and use tax” rates. These additional rates raise the total effective rate to as much as 9.75% in some locations.*

Cities, counties and countywide transportation agencies may impose sales tax rates to be added on to the “base” statewide sales and use tax rate. The add-on rates are actually “transactions and use taxes” and are allocated to the jurisdiction where the taxed product is received or registered (as in the case of a motor vehicle purchase). Over 120 cities have enacted transaction and use taxes of up to one percent, most commonly with majority voter approval for general purposes. Many counties and county transportation agencies have enacted rates, most commonly with two-thirds vote for specific purposes. Under current state law, the maximum combination of transactions and use tax rates in any location may not exceed two percent.<sup>viii</sup>

## State Sales and Use Tax Administration

The State Board of Equalization collects local sales and use tax revenues from the retailer and sends revenue from local rates and allocations back to cities and counties. In addition to administering the sales and use tax system, the State Board of Equalization collects and allocates other state taxes including fuel, tobacco and alcohol taxes.

## The “Use Tax” Part of the Sales and Use Tax

California’s sales tax has a relative called the “use tax.” While the sales tax is imposed on the seller, the use tax is imposed on the purchaser and at the same rate as the sales tax. The most common example of use tax is for the purchase of goods from an out-of-state retailer for use in California.

Out-of-state retailers doing business in California are required to report to the State Board of Equalization the jurisdiction to which sold items are delivered. If the retailer has a physical presence (nexus) in California, they must collect use tax when goods are delivered to purchasers in this state. If the seller does not collect and remit the use tax, the purchaser is legally obligated to report and pay.



### **Business License Tax (BLT)**

Most cities and a few counties have enacted business license taxes. Business license tax rates are set individually by each city and county most commonly based on gross receipts (overall business revenue) or levied at a flat rate, but may be based on the quantity of goods produced, number of employees, number of vehicles, square footage of the business or some combination of factors.

If a business operates in more than one city, a city may only tax that portion of the business's activities conducted within the city. In most cases, business license taxes are not imposed for regulatory purposes (as the term "license" might imply) but to raise revenues for general municipal purposes (i.e. a tax). If imposed as a fee to pay for the cost of regulating the business, the fee may not exceed the reasonable cost of regulating the business. (See "regulatory fees.")

### **Transient Occupancy Tax (TOT) or Hotel Bed Tax**

Most cities and some counties impose a transient occupancy tax or hotel bed tax on persons staying thirty days or less in hotels, motels and similar lodgings, including mobile homes. A county may impose a transient occupancy taxes only in the county area outside city limits. Typically, the lodging provider collects the tax from guests and turns the funds over to the county or city.

Transient occupancy taxes are imposed by most cities and counties and range from three and a half percent to 15 percent. For cities with a transient occupancy tax, it provides seven percent of general revenues on average, and as much as 17 percent in some cities. Any increase or extension of a local tax requires voter approval.

### **Utility User Tax (UUT)**

Many cities impose utility user taxes on the consumption of utility services, including (but not limited to) electricity, gas, water, sewer, telephone (including mobile phone and long distance), sanitation and cable television. Counties may levy utility user taxes in county area outside city limits. Any increase or extension of a local tax requires voter approval.

Utility companies usually collect utility user's taxes from their customers as part of their regular billing procedures and remit the funds collected to the city or county which imposed the tax.

Over 150 cities and a few counties levy utility user rates varying from one to 11 percent. For those jurisdictions with utility user taxes, it provides an average of 15 percent of general revenue and often as much as 22 percent.

### **Parcel Tax**

A parcel tax is a special tax on a parcel – or unit – of real property. Unlike the property tax, a parcel tax may not be based on the value of property. Instead, parcel taxes are generally based on a flat per-parcel rate.

A parcel tax may be enacted, increased or extended by a city, county, special district or school district only with two-thirds voter approval, even for general purposes.

### **Documentary Transfer Taxes and Property Transfer Taxes**

A documentary transfer tax is a tax imposed on the transfer of interests in real estate. Counties tax at a rate of 55 cents per \$500 of the property's value. Cities may impose the tax at up to one half of that amount, which is credited to the payment of the county tax. The Constitution allows charter cities<sup>ix</sup> to

enact a property transfer tax, with voter approval, on the value of real estate that is sold. In these cases, the entire county documentary transfer tax rate goes to the county. All cities and counties in California have documentary transfer taxes or property transfer taxes.

### **Other Taxes**

A city or county may impose other types of taxes within the limitations of and if not prohibited by state law. These include: admissions taxes, parking taxes, construction/development taxes, local vehicle registration taxes.

# SERVICE CHARGES, ASSESSMENTS AND FEES

## Utility Rates

Utility rates are fees for utility services charged to users who pay for special district, county or city provided water, sewer, electric or other utility services. Utility rates cover some or all of the cost of providing the service, which may include operations, maintenance, overhead, capital improvements and debt service.

Utility rates for water, sewer services and certain other utilities belong to a special category of fees called a “property-related fees.” A local government must follow certain specific procedures to impose, extend or increase a property-related fee.

To impose a property-related fee, the agency must first hold a public hearing. At the hearing, a majority of affected property owners can prevent the fee’s adoption by filing written protests. If a majority of affected property owners do not protest the fee and the fees pays for sewer, water or refuse collection, then an election is not required and the governing body may approve the fee. Other property-related fees require approval, either of two-thirds of the electorate residing in the affected area or of a majority of the owners of the property who would pay the fee.

## Benefit Assessments

Assessments are charges by cities, counties or special districts on real property to pay for public facilities or services within an area which benefit either real property or businesses. A common type of assessment is one used to pay for landscaping and lighting in a neighborhood. The amount of the assessment must reflect the special benefit to the property that results from the improvements. Assessments on property are typically collected through the owner’s annual property tax bill.

A local government must follow certain specific procedures to impose benefit assessments. When a local agency considers an assessment, a majority of property owners may defeat the assessment in a public hearing procedure. If the proposed assessment is not defeated in a public hearing procedure, then a majority of the property owners subject to the charge must approve the assessment by a mailed ballot. The property owners’ votes are weighted according to how much their property will be charged.

## User Fees

A city, county or special district may impose fees, charges and rates for services and facilities it provides. Examples include fees for checking plans for new construction or for recreation classes. The amount of a fee may not exceed the cost of providing the service or granting a benefit or privilege. This cost may include overhead, capital improvements and debt service.

## Regulatory Fees

Regulatory fees pay for the cost of issuing licenses and permits, performing investigations, inspections and audits and the administrative enforcement of these activities. Examples include a fee to pay for the cost of processing pesticide license applications or a fee to inspect restaurants for health and safety compliance.

## Development Impact Fees

Development impact fees are imposed on new construction (like new houses, apartments, shopping centers or industrial plants). They pay for improvements and facilities required to serve new development and to reduce the impacts of new development on a community.

Development impact fees (also known as “AB 1600 fees” after legislation adopted that governs such fees) pay for community amenities such as streets, sewers, parks and schools. They may not be used for day-to-day operating expenses.

The ordinance or resolution establishing the fee must explain the connection between the development project and fee. For example, a library impact fee must be connected to the demand for library services created by the construction of the development project.

The amount of the fee must not exceed the cost of providing the service or improvement that the fee pays for.

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## Local Debt Financing Tools

Local governments borrow money to pay for land, facilities and equipment that may require more funding than current revenues provide. Not a revenue source, but a way to leverage the timing of revenues, debt financing methods are important tools in government finance. Local governments may issue bonds and other debt instruments to finance improvements and services. These loans are paid off through taxes, assessments or fees. A variety of debt financing tools are available:

- **General Obligation Bonds.** General obligation bonds are essentially IOUs issued by public entities to finance large projects. General obligation bonds are backed by property tax revenue, which is used to repay the bond over a twenty- to thirty-year period. Increasing the property tax to repay the debt requires two-thirds voter approval and may only be done to acquire or improve real property.
- **Lease-Purchase Agreements.** In a lease-purchase agreement, sometimes called “certificates of participation,” the agency leases an asset for a period of years with the option to purchase the land or improvement at the end of the lease. The amount of the lease is equivalent to the principal and interest that would be paid if the transaction were financed as a loan.
- **Benefit Assessment and Special Tax Financing.** Benefit assessment financing is supported by benefit assessments on the property to fund acquisition of property and improvement of infrastructure and additional facilities of benefit to the property that is charged. Similarly special taxes, such as Mello-Roos taxes, may be financed with bonds to provide public improvements.
- **Revenue Bonds.** Revenue bonds are issued to acquire, construct or expand public projects for which fees, charges or admissions are charged. Because the debt service is paid from income generated by the facility or related service, such debt is considered self-liquidating and generally does not constitute debt of the issuer, subject to constitutional debt limitations.
- **Tax Allocation (Tax Increment).** Tax allocation bonds (sometimes referred to as tax-increment financing) are issued by Enhanced Infrastructure Financing Districts or Community Revitalization and Investment Authorities and repaid from the growth in property tax revenue (i.e., tax increment) and other designated revenues over a certain period, largely as a result of the funded projects in the area.

# REVENUES FROM OTHER GOVERNMENT AGENCIES

Counties, cities and many special districts also receive revenues from the state and federal government. For example, over half of county revenues statewide come from state and federal sources. This reflects the role of counties in implementing state policy and programs for health and human services.

## **Gas Tax or Highway Users Tax**

The state imposes per gallon tax on gasoline of 27.8 cents as of July 1, 2016. These funds are apportioned to cities and counties, primarily on the basis of their populations. Local gas tax revenues must be spent on research, planning, construction, improvement and maintenance of public streets, highways and mass transit. The federal government's 18.4 cents per gallon rate pays primarily for federal highways with some local grants.

## **Motor Vehicle License Fee (VLF)**

The Motor Vehicle License Fee is a state imposed and collected tax on ownership of a registered vehicle. Counties receive vehicle license fee revenues to fund certain health, social service and public safety programs that were realigned to counties in 1991 and 2011.

## **State Public Safety Sales Tax**

Proposition 172, a ballot measure approved in 1993, imposed a one-half percent state sales tax to be used for local public safety activities. The state distributes Proposition 172 revenues to each county based on its proportionate share of statewide taxable sales. Many cities receive a share of those funds based on losses to the state's ERAF property tax diversions.

## **State Mandate Reimbursement**

The state constitution requires the Legislature to reimburse local governments for their costs to implement a state-mandated new program or higher level of service in an existing program. The Constitution requires the Legislature to suspend most state mandates in any year in which full funding is not provided for that mandate. The Commission on State Mandates determines the level of reimbursement in response to a claim for reimbursement filed by a local agency. The process typically takes several years during which time, local governments must spend money to comply with the mandate.

## **Federal and State Grants and Aid**

The federal and state governments provide a wide variety of funds to counties, and a more limited set to cities and special districts. Federal and state grants comprise a large proportion of county revenues because of the many programs and responsibilities counties carry out on behalf of the federal and state governments. These funds are almost entirely restricted to specified uses. Examples include certain health, mental health, social and child welfare services.

Categorical grants support a defined program area. Categorical grants typically go to local agencies that either meet predetermined funding criteria or compete for project funding through an application process.

Block grants provide funding to a broad functional area. For example, federal Community Development Block Grant (CDBG) funds support local housing and economic development activities.

## RENT FOR USE OF PUBLIC PROPERTY

### Rents, Royalties and Concessions

Another way cities and counties and some special districts pay for public services is to charge rent for use of the public's property. An example is royalties from natural resources taken from land the public owns. Others include selling advertisements in publications or on buses, as well as, receiving a percentage of net profits from concessionaires operating on public property.

### Franchise Fees

Franchise fees are a form of rent for use of public streets and roadways. Examples of businesses that pay franchise fees include trash collectors, cable television companies, electric utilities and oil and natural gas pipeline companies. Federal and state law limits the amount of some franchise fees (for example, video and cable television franchise fees). Franchise fees for provision of video services (like television programming) are limited and administered by the state.

## FINES, FORFEITURES AND PENALTIES

Violations of the law often result in a fine of some kind. Fines, forfeitures and penalties may be imposed for many reasons. Typical examples include traffic violations, court fines, penalties and interest on late or unpaid taxes.

- State law determines the distribution of fines and bail forfeitures imposed by the state.
- State law apportions revenues for parking violations and surcharges between issuing agencies and the counties.
- A city or county may impose fines, forfeitures and penalties for civil violation of local ordinances.
- Bail for local code violations charged criminally is established by the local courts with input from the city or county.

### Maintenance of Effort Requirements (MOE)

When cities and counties receive funding for programs from the state or federal government, such funding may come with strings attached. A common condition is that the city or county commit to a certain level of funding. This commitment is called "maintenance of effort."

Local agencies also receive reimbursement for revenue lost as a result of some tax exemptions and reductions. An example includes the homeowners' property tax exemption, which eliminates the property tax on a small portion of the assessed valuation of owner-occupied residential property.



# OTHER REVENUES

There are other local government revenues, comparatively minor in amounts. These include interest earned on investments, sales of surplus property and gifts.

## ACKNOWLEDGEMENTS

Special thanks to Michael Coleman whose expertise contributed to the 2016 update of this publication. Michael Coleman is a leading expert on California local government revenues, spending and financing. He is the creator of CaliforniaCityFinance.com, the California Local Government Finance Almanac, an online resource of data, analyses and articles on California municipal finance and budgeting.

The Institute also appreciates the contributions from the staff of the California Special Districts Association, the California State Association of Counties and the League of California Cities for their contributions and suggestions to this revised document.

## ENDNOTES

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<sup>i</sup> California Department of Finance, Demographic Research Unit [www.dof.ca.gov/Forecasting/Demographics/Estimates/](http://www.dof.ca.gov/Forecasting/Demographics/Estimates/)

<sup>ii</sup> Cal. Const. art. XI, § 1(a). *See also* Cal. Gov't Code § 23002 ("The several existing counties of the State and such other counties as are hereafter organized are legal subdivisions of the State."). *People ex rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 491, 96 Cal. Rptr. 557 (1971)

<sup>iii</sup> Cal. Const. art XIII, section 1(e)

<sup>iv</sup> A complete discussion of this list of seven exceptions can be found in the *Proposition 26 Implementation Guide* published by the League of California Cities.

<sup>v</sup> Proposition 30 imposed an additional state general fund sales tax of 0.25 percent from 2013 through 2016, for a total base rate of 7.5% during that time.

<sup>vi</sup> See "State Public Safety Sales Tax" under "Revenues From Other Government Agencies."

<sup>vii</sup> In some cities, by historic agreement, the city collects less than 1.00 percent, with the difference allocated to the county. For example, in San Mateo county each city receives 0.95% of transaction within its jurisdiction and 0.05% goes to the county general fund. For a full list of local sales tax rates see Table 23A of the California State Board of Equalization Annual Report.

<http://www.boe.ca.gov/annual/table23a.htm>

<sup>viii</sup> Except in the counties of Los Angeles, Alameda and Contra Costa where the maximum is 2.5 percent. Revenue and Tax Code §7251 et seq.

<sup>ix</sup> For more information on Charter Cities see [www.cacities.org/chartercities](http://www.cacities.org/chartercities)

## Resources for Further Information

Coleman, Michael. *California Municipal Revenue Sources Handbook*, League of California Cities 2014.

Multari, Michael, Michael Coleman, Kenneth Hampian, Bill Statler. *Guide to Local Government Finance in California*, Solano Press Books, 2012.

California Legislative Analyst's Office. [www.lao.ca.gov](http://www.lao.ca.gov)

"California Local Government Finance Almanac: Data, Statistics, Analyses on California City, County and Special District Finance." [www.californiacityfinance.com](http://www.californiacityfinance.com)

"Financial Management for Elected Officials." Institute for Local Government. [www.ca-ilg.org/post/financialmanagement](http://www.ca-ilg.org/post/financialmanagement)

"Learn About Cities." League of California Cities. [www.cacities.org/Resources/Learn-About-Cities](http://www.cacities.org/Resources/Learn-About-Cities)

"What Do Counties Do?" California State Association of Counties. [www.csac.counties.org/californias-counties](http://www.csac.counties.org/californias-counties)

"What are Special Districts and What Do They do?" California Special Districts Association. [www.csda.net/special-districts/](http://www.csda.net/special-districts/)



## ABOUT THE INSTITUTE FOR LOCAL GOVERNMENT

The Institute for Local Government (ILG) is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities, the California State Association of Counties and the California Special Districts Association. Its mission is to promote good government at the local level with practical, impartial and easy-to-use resources for California communities.

For more information and to access the Institute's resources,  
visit [www.ca-ilg.org](http://www.ca-ilg.org).

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# PUBLIC ENGAGEMENT IN BUDGETING

*Budgeting is one of the most important decisions local agencies make.*

## Why involve the Public in Budgeting?

- The annual budget is typically the strongest statement of the local agency's priorities for the community. As such, it is important that the community is involved in the development of this document.
- Meaningful public involvement can help residents understand the hard choices that budgeting entails, and assist policy-makers in better understanding the programs and services residents value most.
- Increased public understanding about local agency budgets, including revenues, expenses and challenges can lead to greater support for budgetary decisions as well as for measures to increase effective use of local revenues.
- Transparency about the local agency finances and the budget decision-making process promotes public trust and confidence in the agency's stewardship of taxpayer dollars.
- The International County/City Management Association considers resident participation a core competency for successful public managers.
- The budgeting process allocates scarce taxpayer dollars to services, programs and facilities that play a key role in determining the community's quality of life.

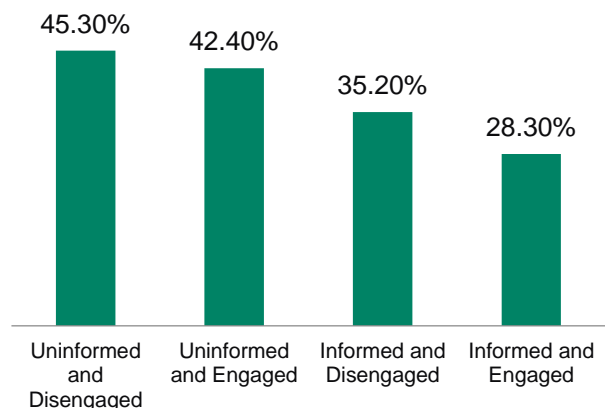
## What Is "Public Engagement?"

Public engagement works to increase the extent to which residents become more informed about local issues and participate more effectively in local decision making. Approaches include:

- Public information
- Public consultation
- Public deliberation
- Sustained public problem solving

► **More information:** [www.ca-ilg.org/document/what-public-engagement](http://www.ca-ilg.org/document/what-public-engagement)

## Probability: Belief that Sales Tax Rate is "Too High" When People Are:



Source: Center for California Studies, *Civic Engagement and Local Fiscal Attitudes: 2013 Survey of Californians*

## Choosing the Right Approach Means Asking the Right Questions

- What type of input do staff and officials want from the public relating to budget decisions—a vision, an expression of broad community values, new ideas or choices among options, or ranked or unranked sets of ideas or preferences?
- How will the public's preferences and/or ideas be considered in final budget decision-making?
- Is the goal solely a one-time process or also to build an ongoing local agency and community capacity for public engagement?
- In terms of the desired participation, is the goal to hear:
  - From a broad cross-section of community?
  - From those with present direct interest in the subject, including stakeholders or stakeholder groups?
  - Or a combination of both of these groups?
- What time period as well as financial and staff resources can be devoted to the effort?
- Is broader community understanding and support for the ultimate budget decisions the goal? How important is that goal?
- Is the local agency (elected and staff) clear about its public engagement commitment, goals, and process. Is there clear communication between elected officials and staff?
- How comfortable are policy-makers with public involvement in budget decisions? Are they willing to strongly consider community opinion, even if it means reducing spending elsewhere in the budget?

### Using Consultants Successfully

*Local agencies sometimes find it helpful to get assistance from public engagement consultants.*

► **More information:**

[www.ca-ilq.org/PEConsultantTips](http://www.ca-ilq.org/PEConsultantTips)

## Tools to Consider

Once the purposes for engaging the public are clear, the task becomes selecting the approaches that best fit the goals. Often using more than one tool will secure the broadest participation.

**Surveys:** These provide a snapshot of public opinion at any given time; methods can include online, phone, mail, or in person (for example, using instant polling devices).

**When to use:** *When seeking input on budget balancing choices or strategies.*

**Online Forums (Social Media):** Technological platforms that allow for a virtual exchange of information and preferences.

**When to use:** *To gather input from a large number of people, on their schedule, from their home or office.*

### Advisory Boards, Commissions and Committees

**Advisory Boards, Commissions and Committees:** Community members, typically representing interests, groups, areas of expertise or geographic areas are selected to provide input on budget goals, issues, priorities and decisions.

**When to use:** *When seeking to create a conduit for information between communities and local agency.*

**Workshops:** Opportunities for information sharing, discussion and feedback on budget goals and issues.

**When to use:** *Can give a significant number of community participants an opportunity to grapple with budget issues.*

**Deliberative Forum:** Similar to a workshop, but usually involves more information sharing and increased time for participant dialogue.

**When to use:** *When budget development is contentious and more in-depth and informed public input is desired.*

**Participatory Budgeting:** Allocation of a portion of revenues for local agency projects and programs by residents, utilizing an extensive nomination, community forum and voting process.

**When to use:** *When seeking to develop extensive community involvement in budget choices, particularly when there are significant differences of opinion in the community about spending new tax dollars or one-time funds, where community trust is low and/or where there are "new" revenues to allocate.*

## Communication and Engagement

Information and outreach are essential components of any public engagement strategy:

- **Budget and Financial Information.** For the public's input to be helpful, it must reflect the realities of the agency's fiscal situation. This requires that the public have appropriate and accessible information about both the budget process and the public agency's finances.
- **Process Information.** Another component of the communications strategy is sharing information about the budget decision-making process and the opportunities residents have to participate in discussions and share their thoughts.
- **Inclusive Education and Outreach Strategies.** For decision-makers to hear from an informed and representative cross-section of the community, the agency must use education and outreach strategies that reflect the diverse ways that community members receive information.
- **Feedback Loops.** It is important that residents understand how their input influenced the ultimate budget. This could be accomplished through a community newsletter, a section of the budget narrative, or social media tools

► **More information:** [www.ca-ilg.org/EffectivePE-Strategic-Communication](http://www.ca-ilg.org/EffectivePE-Strategic-Communication)

## One Strategy: Start with Goals

The Government Finance Officers Association (GFOA), the leading professional organization for public agency finance professionals, recommends that the budget process be tied to goals. Such goals can define what a community wants to preserve or what it wants to move toward (something GFOA calls the “preferred future state of the community”).

The budget process is a tool to realizing those goals, involving the allocation of resources to fund local agency services, programs and facilities which are a key part of the strategy for accomplishing the goals. Such goals also help decision-makers and the community set priorities for allocating limited resources.

Such goal setting can occur as part of the budget process or a separate strategic planning process. It is often helpful to begin the goal-setting process several months in advance of the annual budget process, so that the budget will reflect the key priorities of the city council and community.

**Goal Setting Question Example:** What are the most important things for the city/county/school/special district to focus on over the next five years?

## A Strategy for Sustaining Public Engagement

A Working Group on Legal Frameworks for Public Participation has produced a model local ordinance for public participation as a tool for local agencies to use in committing to inclusive and authentic public participation in local agency decision-making processes.

► **More information:** [www.ca-ilg.org/post/new-strategy-sustaining-public-engagement](http://www.ca-ilg.org/post/new-strategy-sustaining-public-engagement)

### Engage the Full Spectrum of Your Population

*You may want to consider that participation in public engagement efforts more fully reflect community*

*“The mission of the budget process is to help decision-makers make informed choices about the provision of services and capital assets and to promote stakeholder participation in the process.” [emphasis added]*

*—National Advisory Council on State and Local Budgeting*

## For Additional Information

- *A Local Official's Guide to Public Engagement in Budgeting*  
[www.ca-ilg.org/engaging-public-budgeting](http://www.ca-ilg.org/engaging-public-budgeting)
- *Effective Public Engagement through Strategic Communication*  
[www.ca-ilg.org/EffectivePE-Strategic-Communication](http://www.ca-ilg.org/EffectivePE-Strategic-Communication)
- *Broadening Participation*  
[www.ca-ilg.org/broadening-participation](http://www.ca-ilg.org/broadening-participation)
- *Transparency Strategies*  
[www.ca-ilg.org/transparency-strategies](http://www.ca-ilg.org/transparency-strategies)
- *Public Engagement Key Questions for Local Officials*  
[www.ca-ilg.org/PublicEngagementKeyQuestions](http://www.ca-ilg.org/PublicEngagementKeyQuestions)
- *GFOA, Best Practices in Budgeting, Principle 1*  
[www.gfoa.org/services/nacslb/introprinciples.htm#l](http://www.gfoa.org/services/nacslb/introprinciples.htm#l)
- *GFOA Resource: Best Practices in Budgeting*  
[www.gfoa.org/services/nacslb/](http://www.gfoa.org/services/nacslb/)
- *Information on Local Agency Finance*  
<http://www.ca-ilg.org/Budgeting-finance>
- *Evaluating Public Engagement Activities*  
[www.ca-ilg.org/measuring-public-engagement-success](http://www.ca-ilg.org/measuring-public-engagement-success)
- *ICMA Resource: Practices for Effective Local Government Management*  
<http://webapps.icma.org/credentialing/Practices.pdf>



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The Institute's current program areas include:

- Local Government Basics
- Public Engagement
- Ethics and Transparency
- Sustainability
- Collaboration and Partnerships

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# **Effective Advocacy and Key City Issues**



## League of California Cities 2022 Action Agenda

- 1. Secure funding to increase the supply and affordability of housing and reform state housing laws to retain local authority.** Secure adequate and sustainable funding for cities to increase construction of housing at all income levels, particularly affordable housing and workforce housing. Reform state housing laws to ensure cities retain local decision-making to meet the needs of their communities.
- 2. Attain investments to strengthen and sustain critical infrastructure.** Advocate for policies that strengthen the conditions of local streets, highways, bridges, public transit, and broadband to improve workforce and economic development. Secure support for the modernization and expansion of the statewide water grid, including infrastructure, storage, and conveyance. Work with stakeholders to provide cities with access to the tools needed to ensure projects are delivered efficiently and cost-effectively to meet current and future needs.
- 3. Secure increased funding and resources to prevent homelessness and assist individuals experiencing homelessness.** Secure additional ongoing, flexible resources to provide navigation assistance, emergency shelters, and permanent supportive housing. Enhance city and county coordination and strengthen partnerships with stakeholders to ensure adequate wraparound services are available for adults and youth at risk of, or already experiencing, homelessness in our communities, and effectively address mental health and substance use disorders.
- 4. Strengthen disaster preparedness, resiliency, and recovery from climate change impacts through improved collaboration and resources.** Secure additional resources and support to mitigate the effects of climate change, including catastrophic wildfires, drought, and sea level rise. Promote collaboration with other city, state, and federal governments, to strengthen disaster preparedness, resiliency, and recovery.





## 2022 Legislative Calendar Summary

*Note: This is a summary of the major legislative and budget actions taken by the Governor and Legislature. The majority of legislative and budget actions follow this timeline. However, there are always exceptions to the rules. Rule waivers, urgency measures, and budget measures can take a very different path.*

### **January:**

- Jan. 3: Legislature reconvenes
- Jan. 10: Deadline for the Governor to submit his 2022-23 Budget Proposal to the Legislature
- Jan. 14: Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house in the odd-numbered year
- Jan. 21: Last day for any committee to hear and report to the floor bills introduced in that house in the odd-numbered year. Last day to submit bill requests to the Office of Legislative Council
- Jan. 31: Last day for each house to pass bills introduced in that house in the odd numbered year

### **February:**

- Budget subcommittees begin to meet to discuss the Governor's 2021-22 Budget Proposal
- Feb. 10-11: Cal Cities Policy Committee meetings
- Feb. 18: Deadline for individual legislators to introduce non-urgency bills. Bills that contain an urgency clause, amend the constitution, or are authored by a legislative committee can be introduced after this date

### **March:**

- With the majority of the bills introduced, legislators, lobbyists, and other interested parties begin research and negotiations on bills
- Legislative committees meet and vote on bills in the house of origin
- Cities should expect to receive increased requests to submit letters and information on bills that impact their city
- Budget subcommittees meet to discuss the Governor's 2022-23 Budget Proposal

### **April:**

- Budget subcommittees meet to discuss the Governor's 2022-23 Budget Proposal
- April 7: spring recess begins
- April 18: Legislature reconvenes from spring recess
- April 28-29: Cal Cities Policy Committee meetings
- April 29: Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house

### **May:**

- May 6: Last day for policy committees to hear and report to the floor nonfiscal bills introduced in their house
- May 11-13: Cal Cities City Leaders Summit, Sacramento
- May 13: Last day for policy committees to meet prior to May 31
- May 14: Governor releases his revision to the budget



- May 20: Last day for fiscal committees to hear and report to the floor bills introduced in their house. Last day for fiscal committees to meet prior to May 31
- May 23-27: Floor session only. No committees, other than conference or rules committees, may meet for any purpose
- May 27: Last day for each house to pass bills introduced in that house
- May 31: Committee meetings may resume

**June:**

- Legislative committees begin to meet to discuss bills from the other house
- Budget subcommittees complete their work on the 2021-22 Budget
- The Assembly and Senate Budget Committees meet to adopt the budget proposal from their house
- The Budget Conference Committee meets to reconcile differences between the Assembly and Senate budget proposals
- The Governor meets with legislative leaders to negotiate last minute differences on the budget
- June 9-10: Cal Cities Policy Committee meetings
- June 15: Deadline for Legislature to pass 2022-23 State Budget
- June 30: Deadline for Governor to sign 2022-23 State Budget

**July:**

- July 1: Last day for policy committees to meet and report bills. This is the last chance for cities to weigh in before bills with a fiscal impact go to the floor for a full vote and is often the best chance to stop a bill
- July 1-Aug. 31: Legislative summer recess upon adjournment provided the Budget Bill has been passed. Legislators will be in their districts, and city officials are encouraged to meet with them on city priorities

**August:**

- Aug. 1: Legislature reconvenes from summer recess
- Aug. 12: Last day for fiscal committees to meet and report bills. This is the last chance for cities to weigh in before bills with a fiscal impact go to the floor
- Aug. 25: Last day to amend bills on the floor
- Aug. 31: Last day for each house to pass bills. Summer recess begins upon adjournment

**September:**

- Sept. 7-9: League of California Cities Annual Conference and Expo, Long Beach
- Sept. 7: Cal Cities Policy Committees meet as needed at Annual Conference
- Sept. 30: Last day for Governor to sign or veto bills passed by the Legislature

**November:**

- Nov. 8: General Election



A bird's eye view of the city of Sacramento and the state Capitol.

January 1, 2022 [Features](#) By Melanie Perron

## 2021 Legislative Year in Review

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For many, the beginning of 2021 felt like a continuation of 2020. COVID-19 continued to significantly impact the globe and cities throughout the state were still reeling from the economic impacts of the pandemic. Any guarantee of state or federal relief for cash-strapped cities was tepid at best. One silver lining was that the League of California Cities was able to build upon key relationships in the Legislature to advance top priorities for cities in 2021.

Many important bills that died in 2020 came back, often with favorable results for cities. Moreover, the state's historic budget surplus of \$100 billion, along with \$8 billion for California cities through a federal relief package, created new opportunities to fund an array of city priorities.

Lawmakers were also more focused this year, introducing a whopping 2,421 bills, far more than in 2019 or 2020. Cal Cities monitored more than 70% of the bills introduced and engaged on the most important measures to cities. Of the 836 bills to reach the Governor's desk, 92% were signed. Further, the Governor's actions aligned with Cal Cities' positions on bills 70% of the time, highlighting how critical it is that we engage on bills in the legislative process to try to stop or get amendments to those impacting cities the most.

Although this year seemed in many respects to be a repeat of 2020, the legislative results were anything but. Cal Cities' many — and at times, monumental — wins this year at the state and federal level have demonstrated the strength of our organization, and most importantly, our members. Together, we successfully advanced each legislative priority in our 2021 Action Agenda.

### **An \$8 billion lifeline for cities**

At the beginning of the year, the state announced that it was flush with cash, despite predictions to the contrary, and the federal government was poised to deliver billions in aid to American families and



businesses in yet another relief package. Unfortunately, both seemed reluctant to provide funding relief for cities, which had provided many new, pandemic-related services while maintaining existing services with shrinking budgets. Statewide, cities were facing a \$7 billion shortfall. Save for \$500 million in CARES Act state funding in 2020, cities had been left to fend for themselves.

Many powerful lawmakers at the federal level openly balked at the idea of providing any relief to cities. However, in March, Cal Cities' year-long research, lobbying, and grassroots efforts finally paid off. Thanks to strong partnerships with the state of California and our Support Local Recovery coalition, as well as national partners like the National League of Cities, Cal Cities delivered on its first Action Agenda item: \$8 billion in direct, flexible funding for cities of all sizes through the American Rescue Plan Act. The historic funding package has already had a transformative effect on many communities.

However, dollars do not guarantee success. Cal Cities worked closely with the U.S. Department of the Treasury and the California Department of Finance throughout the year to ensure cities' concerns were addressed during the federal rulemaking process and that the application process was streamlined. Those partnerships ensured that every city in California received American Rescue Plan Act dollars.

Working closely with the Department of Finance to get processes established quickly helped California be one of the first states to distribute funding to all its municipalities, whereas other states continue to struggle to do so. Cal Cities' involvement was key to ensuring expedited and streamlined distribution of funds here at home while also keeping city officials updated with important information about resources and processes to access these funds through regular updates on the Cal Cities [Guide to Local Recovery](#) webpage.



Cal Cities fought hard to stave off housing bills that were most harmful to cities and supported bills to help cities plan for more housing.

## The state made a significant investment in the production of affordable housing, but high-profile housing bills undermined local control

For years, Cal Cities has sought ongoing dedicated funding from the state to help address California's affordable housing crisis while preserving local decision-making. And for years, the state and Legislature has responded by proposing — or worse, passing — inflexible statewide mandates that prioritize the needs of developers over local communities, while simultaneously failing to provide any long-term resources to help cities plan for housing. Some bills have even upended or hindered existing housing plans. As a Cal Cities legislative priority this year, we fought hard to stave off housing bills that were most harmful to cities and supported bills to help cities plan for more housing. Some of the housing bills that undermine local decision-making made it through and were signed by the Governor, while important budget bills were largely positive for cities.

The state continued this year to make homelessness a budget priority. In total, the [2021-22 budget](#) provides \$10 billion for affordable housing and homeless programs. The budget specifically includes more than \$2 billion over the next two years to help cities address homelessness and \$2.2 billion for Homekey. The budget also includes more than \$750 million to support affordable housing development. This funding marks an important shift from providing less generous, one-time funding to cities to address homelessness, to the state providing \$1 billion annually for the next two years. Additionally, the Legislature and the Governor have committed to making funding to address homelessness an annual priority.

In another significant win for cities, several bills infringing upon local control became two-year bills or failed to advance entirely, including [AB 500 \(Ward\)](#), [AB 1401 \(Friedman\)](#), and [AB 989 \(Gabriel\)](#). These bills would have added more decision-makers to the housing plan process, which would adversely impact cities, and would have likely stalled existing efforts to build more affordable housing.

Unfortunately, two bills of significant concern were ultimately signed into law, despite the fervent objections of California's city leaders: [SB 9 \(Atkins\)](#) and [AB 215 \(Chiu\)](#). More than 240 cities joined Cal Cities in opposition to SB 9, which will require local governments to ministerially approve a housing development containing two residential units in single-family zones and urban lot splits. This 'by right' or mandatory approval scheme changes the rules midstream and as a result, may hinder housing plans already being implemented.

AB 215 slows existing housing efforts by adding a step to the housing element certification process requiring 40 additional days. Moreover, a last-minute amendment created a new three-year statute of limitations for any housing plan enforcement process. It also allows the Department of Housing and Community Development to appoint or contract with other counsel to represent the department in such cases if the Attorney General declines to represent them.

Cal Cities expects to see additional proposals over land use authority in the next session, particularly on state funding reporting requirements — which were not fully codified in this year's budget trailer bills — and single-family zoning. Cal Cities continues to prioritize the need for resources that support the construction of affordable housing while preserving local control. Ultimately, this problem affects all Californians and requires extensive collaboration at the local, regional, and state levels.





The pandemic shined a light on the state's massive digital divide. In 2021, Cal Cities pushed to protect and modernize infrastructure including broadband deployment.

## California passes largest public broadband infrastructure investment in the country

The pandemic shined a glaring floodlight on many of the state's inequities, including the massive digital divide. For years, Cal Cities has advocated for high-quality, affordable broadband in rural, urban, and suburban communities. In 2020, Cal Cities came close to securing a funding package, which ultimately crumbled due to legislators in-fighting during the end-of-session chaos, while many Californians struggled to stay connected while working from home and or attending school remotely.

Protecting and modernizing infrastructure was another Cal Cities priority this year and we pushed legislators hard on the issue. By the summer our efforts paid off. In July, the state passed a [\\$6 billion broadband package](#). Until the passage of the federal government's Infrastructure Investment and Jobs Act, this was the country's largest ever public broadband infrastructure investment. Unlike previous funding attempts, this bill provides local leaders more opportunities to participate in broadband deployment. It also prioritizes the construction of networks in unserved areas, as well as those with lower speeds not suitable for education, commerce, and video conferencing. This ensures that services benefit those needing them the most.

Cal Cities also worked closely with Assembly Member Cecilia Aguiar-Curry and Senator Lena Gonzalez, who have both long advocated for high-speed, widely available, and reliable broadband to develop two complementary bills: [AB 14 \(Aguiar-Curry\)](#) and [SB 4 \(Gonzalez\)](#). The two measures prioritize equitable broadband deployment and make important separate tweaks to the California Advanced Services Fund, which supports broadband deployment. While a last-minute industry push was made to kill SB 4, cities came out strong, advocating to legislators about the need for these bills, which secured their passage in the Legislature and the Governor's signature on both bills. These two



lawmakers were honored for their persistent work to bring broadband to California’s unserved and underserved neighborhoods with the 2021 Distinguished Legislative Leadership Award at the Cal Cities 2021 Annual Conference and Expo.

AB 14 and SB 4 also were accompanied by a welcomed veto of [SB 556 \(Dodd\)](#), which would have forced local governments to make space on public infrastructure available to telecommunications providers. The Governor’s veto message largely mirrored Cal Cities’ arguments, with Gov. Gavin Newsom noting that provisions of the bill “conflict with and complicate some of the FCC requirements.” He also stated, “part of our achievements laid out in the broadband budget bill, SB 156 (Chapter 112, Statutes of 2020), enables and encourages local governments to take an active role in last mile deployment and, in doing so, drive competition and increase access.”

Cities could not have had a better year regarding affordable and reliable broadband. Collectively, these wins are the result of years of continued intense advocacy from Cal Cities and its members. Cities put themselves at the forefront of a national conversation about broadband access and demonstrated their capability to provide high-quality services to all their residents. In doing so, we were able to fend off bad bills and lay the groundwork for transformative change in cities.



SB 155 contains an ongoing, ten-year appropriation of funding for healthy forest fire prevention programs, prescribed burns, and other fuel reduction projects.

## **Cal Cities secures much-needed funding for disaster preparedness, resiliency, and recovery**

With unprecedented pandemic-related shortfalls, legislators and the Governor were forced to rework the 2020 state budget. One of the first major areas chopped was funding for disaster preparedness, resiliency, and recovery. The narrative was substantially different in 2021. For starters, the state’s

coffers were overflowing providing significant opportunities to create and reimagine programs and provide resources. Second, California was entering another devastating — and likely multi-year drought — as well as an increasingly long and volatile fire season. It was clear that direct, flexible funding was desperately needed for those on the frontlines of climate change: cities.

With strengthening community disaster preparedness, resiliency, and recovery as another Cal Cities priority in 2021, and building on last year's work, Cal Cities partnered with key legislators to secure \$4.5 billion in the state budget to help cities prepare for, fight, and recover from wildfires, as well as update local coastal plans and fund urban climate resiliency programs. In the final days of the legislative session, lawmakers also passed [SB 155 \(Committee on Budget and Fiscal Review\)](#) and [SB 170 \(Skinner\)](#), two trailer bills that provide millions for climate resiliency and disaster preparedness. Notably, SB 155 contains an ongoing, ten-year appropriation of \$200 million to CAL FIRE for healthy forest fire prevention programs, prescribed burns, and other fuel reduction projects.

In 2020, the state could not even agree on a one-time climate change package. This year, every issue area, from sea level rise to extreme heat mitigation, received state funding.

## **Major Brown Act relief secured; proposed unfunded mandate vetoed**

In addition to Cal Cities' top four priorities in our 2021 Action Agenda, other issues emerged and were a focus for our advocacy efforts. Unsurprisingly, Brown Act relief and modernization was a critical priority issue for many city officials in 2021. Last March, the Governor issued Executive Order N-29-20, which was followed by subsequent executive orders, allowing cities to conduct remote meetings under modified Brown Act requirements. The Legislature passed, and the Governor signed, [AB 361 \(Robert Rivas\)](#) shortly before the order was set to expire, which lets cities conduct remote meetings under some similar conditions and rules, while also expanding this to include any declared state of emergency. At the urging of Cal Cities and other local government associations, the bill was amended to include an urgency clause, allowing cities to provide services and conduct city business safely and uninterrupted.

From the moment [AB 339 \(Lee\)](#) was introduced, Cal Cities led a coalition in strong opposition to the bill. While cities are committed to conducting public meetings transparently and providing opportunities for public participation, AB 339 was the wrong approach. The bill failed to consider the practical impacts of unlimited remote public comment on local agencies' ability to both deliberate and act on items of importance to the public. The measure would have required cities to provide call-in and internet-based options, in addition to in-person options, for members of the public during any public meeting. By not including any clear ability to limit participation or length of testimony, the bill would have allowed a relatively small group of people from anywhere in the world to disrupt a local government meeting. With continued pressure from Cal Cities and local governments, the bill was significantly amended but remained problematic.

Although AB 339 passed out of the Legislature, it eventually was vetoed by the Governor, who shared many of Cal Cities' concerns. He noted that the bill would “set a precedent of tying public access requirements to the population of jurisdiction,” “limits flexibility and increases costs for the affected local jurisdictions trying to manage their meetings,” and “puts the health and safety of the public and employees at risk.”

The Governor's veto of AB 339 is important; however, much work remains to be done. As such, we are actively looking at ways to revise and modernize the Brown Act to increase public access while protecting public health and safety.

## **Pandemic regulatory relief maintains local control**

In a move to support California's pandemic recovery, the Governor and the Legislature almost unanimously approved several pieces of legislation to build upon some of the state's more successful pandemic-era rules: [SB 314 \(Wiener\)](#), [AB 61 \(Gabriel\)](#), and [SB 389 \(Dodd\)](#). All three Cal-Cities supported measures provide some regulatory flexibility or relief to qualified businesses serving alcoholic beverages in nontraditional spaces due to indoor dining restrictions. Cal Cities worked closely with SB 314's and AB 61's authors to secure key amendments that preserve local authority.

## **A good year for organic waste diversion**

Although Cal Cities focuses much of its advocacy efforts on its yearly Action Agenda, it is also responsive to the evolving needs of cities. One key issue in 2021 was the need for additional funding and time to implement [SB 1383 \(Lara, Statutes of 2016\)](#) organic waste diversion regulations. Cal Cities worked closely with its members through a survey and a series of roundtables to determine the extent of the issue and with Senator John Laird on a legislative solution.

A longtime assembly member, former budget chair, and former Natural Resources Agency Secretary, Senator Laird was instrumental in helping cities secure funding and flexible compliance pathway. [SB 170 \(Skinner\)](#) includes \$60 million in grant funding to help cities implement SB 1383 regulations and more than \$100 million for organic waste infrastructure. Although far less than Cal Cities' original ask, it is still the largest amount of money ever set aside for cities in a single fiscal year for SB 1383 implementation. Additionally, [SB 619](#), which Senator Laird authored, gives local governments a pathway to compliance with SB 1383 and Cal Cities more time to secure additional SB 1383 funding.

Senator Laird was ultimately awarded the 2021 Distinguished Legislative Leadership Award at Cal Cities 2021 Annual Conference and Expo for his work in providing additional funding and time for SB 1383 regulations.

## **A good year for other environmental issues**

For years, Cal Cities has been heavily involved in attempts to overhaul California's plastic recycling system, a desire shared by many lawmakers, most notably Senator Ben Allen. This year, several innocuous, but notable recycling bills finally passed — despite fervent opposition from industry groups, potentially setting up a larger fight in 2022, including at the ballot box.

One of the more noteworthy measures is [SB 343 \(Allen\)](#) which clarifies which materials are suitable for recycling. Due to decades of greenwashing, many consumers wrongly assume that all materials with the word "recyclable" or the "chasing arrows" symbol are recyclable. These designations now will be reserved for materials that are truly recyclable and routinely sold to manufacturers to make new products. These changes will reduce contamination, lower waste volume, and improve recycling rates. SB 343 passed due to a coalition of nonprofits and local government partners, including Cal Cities.



Cal Cities also worked closely with cities and lawmakers to pass [AB 1311 \(Wood\)](#). Cal Cities, along with the California State Association of Counties and the Rural County Representatives of California, identified a crisis-in-making early on — zero access to certified recycling centers in numerous counties. Using that information, Assembly Member Jim Wood crafted AB 1311, which expands the number of beverage container redemption opportunities under the California Beverage Container Recycling and Litter Reduction Act. The bill, which is a strong step in the right direction, will help create new opportunities for consumers to redeem their California Redemption Value and preserve the program’s core functions.



Unlike last year, dozens of environmental quality bills advanced to the Governor’s desk. Other significant bills include [SB 1 \(Atkins\)](#), which establishes new planning, assessment, funding, and mitigation tools for California to address and respond to sea level rise, and [SB 323 \(Caballero\)](#), a measure that gives public agency water and sewer rates the same protections already afforded to fees and charges that fund other essential government services.

## Key transportation funding legislation

Transportation funding continues to be an issue for cities struggling to maintain their roads, streets, and bridges. Cal Cities secured much-needed relief to the maintenance of effort requirements under SB 1 (Chapter 5, 2017), which were included in the budget bill. This relief provides a two-year exemption from the state’s annual minimum expenditure requirements in the 2019-20 fiscal year, with proportional adjustments to their fiscal obligations through the 21-22 fiscal year.

While this was welcome news to many cities, others continued to seek creative ways to leverage their existing funds to help deliver needed local and regional projects. One strategy was to finance projects by partnering with other jurisdictions to pool transportation funds. However, under [SB 1 \(Beall, Statutes of 2017\)](#), it was unclear if cities had the authority to jointly sponsor local streets and roads

projects. Cal Cities-backed legislation, [SB 640 \(Becker\)](#), clarified this additional flexibility for cities to access the funding while teaming up with other cities or counties.



Transportation funding continues to be an issue for cities to maintain their roads, streets, and bridges. Cal Cities secured much-needed relief to the maintenance of effort requirements under SB 1.

Under SB 640, two or more eligible cities, or one or more cities and a county, can combine resources on projects that affect multiple jurisdictions. The bill also consolidates reporting requirements into a single report making it easier for cities to provide the required information. A desperately needed bill, both changes will allow cities to negotiate more competitive rates, thus maximizing SB 1 dollars on regional projects, and adding flexibility to the spending of that funding.

While this is a step in the right direction, continued talks around a more sustainable funding source for road maintenance and construction are urgently needed.

## Major pension bill unfairly punishes cities

Despite opposition from Cal Cities members and coalition partners [SB 278 \(Leyva\)](#) will become law in 2022. Under SB 278, if CalPERS determines that compensation agreed to under a collective bargaining agreement is non-pensionable, cities must pay penalties to the affected retired member, survivor, or beneficiary and CalPERS, with 10% going directly to CalPERS. This creates both a conflict of interest for CalPERS and places 100% of the total liability for such overpayments on public agencies. SB 278 is a de facto and retroactive benefit enhancement measure that will further strain local agency budgets at a time when the impacts of COVID-19 and retirement obligations are making it exceedingly difficult to effectively provide critical services for the public.



## Revenue and taxation measures yield mostly positive results

This year, lawmakers were reluctant to alter existing revenue and taxation laws as many communities were still struggling to recover from the pandemic. This is in part because Cal Cities worked extensively to educate key lawmakers about these impacts, resulting in several bills being held. As a result, 2021 was a good year for cities in the revenue and taxation space, except for a key sales tax measure that failed to secure the Governor's signature.

Two Cal Cities-supported bills, [SB 60 \(Glazer\)](#) and [SB 219 \(McGuire\)](#), were passed and signed. SB 60 allows cities and counties to impose larger fines for violations of short-term rental ordinances up to \$5,000 for each violation, which will help prevent public health and safety violations related to short-term rentals. SB 219 provides much-needed flexibility to residents unable to pay their property taxes due to economic hardship caused by a shelter-in-place order. Additionally, [SB 555 \(McGuire\)](#), a bill that would have resulted in less effective tax collection from short-term rentals, was turned into a two-year bill.

[SB 792 \(Glazer\)](#) aimed to better inform the public's understanding of online transactions and the flow of goods across the state with new, modernized reporting requirements. Cal Cities members and others advocated for better data about these transactions. However, the Governor vetoed the bill, noting that it creates a "burdensome and costly new reporting requirement for many retailers that is unrelated to their tax obligations." Cities will have to continue relying on current analysis, which is constrained to modeling based on transaction and use tax (district tax) data from about half of California's 482 cities.

## Key amendments secured for significant police reform bills

After the senseless death of George Floyd and the civil unrest that followed, it became clear that public safety and police reform policy would be a major priority of the Legislature this session. The Cal Cities Board of Directors voted in December 2020 to create a Public Safety Task Force, which would provide feedback and recommendations on public safety policy priorities. This allowed Cal Cities to remain highly engaged on these issues throughout the year, negotiating amendments that removed some of the more contentious elements for cities, while preserving the bills' core functions and promoting appropriate transparency, reporting, and certification standards.

Cal Cities, California State Sheriffs Association, and the California Correctional Peace Officers Association played a key role in securing amendments to [SB 16 \(Skinner\)](#). As previously drafted, the measure would have made every incident involving unreasonable or excessive force and any sustained finding that an officer failed to intervene in such cases subject to disclosure. The bill now only mandates the disclosure of substantiated claims. Cal Cities and others removed their opposition, paving the way for the Governor's eventual signature.

Cal Cities also secured substantial amendments to [SB 2 \(Bradford\)](#), which undercuts the federally held doctrine of qualified immunity and outlines a largely unworkable peace officer decertification process. The amendments Cal Cities negotiated addressed financial concerns related to lawsuits under the Tom Bane Civil Rights Act, which would have seriously impacted cities financially. While these were critical amendments, Cal Cities remained opposed to the bill largely due to the new Peace Officer Standards



and Training Commission advisory board, which removes police chiefs from the decision-making process. Despite our continued opposition, the Governor signed this measure.

Cal Cities supported [AB 89 \(Jones-Sawyer\)](#) after the author addressed concerns about the measure's impact on recruitment and a lack of access to higher education in some communities. The signed bill takes a nuanced, collaborative, and thoughtful approach to the law enforcement certification process. This measure includes the requirement to create a modern policing degree program by June 2023, as well as recommendations to provide financial assistance for students from historically underserved and disadvantaged communities.

One of the last bills the Governor acted on was [AB 603 \(McCarty\)](#), which he vetoed. The bill would have required cities to post details about money spent on law enforcement-related settlements and judgments online. Cal Cities argued that the measure would both undermine trust — as most defendants settle with the plaintiff out of economic necessity — and impose a significant, non-reimbursable cost statewide. The Governor partially agreed with Cal Cities, noting that the information is already available and could “have potentially significant General Fund costs associated with [it].”

The bills passed this year largely mirror Cal Cities' recently adopted peace officer decertification process policy. Bad actors need to be held accountable, but in a way that does not remove cities from the decision-making process. Bills like SB 2 (Bradford), while far from perfect, make moves in the right direction. Cal Cities will continue to focus advocacy efforts on improving that process and ensuring its transparency and effectiveness.

## Outlook for 2022

In short, 2021 yielded positive legislative results for cities, largely thanks to the efforts of Cal Cities and California's city officials. Despite monumental — and at times, seemingly insurmountable challenges — local leaders rose to the occasion and made sure lawmakers knew how bills would impact their communities.

But city leaders were not just their greatest advocates. They also demonstrated that, when given the right tools and information, cities can find solutions to some of the nation's most pressing problems. Working together with state and federal lawmakers, Cal Cities and its members were able to deliver some truly historic outcomes for California's many diverse communities.

2022 will undoubtedly be another interesting year. Several key housing bills that failed to materialize may resurface in 2022, and a statewide drought and the continuing effects of climate change will influence many legislative conversations around water infrastructure, disaster preparedness, and climate resiliency. Pension sustainability, infrastructure funding, and other public safety reforms will also remain hot-button issues — all as local communities continue to recover from the economic and public health impacts of the pandemic.

The policy fight will not just be confined to the halls of the Capitol. Next year is also an election year, which means voters will be asked to decide the fate of several ballot initiatives in November 2022, many of which will significantly impact cities.

The 2022 election, as well as new redistricting lines, will certainly impact decisions and priorities in Sacramento. The Governor, as well as many lawmakers, will be up for reelection, some in new legislative districts. The election will most likely impact the Legislature's agenda but given the

Governor's large margin of victory in the recall election, it's difficult to anticipate how his reelection campaign may impact his priorities in 2022.

Given the magnitude of legislative issues that are left to be resolved and the ballot measure fights ahead of us, it will be more important than ever that in 2022 cities are united in their effort to affirm local decision-making. Cal Cities will continue to fight on behalf of cities to ensure that their voices are heard loud and clear in the Capitol and remain laser-focused on advancing the priorities that matter most to city leaders.

Together, we will work to uphold local authority, advance our legislative priorities, and improve the quality of life for all Californians.



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# **Policy Role in Land Use Planning**

# UNDERSTANDING THE BASICS OF LAND USE AND PLANNING:

## The Nuts and Bolts of Project Review

*Project review is at the center of the process of local planning. Most planning decisions are made in response to project applications submitted by individual business owners, residents, property owners, and developers.*

As local officials review project applications – whether they are acting as an elected official, an appointed commissioner, or a staff member – they evaluate the project’s design and fit with the surrounding community. As they do so, they must grapple with some common questions:

- What should the community look like?
- Are there community needs that are not being met?
- How does the project relate to its surrounding environment?
- Does the proposed use enhance the community both today and in the future?

The challenge is to incorporate big-picture concepts into the weekly or monthly act of ruling on individual project applications. Long-term community goals must also be balanced against economic, legal, safety, and other public policy concerns. For example, residents may suggest a narrower street design to reduce traffic hazards and create a more compact feel in a planned neighborhood, only to find that the fire marshal believes that extra-wide streets are needed to assure that emergency vehicles can get through in any situation. All of these are valid concerns that make the role of local officials challenging. Yet it is the sum of these incremental decisions, the ones made day after day, that will ultimately shape the future of the community.

### The Typical Application

The typical development application comes in many forms. Planning officials may review general plan and zoning amendments, tentative or parcel maps, planned unit developments, building permits, conditional use permits, certain types of variances, design review permits, development agreements, environmental documents and other types of applications.

The agenda for any given meeting may require local officials to review an addition to a single-family residence one minute and a complex mixed-use or multifamily development the next. Even the smallest project may raise a few unique issues. The job of elected officials, appointed commissioners, and professional staff is to ensure that those issues are considered and addressed.

City council members and county supervisors are not generally responsible for assessing all of the technical merits of a development project. They will usually receive advice from advisory bodies such as the planning commission or design review board. Staff will summarize the most important technical points in the staff report. Although elected officials or appointed commissioners may not see (or need to see) all the information received by their planning staff, it may be helpful to know what type of information they use to evaluate a project.

## CHECKLIST FOR REVIEWING AN APPLICATION

- ✓ Compare to the general plan and the zoning ordinance
- ✓ Compare the vicinity map and the site plan
- ✓ Check the scale of the plans
- ✓ Determine if there are public views worth protecting
- ✓ Review existing and proposed contours and the grading plan
- ✓ Check the circulation pattern
- ✓ Locate landscaped areas
- ✓ Check the materials and architectural elements
- ✓ Review conservation practices
- ✓ Check the parking layout
- ✓ Think about the future

### How to Review an Application

A reviewer can get a basic understanding of a project by going through the following steps.

**Compare to the General Plan and the Zoning Ordinance.** Is the project consistent with the general plan and the zoning ordinance? Look at the range of permitted uses, density, housing needs, structure heights, circulation, environmental issues like habitat preservation and open space protection, etc. If the applicant seeks a zone change or general plan amendment, the project's benefits should justify the change and be consistent with surrounding planned uses.

**Compare the Vicinity Map and the Site Plan.** How does the proposed project fit in with the existing community? Is it compatible with surrounding properties and the street? Is there any relationship between the adjacent buildings (both on and off the project site), such as pedestrian walks, window-to-window visual contact, noisy areas adjacent to quiet areas, or shadows cast over plaza areas? Can changes in the design address potential conflicts?

**Check the Scale of the Plans.** Understanding scale will help decision makers get a feel for the actual size of the project. A good way to interpret plans on a human scale is to judge them in five- to six-foot increments to see how the scale matches the size of a typical person. A typical parking stall is 20 feet long, also a good reference point for scale.

**Determine If There Are Public Views Worth Protecting.** Would the project obstruct the public view of a landscape or landmark? Is there a public view of a feature on the site itself that should be protected? If so, do the site plan and architecture take these public views into account?

**Review Existing and Proposed Contours and the Grading Plan.** An outline of the building should be drawn on a topographical map. Do slopes threaten adjoining properties or detrimentally change the visual character of the area? Will floor elevations and parking facilities be graded to levels that are consistent with the landscaping plan and are not so high that buffers such as landscaping would be ineffective? Is drainage addressed so as to minimize the impacts of erosion on-site and prevent off-site erosion?

**Check the Circulation Pattern.** How easily can people reach the site by various modes of transportation? Check circulation aspects for transit riders, cars, delivery vehicles, pedestrians, and bicycles. Are there points of conflict, such as walkways that would lead pedestrians through traffic or between cars?

## BASIC PROJECT APPLICATION INFORMATION

Each local agency maintains a detailed list of all the information needed from a project applicant, although most require the same basic information, including:

- Signed Application
- Vicinity Map
- Existing Facilities Map
- Site Plan
- Grading Plan
- Architectural Elevations
- Materials Board
- Landscape Plan
- Environmental Questionnaire

Additional information may be provided depending on the nature of the application. Examples include traffic analyses, biological studies, utility reports, lighting and signage plans, and phasing plans for large projects.

**Locate Landscaped Areas.** Does the proposed landscape reflect the available water and can it be irrigated with reclaimed water? Are native or natural landscapes protected? Do landscaped areas soften buildings, breaking up parking areas and long, blank portions of wall? Are there areas for special landscape and hardscape treatment? Will existing trees be removed or should they be saved? Is the selection of plants and trees appropriate for the climate?

**Check the Materials and Architectural Elements.** Review the materials and architectural elements of the project. Do they incorporate features that are consistent throughout the neighborhood or district? Do they create visual interest? Do they match existing design guidelines or policies in the general plan or specific plan?

**Review Conservation Practices.** Recycled and energy-efficient materials can reduce a project's impact on the environment. Is the building sited to reduce energy consumption and does it respond to the solar orientation of the site? Does the builder intend to use recycled materials? Is the project designed to minimize runoff (particularly from parking areas and other paved or impervious areas such as roofs)? Are energy-efficient materials—like windows and heating and cooling systems—included in the plan? Are trees and landscaping used to minimize energy consumption and heat generation?

**Check the Parking Layout.** Does the parking layout and development reduce the 'heat island' effect of large, unshaded parking lots? Do the aisles relate well to entry and exit points? Is there a logical pattern for cars to follow? Is there sufficient landscaping to screen parking from view or to break up expanses of asphalt? If the project site fronts a pedestrian area, is the parking tucked behind the building to create a more vibrant streetscape? Are there adequate pedestrian routes and disabled access accommodations in the parking lot?

**Think About the Future.** What is likely to happen on adjacent undeveloped or potentially redevelopable property? Does the project anticipate likely changes or is it adaptable? For phased projects, make sure that the first phase will stand by itself in case the next phase is never constructed.

## RESOURCES FOR FURTHER INFORMATION

The Institute offers several publications on land use topics, including guides in the *Understanding the Basics of Land Use* series and a set of plain-language, one-page descriptions of common land use actions. For more information and resources on planning and land use topics, visit ILG's Land Use and Environment Program at [www.ca-ilg.org/landuse](http://www.ca-ilg.org/landuse).



## ABOUT THE INSTITUTE FOR LOCAL GOVERNMENT

The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties.

Its mission is to promote good government at the local level.

The Institute's current program areas include:

- Climate Change
- Collaborative Governance Initiative
- Healthy Communities
- Intergovernmental Conflict Resolution
- Land Use and Environment
- Local Government 101
- Public Service Ethics



UNDERSTANDING THE BASICS OF LAND USE AND PLANNING: THE NUTS AND BOLTS OF PROJECT REVIEW

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## GLOSSARY OF LAND USE AND PLANNING TERMS: Acronyms and Abbreviations

<b>A</b>	Agricultural	<b>FEMA</b>	Federal Emergency Management Agency
<b>ADA</b>	Americans with Disabilities Act (1990)	<b>FHA</b>	Federal Housing Administration
<b>ADT</b>	Average Daily Trips made by vehicles or persons in a 24-hour period	<b>FHLMC</b>	Federal Housing Loan Mortgage Company/"Freddie Mac"
<b>ADU</b>	Accessory Dwelling Unit	<b>FHWA</b>	Federal Highway Administration
<b>af</b>	Acre foot	<b>FIA</b>	Fiscal Impact Analysis (also Federal Insurance Administration)
<b>AIA</b>	American Institute of Architects	<b>FIR</b>	Fiscal Impact Report
<b>AICP</b>	American Institute of Certified Planners	<b>FIRE</b>	Finance, Insurance and Real Estate
<b>ALUC</b>	Airport Land Use Commission	<b>FIRM</b>	Flood Insurance Rate Map
<b>APA</b>	American Planning Association	<b>FmHA</b>	Farmers Home Administration
<b>AQMD</b>	Air Quality Management District.	<b>FMV</b>	Fair Market Value
<b>ASCE</b>	American Society of Civil Engineers	<b>FNMA</b>	Federal National Mortgage Association/ "Fannie Mae"
<b>BAT</b>	Best Available Technology	<b>FPPC</b>	Fair Political Practices Commission (California)
<b>BID</b>	Business Improvement District	<b>FTA</b>	Federal Transit Administration
<b>BLM</b>	Bureau of Land Management	<b>FWS</b>	U.S. Fish and Wildlife Service
<b>BMP</b>	Best Management Practices	<b>GHG</b>	Greenhouse Gas
<b>BMR</b>	Below-Market Rate dwelling unit or interest rate	<b>GIS</b>	Geographic Information Systems
<b>BRT</b>	Bus Rapid Transit	<b>GLA</b>	Gross Leasable Area
<b>C</b>	Commercial zone/use of specified intensity	<b>GMI</b>	Gross Monthly Income
<b>C</b>	Commercial	<b>GNMA</b>	Government National Mortgage Association/"Ginnie Mae"
<b>CAA</b>	Clean Air Act	<b>GPS</b>	Global Positioning System
<b>CAD</b>	Computer Aided Design	<b>HAP</b>	Housing Assistance Plan
<b>CARB</b>	California Air Resources Board	<b>HCD</b>	California Department of Housing and Community Development
<b>CalEPA</b>	California Environmental Protection Agency	<b>HCP</b>	Habitat Conservation Plan
<b>CBD</b>	Central Business District	<b>HIA</b>	Health Impact Assessment
<b>CC&amp;Rs</b>	Covenants, Conditions, and Restrictions	<b>HOA</b>	Home Owners' Association
<b>CDBG</b>	Community Development Block Grant	<b>HOV</b>	High-Occupancy Vehicle
<b>CEQA</b>	California Environmental Quality Act	<b>HTF</b>	Housing Trust Fund
<b>CESA</b>	California Endangered Species Act	<b>HUD</b>	U.S. Department of Housing and Urban Development
<b>CFD</b>	Mello-Roos Community Facilities District	<b>I</b>	Industrial
<b>cfs</b>	Cubic Feet per Second	<b>ISTEA</b>	Intermodal Surface Transportation Efficiency Act
<b>CHFA</b>	California Housing Finance Agency	<b>JPA</b>	Joint Powers Authority
<b>CIP</b>	Capital Improvements Program	<b>LAFCO</b>	Local Agency Formation Commission
<b>CMP</b>	Congestion Management Plan	<b>LCP</b>	Local Coastal Plan/Program
<b>CNEL</b>	Community Noise Equivalent Level	<b>Ldn</b>	Day-Night Average Sound Level
<b>CPI</b>	Consumer Price Index	<b>LEED</b>	Leadership in Energy and Environmental Design
<b>COG</b>	Council of Governments	<b>LEED-ND</b>	LEED for Neighborhood Development
<b>CRA</b>	Community Redevelopment Agency	<b>LHA</b>	Local Housing Authority
<b>CSA</b>	Community Service District	<b>LOS</b>	Level of Service
<b>CUP</b>	Conditional Use Permit	<b>LRT</b>	Light-duty Rail Transit
<b>CWA</b>	Federal Clean Water Act	<b>M-1,2</b>	Manufacturing Zone
<b>dB</b>	Decibel	<b>MEA</b>	Master Environmental Assessment
<b>DFG</b>	Department of Fish and Game	<b>MEIR</b>	Master Environmental Impact Report
<b>DOE</b>	Department of Energy (U.S.)	<b>MF</b>	Multifamily
<b>DOT</b>	Department of Transportation (U.S.)	<b>MGD</b>	Millions of Gallons per Day
<b>DU</b>	Dwelling Unit	<b>MH</b>	Manufactured Housing
<b>EIR</b>	Environmental Impact Report (California)	<b>MOU</b>	Memorandum of Understanding
<b>EIS</b>	Environmental Impact Statement (Federal)	<b>MPD</b>	Master Planned Community
<b>EJ</b>	Environmental Justice	<b>MPO</b>	Metropolitan Planning Organization
<b>EPA</b>	Federal Environmental Protection Agency	<b>MSCP</b>	Multi-Species Conservation Plan
<b>ESA</b>	Federal Endangered Species Act		
<b>FAA</b>	Federal Aviation Administration		
<b>FAR</b>	Floor Area Ratio		
<b>FAUS</b>	Federal Aid to Urban Systems		

<b>MXD</b>	Mixed Use Development	<b>RFQ</b>	Requests for Qualifications
<b>NAHB</b>	National Association of Home Builders	<b>RHNA</b>	Regional Housing Needs Assessment/Allocation
<b>NAHRO</b>	National Association of Housing & Redevelopment Officials	<b>RLUIPA</b>	Religious Land Use and Institutionalized Persons Act
<b>NCCP</b>	Natural Communities Conservation Plan	<b>ROW</b>	Right-of-Way
<b>NEPA</b>	National Environmental Policy Act	<b>RPA</b>	Regional Planning Agency
<b>NGO</b>	Nongovernmental Organization	<b>RTPA</b>	Regional Transportation Planning Agency
<b>NHPA</b>	National Historic Preservation Act	<b>SFD</b>	Single-Family Dwelling
<b>NMFS</b>	National Marine Fisheries Service	<b>SLAPP</b>	Strategic Lawsuits Against Public Participation
<b>NOC</b>	Notice of Completion (CEQA)	<b>SRO</b>	Single-Room Occupancy
<b>NOD</b>	Notice of Determination (CEQA)	<b>STIP</b>	State Transportation Improvement Plan
<b>NOP</b>	Notice of Preparation (CEQA)	<b>TEA-21</b>	Federal Transportation Equity Act for the 21st Century
<b>NPDES</b>	National Pollution Discharge Elimination System	<b>TDM</b>	Transportation Demand Management
<b>NRCS</b>	National Resources Conservation Service	<b>TDR</b>	Transfer of Development Rights
<b>OPR</b>	Governor's Office of Planning and Research (California)	<b>TMDL</b>	Total Maximum Daily Load
<b>P&amp;Z</b>	Planning and Zoning	<b>TOD</b>	Transit-Oriented Development
<b>PC</b>	Planning Commission	<b>TOT</b>	Transient Occupancy Tax
<b>PCD</b>	Planned Commercial Development	<b>TSM</b>	Transportation Systems Management
<b>PDR</b>	Purchase of Development Rights	<b>UBC</b>	Uniform Building Code
<b>PHA</b>	Public Housing Agency	<b>UGB</b>	Urban Growth Boundary
<b>PHT</b>	Peak Hour Traffic (or Peak Hour Trips)	<b>UHC</b>	Uniform Housing Code
<b>PID</b>	Planned Industrial Development	<b>UMTA</b>	Urban Mass Transportation Administration
<b>PM</b>	Particulate Matter	<b>USDA</b>	U.S. Department of Agriculture
<b>PPB</b>	Parts Per Billion	<b>USDI</b>	U.S. Department of the Interior
<b>PPM</b>	Parts per Million	<b>USFS</b>	U.S. Forest Service
<b>PUD</b>	Planned Unit Development	<b>USFWS</b>	U.S. Fish and Wildlife Service
<b>QOL</b>	Quality of Life	<b>USGS</b>	U.S. Geological Survey
<b>R</b>	Residential	<b>VLF</b>	Vehicle License Fee
<b>R-1,2</b>	Residential Zone/use of specified intensity	<b>VMT</b>	Vehicle Miles Traveled
<b>RDA</b>	Redevelopment Agency	<b>WQMP</b>	Water Quality Management Plan
<b>RFP</b>	Request for Proposal	<b>ZLL</b>	Zero Lot Line
		<b>ZO</b>	Zoning Ordinance

## ABOUT THE INSTITUTE FOR LOCAL GOVERNMENT

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

The Institute's current program areas include:

- Climate Change
- Collaborative Governance Initiative
- Healthy Communities
- Intergovernmental Conflict Resolution
- Land Use and Environment
- Local Government 101
- Public Service Ethics



GLOSSARY OF LAND USE AND PLANNING TERMS:  
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For more information about land use, health and the  
environment, visit [www.ca-ilg.org/landuse](http://www.ca-ilg.org/landuse).

# Sustainability Best Practices Framework



## About ILG's Sustainable Communities Program

The Institute's Sustainable Communities program helps local officials and staff identify and apply policies and best practices that support sustainable communities — places that foster and maintain a high quality of life for their residents on an ongoing basis. [www.ca-ilg.org/Sustainability](http://www.ca-ilg.org/Sustainability)

## Sustainability Best Practices Framework: Options to Consider

The Institute for Local Government's Sustainability Best Practices Framework offers options for local action in ten areas. They are drawn from practical experiences of cities and counties throughout California. The options vary in complexity and are adaptable to fit the unique needs and circumstances of individual communities.

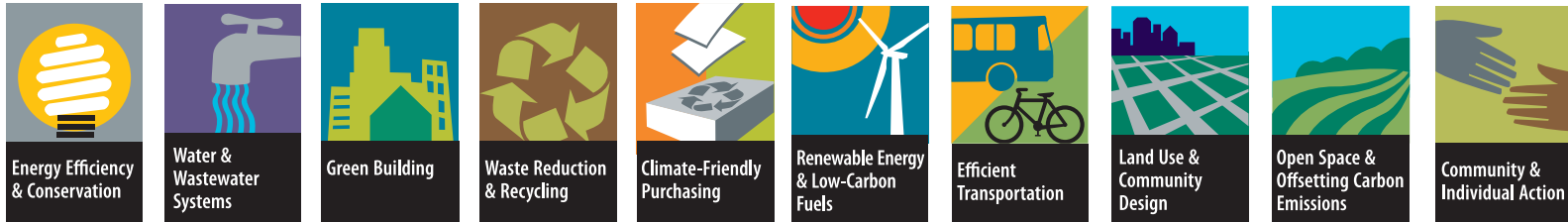
Local officials and staff may use the framework in a variety of ways, including to:

- Generate ideas about programs and policies to pursue;
- Inform a comprehensive climate action planning process; or
- Integrate sustainability into general plan policies.

Many of the activities can lead to multiple benefits, including:

- Reduced greenhouse gas emissions;
- Energy, water, fuel and cost savings;
- Improved health; and
- Increased resilience to climate change impacts.

# Sustainability Best Practices Framework



## Feedback Welcome

The Sustainability Best Practices Framework highlights the ongoing good work at the local level to save energy and reduce greenhouse gas emissions. It is an evolving resource. New ideas are welcome, along with any materials or background information that may benefit local agencies. Please email us at [sustainability@ca-ilg.org](mailto:sustainability@ca-ilg.org).

## About the Institute for Local Government

The Institute for Local Government (ILG) is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties. The Institute's mission is to promote good government at the local level with practical, impartial and easy-to-use resources for California communities. [www.ca-ilg.org](http://www.ca-ilg.org)

The activities can also help make communities more attractive places to live, work and conduct business. Learn more about the co-benefits of sustainability strategies at [www.ca-ilg.org/SustainabilityCo-Benefits](http://www.ca-ilg.org/SustainabilityCo-Benefits)

## Updated Sustainability Best Practices Now Available

First released in 2008, the Sustainability Best Practices Framework has gone through several iterations, including the most recent 2013 update.

The new updates reflect activities local agencies, including cities and counties, participating in the Beacon recognition program have undertaken, technological advancements, and policy changes at the state level. Like the original Best Practices Framework, these updates have been peer-reviewed and reflect input from local and state officials, technical experts and others. [www.ca-ilg.org/SustainabilityBestPractices](http://www.ca-ilg.org/SustainabilityBestPractices)

## More Information to Support Local Efforts

Visit the Institute's website ([www.ca-ilg.org/SustainabilityBestPractices](http://www.ca-ilg.org/SustainabilityBestPractices)) to read stories and watch videos ([www.ca-ilg.org/BeaconAwardVideos](http://www.ca-ilg.org/BeaconAwardVideos)) about local sustainability efforts from around California and to access resources to support efforts in the ten best practice areas.

Additionally, join the Institute's Sustainable Communities Learning Network LinkedIn group ([www.ca-ilg.org/SCLNLinkedIn](http://www.ca-ilg.org/SCLNLinkedIn)), which enables local agency sustainability practitioners to connect, exchange information, discuss best practices, and seek feedback directly from their peers.



Local Leadership Toward Solving Climate Change

## About the Beacon Program

The Beacon program, sponsored by the Institute for Local Government and the Statewide Energy Efficiency Collaborative, recognizes and supports California cities and counties that are working to reduce greenhouse gas emissions, save energy and adopt policies and programs that promote sustainability. Learn about the Beacon program and participant accomplishments at [www.ca-ilg.org/BeaconAward](http://www.ca-ilg.org/BeaconAward).

The program is funded by California utility customers and administered by Southern California Gas Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company and Southern California Edison, under the auspices of the California Public Utilities Commission.

The Statewide Energy Efficiency Collaborative (SEEC) is an alliance to help cities and counties reduce greenhouse gas emissions and save energy. SEEC is a collaboration between three statewide non-profit organizations, including the Institute for Local Government, and California's four investor-owned utilities. [www.californiaseec.org](http://www.californiaseec.org)



[www.ca-ilg.org](http://www.ca-ilg.org)





## Energy Efficiency & Conservation

Options to Consider

Energy generation is the second largest source of greenhouse gas emissions. Thus, strategies to conserve energy and use it more efficiently in agency operations and the community help reduce greenhouse gas emissions. In addition, energy efficiency and conservation measures save money and resources.

**For other energy-related best practices:** see Green Building and Water and Waste Water Systems areas.

### Agency

#### Audits and Assessment

- Audit energy use of agency buildings to identify opportunities for energy savings through efficiency and conservation measures.
- Use energy management software to monitor real-time energy use in agency buildings to identify energy usage patterns and abnormalities.
- Conduct commissioning and retro-commissioning studies of agency buildings, including equipment such as heating, ventilation and air conditioning (HVAC) and lighting systems to ensure they are operating as designed and installed.
- Benchmark energy use of major agency buildings.

#### Internal Policies and Procedures

- Establish an energy efficiency and conservation policy that provides employees with behavioral guidelines for energy efficient use of the facility such as turning lights, copiers and computers off, appropriate thermostat use, etc.
- Establish energy efficiency and conservation protocols for building custodial and cleaning services and other contract employees.
- Adopt and implement a policy to reduce “plug” load in agency facilities by removing personal equipment such as desk lamps and space heaters or installing smart power strips.
- Implement a network cloud-computer system to reduce computer work station energy use.
- Incorporate energy efficiency features in agency data centers, such as through implementation of an information technology energy efficiency program.
- Adopt ENERGY STAR® purchasing standards for all new computer equipment, appliances and equipment.
- Require new agency buildings to exceed Title 24, California’s energy efficiency building standard.
- Implement off-peak scheduling of pumps, motors, and other energy intensive machinery where possible.
- Implement a revolving loan fund or other mechanism to finance future energy investments in agency buildings and operations.
- Work with energy provider to access technical assistance and financial incentives, such as facility audits, rebates, on-bill financing, loans, savings-by-design and demand management programs.
- Require agency new construction to be net zero energy.

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- Train agency building inspectors to understand and enforce Title 24, California's energy efficiency building standard.
- Develop and implement shading requirements for agency buildings and other facilities.
- Require agency funded or supported affordable housing projects to incorporate energy efficiency features, equipment and appliances.
- Prepare and implement an Energy Action Plan for agency facilities.
- Participate in voluntary sustainability and climate change recognition program, The Beacon Award: Local Leadership toward Solving Climate Change to track and share agency energy savings accomplishments.  
[www.ca-ilg.org/BeaconAward](http://www.ca-ilg.org/BeaconAward)

## Retrofits and Upgrades

- Develop and implement a schedule to address no cost/low cost energy retrofit projects.
- Develop and implement a schedule to address capital intensive energy retrofits projects.
- Reduce energy demand by capturing "day lighting" opportunities.
- Install motion sensors, photocells, and multi-level switches to control room lighting systems.
- Replace incandescent lights with more energy efficient lighting, such as compact fluorescents, overhead fluorescent lights or light-emitting diodes (LEDs).
- Upgrade exit signs with light-emitting diode (LED) lighting.
- Add vending misers to cold beverage machines.
- Upgrade pumps, motors and other energy intensive machinery where feasible.
- Replace agency appliances and equipment such as vending machines, refrigerators, and washing machines, with energy efficient models.
- Replace agency natural gas fueled appliances and equipment, such as boilers, stoves, water heaters, with high efficiency units.
- Replace and/or tint windows in agency-owned buildings to reduce heating by sunlight.
- Install cool roof systems on existing and new agency buildings.
- Install smart meters on agency buildings.

**Tip:** Evaluate agency electric bills to ensure each account is on the optimal rate schedule.

## Outside Lighting

- Use "de-lamping" techniques to reduce lighting levels at parks, sports fields and parking lots, where appropriate for the location and use, considering security and decorative lighting issues.
- Change downtown holiday or decorative lighting to light-emitting diodes (LEDs) or other energy efficient lighting systems.
- Replace incandescent traffic and crosswalk lights with energy-efficient lighting such as light-emitting diodes (LEDs).
- Replace incandescent and mercury vapor street, parking lot, park and other outdoor lights with energy efficient alternatives, such as light-emitting diodes.

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## Community

### Working with Local Businesses

- Encourage community businesses to conduct energy audits and implement energy efficiency retrofits through activities such as energy efficiency workshops, energy fairs, agency websites and social media.
- Encourage businesses to install energy efficient exterior lighting that is appropriate for the location and use, considering security and decorative lighting issues.
- Collaborate with local retail businesses to encourage businesses to purchase energy efficient products.
- Promote and reward energy efficiency efforts of local retail businesses.
- Adopt an energy financing program, such as through a PACE (Property Assessed Clean Energy) financing district, to help businesses install energy efficiency retrofits in existing residential and commercial buildings.
- Require energy audits and/or retrofits for commercial properties at time of sale.
- Require new commercial buildings to exceed Title 24, California's energy efficiency standard, to the extent permitted by law.
- Require new commercial construction to be net zero energy.

### Working with Homeowners and Apartment Owners

- Provide information about Energy Upgrade California™ to help homeowners increase energy efficiency.
- Provide rebates or other financial incentives to help residents pay for whole house retrofits.
- Sponsor a home energy makeover contest that includes energy efficient audit and improvements as prizes.
- Adopt an energy financing program, such as through a PACE (Property Assessed Clean Energy) financing district, to help homeowners install energy efficiency retrofits in existing residential buildings.
- Require energy audits and/or retrofits at time of sale for residential properties.
- Require energy audits and/or retrofits at time of residential remodeling or renovation projects.
- Require new residential buildings to exceed Title 24, California's energy efficiency standard, to the extent permitted by law.
- Require new residential construction to be net zero energy.

### Working with Energy Providers

- Work with energy provider to encourage local businesses to implement energy efficiency strategies and retrofits.
- Work with energy provider to provide information to homeowners and businesses about available utility rebates for new residential and commercial buildings that exceed Title 24, California's energy code, by 15 percent or more.

Continued on next page





- Work with energy provider to promote use of utility financial incentives to assist residential and commercial customers improve energy efficiency, such as by using on-bill financing, loans and rebates and demand management programs, as appropriate for the customer.

## Engaging the Community

- Host/support compact fluorescent light bulb, LED give-away or incandescent bulb exchange programs.
- Collaborate with schools and colleges to co-sponsor students to conduct energy audits and/or retrofits for agency buildings, businesses or homeowners.
- Upgrade foreclosed homes in the community with energy efficiency measures and solar photovoltaic or hot water systems.
- Prepare and monitor progress of implementing Energy Action Plan to reduce energy use in the community.





Green buildings reduce energy consumption, use water more efficiently and utilize materials with recycled content, thus saving money and natural resources and related greenhouse gas emissions. Local agencies have taken a variety of approaches to embrace green building policies and programs, consistent with the unique characteristics of their individual communities.

**Note:** The California Green Building Standards Code, known as CALGreen, went into effect in 2011 for residential and non-residential new construction and major remodels. CALGreen is updated triennially with the next update going into effect January 2014. CALGreen includes options for stronger locally adopted standards. Several other green building rating systems, such as GreenPoint Rated and LEED® certification programs, provide options to consider for exceeding California's Green Building Code. [www.bsc.ca.gov/Home/CALGreen.aspx](http://www.bsc.ca.gov/Home/CALGreen.aspx)

**For other green building-related best practices:** see Energy Efficiency and Conservation area.

## Green Building

### Options to Consider

#### Agency

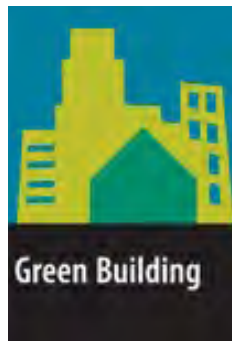
- Adopt a policy that requires new agency buildings to exceed the minimum requirements of California's Green Building Standards Code (also known as CALGreen). Options to exceed the standard include CALGreen's built-in tiers and/or certification under Build It Green's Green Point Rated system, LEED®, or alternative certification program.
- Require agency buildings to exceed Title 24, Part 6, the State's Building Standard Code which establishes energy efficiency requirements for residential and non-residential new construction and major remodels.
- Incorporate materials that are renewable, reusable, recyclable, recycled, non-toxic and those that have zero or low volatile organic compounds (VOCs).
- Explore using alternate materials such as packed gravel or permeable concrete instead of conventional concrete or asphalt to enhance replenishment of ground water.
- Develop and implement sustainable landscaping standards for public agency facilities to reduce water consumption.
- Incorporate water efficient plants, trees, green roofs and rain gardens in agency landscaping.
- Use compost and mulch in agency landscaping as a water conservation measure.
- Require agency landscaping and parks to incorporate smart irrigation technology systems that save water and energy.
- Require verification by a certified third-party rater to ensure compliance with green building standards for all newly built agency facilities.

#### Community

- Establish a green building awareness program to educate and encourage homeowners and builders to use green building techniques.
- Organize a sustainable building task force that includes representation from various fields within the building industry and other groups to evaluate feasibility of incorporating green building techniques that exceed the state standards into all new building and retrofit projects in the community.
- Create a dedicated page on the agency's website to help residents find green building information and resources.
- Provide information to homeowners and businesses about available utility rebates for new residences and commercial buildings that exceed California's Title 24 energy code by 15 percent.
- Provide incentives, such as expedited review/permit processing, to encourage green building.
- Provide technical and financial assistance and other significant incentives to development projects that meet or exceed specified standards under green building programs.

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- Train appropriate agency staff (such as planners, inspectors, and plan checkers) in green building standards and technologies to facilitate the permitting approval and inspection processes.
- Adopt a policy that requires new homes, buildings or remodels to exceed the minimum requirements of California's Green Building Standards Code (also known as CalGreen). Options to exceed the standard include CALGreen's built-in tiers and/or certification under Build It Green's Green Point Rated system, LEED®, or alternative certification program.
- Adopt a "Solar Ready" ordinance, requiring all new residential buildings to be pre-wired and pre-plumbed for photovoltaic and solar hot water systems. (Required in the California Green Building Code January 1, 2014)
- Require new residential and commercial construction buildings to exceed Title 24 energy efficiency standards, to extent permitted by law.
- Require new and renovated commercial construction to incorporate smart irrigation technology systems that save water and energy.
- Require energy efficiency performance audits for specific types of residential and commercial remodeling projects.
- Require buildings, facilities or affordable housing developments using agency funds or other agency support to exceed minimum state green building or energy standards.
- Offer fee reductions, waivers, loans or grants to developers and contractors who commit to verifiable green building practices that exceed state or local minimum standards.
- Offer technical expertise and assistance for community members, builders and businesses undertaking green building projects.
- Work with neighboring jurisdictions, where feasible, to adopt a regional green building standard that exceeds the California Green Building Code Standard or Title 24 energy efficiency standards.
- Enact a construction and demolition debris recycling ordinance that requires 50 percent or more diversion of project waste.







Energy generated from renewable sources produces less greenhouse gas emissions than energy generated from conventional sources. Low carbon fuels are those that are formulated to produce fewer greenhouse gas emissions.

# Renewable Energy and Low Carbon Fuels

Options to Consider

Agency

## Solar Projects

- Replace traditional pedestrian “walk” signals and safety lights with solar powered signals.
- Install solar powered smart parking meters.
- Adopt a “Solar Ready” policy requiring new agency buildings to be pre-wired and pre-plumbed for solar photovoltaic and solar hot water systems. (Required January 2014 as part of the California Green Building Code.)
- Purchase solar photovoltaic systems or enter into power purchase agreements (PPA) to meet all or part of the electrical energy requirements of buildings and facilities owned, leased or operated by the agency.

## Methane Recovery Programs and Projects

- For jurisdictions that own or operate landfills, recover and use the maximum feasible amount of methane gas from the landfill to produce electricity, fuel co-generation facilities, and/or produce compressed natural gas for use in alternative fuel vehicles.
- For jurisdictions that host landfills owned by private companies or other public agencies, enter into partnerships or agreements with agencies or companies that own or operate landfills to ensure that the maximum feasible amount of methane is recovered for waste-to-energy or other renewable energy projects.
- Install digesters and other technologies at wastewater treatment facilities to capture methane and other bio-fuels.
- Install fuel cells to generate power for wastewater treatment plants.

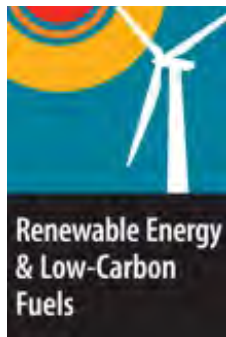
## Fuel Efficient and Alternative Fuel Vehicles

- Establish and implement a policy to convert agency fleets, including agency owned, leased or operated vehicles, to alternative or fuel efficient vehicles.
- Establish and implement a policy to purchase new alternative or fuel efficient vehicles for agency operated transit systems.
- Use regional purchasing options or the California Department of General Services bulk purchasing program to buy green fleet vehicles from local auto dealers.
- Train agency fleet mechanics to service alternative and fuel efficient vehicles.
- Implement bike sharing program for agency employees traveling between agency facilities.
- Install bicycle racks, showers, and other amenities at agency facilities to promote bicycle use by agency employees and visitors.

**For other renewable energy and low carbon fuels-related best practices:** see Efficient Transportation and Waste Reduction and Recycling areas.

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## Community

### Solar and Small Wind Projects

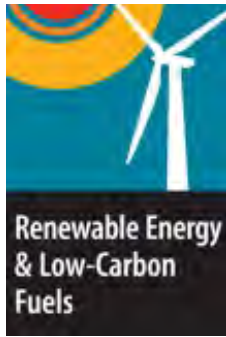
- Develop a map that residents can access online that identifies where solar projects are located in the community.
- Conduct renewable energy workshops for residential, commercial and industrial property owners.
- Offer workshops and information for residents and businesses to provide resources and permitting assistance for those interested in adding renewable energy systems to their properties.
- Provide information about the California Solar Initiative rebate and other renewable energy incentive programs on agency website.
- Work with solar photovoltaic system providers to establish a discounted bulk purchasing program for residents and businesses that wish to purchase and install solar photovoltaic systems on their buildings.
- Offer financial incentives to those who install solar photovoltaic or hot water systems on homes or businesses.
- Adopt a renewable energy financing program, such as through a PACE (Property Assessed Clean Energy) financing district, to help homeowners, multi-family dwellings and businesses install solar photovoltaic and hot water systems on existing residential and commercial buildings.
- Adopt policy or program that offers incentives, such as streamlined permitting system or fee waivers, to encourage installation of photovoltaic systems on new or existing residential and commercial buildings.
- Adopt a "Solar Ready" ordinance requiring new residential or commercial construction to be pre-wired and pre-plumbed for solar photovoltaic and solar hot water systems. (Required January 2014 as part of the California Green Building Standards Code.)
- Adopt an ordinance for small wind energy systems for residential and commercial installations.
- Adopt a solar photovoltaic system siting ordinance for systems proposed on agricultural and open space lands.

### Fuel Efficient and Alternative Fuel Vehicles

- Work with electric utility to develop and implement electric vehicle charging infrastructure plan for the community.
- Develop permitting standards for installation of electric vehicle charging stations at residential and commercial buildings.
- Streamline the permitting process for installing home or business electric vehicle charging stations.
- Install electric vehicle charging stations at public facilities, such as at parking lots and airports, for community use.

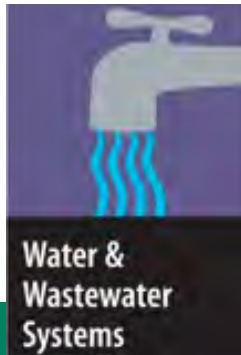
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- Allow the public to use agency facilities that support use of alternate fuel vehicles, such as compressed natural gas fueling facilities and electric vehicle charging stations.
- Require new commercial developments to include electric vehicle charging stations in parking lots or garages.





Water and wastewater systems play an important role in sustainability for several reasons. First, energy is used to convey, pump, distribute, treat and heat water, so saving water saves energy. Second, experts agree that the effects of climate change will further reduce the availability of water. Therefore, efforts to conserve water will play an important role saving energy, reducing greenhouse gas emissions and securing water resources for the future.

**For other water and wastewater-related best practices:** see Green Building, Energy Efficiency and Conservation, and Land Use and Community Design areas.

## Water and Wastewater Systems

Options to Consider

Agency

### Ensure Water Efficiency in Agency Buildings and Operations

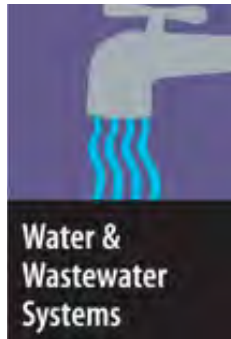
- Audit agency's water and wastewater pumps and motors to identify most and least efficient equipment.
- Work with agency or company that provides water and wastewater service to implement a cycling and equipment replacement program for least efficient water and wastewater pumps and motors.
- Initiate a water loss program or "leak-audit" of agency water infrastructure.
- Upgrade and retrofit agency plumbing systems and appliances with water efficient technology and fixtures.
- Retrofit existing agency buildings and facilities to meet standards for the LEED® Standards Rating Systems for Existing Buildings (EB), Build It Green, Commercial Interiors (CI), or other equivalent standards.
- Incorporate water-efficient systems in new agency buildings that include opportunities for recycled water.
- Require dual plumbing for use of recycled water for new facilities.

### Reduce Water Use in Parks and Landscaping

- Implement all feasible water efficiency strategies included in the Ahwahnee Water Principles for Resource Efficient Land Use in agency parks, landscaping and other new developments. ([www.lgc.org/ahwahnee/h2o\\_principles](http://www.lgc.org/ahwahnee/h2o_principles))
- Install smart water meters to track water usage and the effectiveness of water efficiency activities and programs.
- Assess, maintain and repair existing irrigation systems to minimize water use, including parking lot landscaping, public rest rooms and parks, golf courses and other recreational facilities.
- Install weather-based smart irrigation systems in agency parks and landscaping areas.
- Adopt a water recycling master plan that connects parks into a recycled water system.
- Use recycled water for agency facilities and operations, including parks and medians, where appropriate.
- Convert all water distributing vehicles, such as street sweepers and tree-watering tankers, to use reclaimed water, where feasible.
- Reduce turf and grass in agency landscaped areas. Use native turf and grass, when applicable.
- Implement drought tolerant and hydro-design principles to group compatible plants based upon water needs for agency parks and landscaping.
- Use compost, biosolids and mulch in agency landscaping as a water conservation measure.

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**Tip:** For more information, visit ILG's Water Conservation Leadership Guide: Issues for Local Officials to Consider at [www.ca-ilg.org/WaterConservationLeadership](http://www.ca-ilg.org/WaterConservationLeadership).

## Create Safe and Efficient Water and Wastewater Systems

- Use non-toxic fertilizers in agency parks and landscaped areas to reduce contaminants in run-off.
- Create a Fats, Oils and Grease (FOG) Control Program to reduce blockages in the wastewater system.
- Reduce energy use by auditing agency's water and wastewater pumps and motors to identify most and least energy efficient equipment.
- Work with agency or company that provides wastewater service to implement an audit, cycling and equipment replacement program to increase energy efficiency for water and wastewater pumps and motors.
- Work with local wastewater service provider to determine whether biosolids can be recycled by using them on local landscaping, golf courses, community parks and other programs to improve soil quality and reduce irrigation needs.
- Promote methane capture and enhanced production through co-digestion of other organic waste streams for use as renewable energy at wastewater treatment plants.

## Address Future Water Security

- Construct a new groundwater recharge facility that can hold additional surface water secured in wet years to eliminate possible groundwater overuse in the region.
- Create an urban runoff recycling facility.

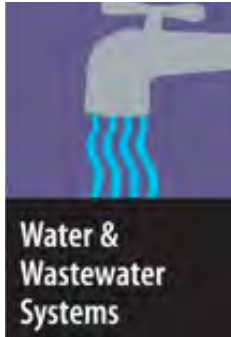
## Community

### Promote Water Conservation

- Adopt water efficiency principles similar to the Ahwahnee Water Principles for Resource Efficient Land Use for new and existing residential and commercial developments. ([www.lgc.org/ahwahnee/h2o\\_principles](http://www.lgc.org/ahwahnee/h2o_principles))
- Adopt a retrofit program to encourage or require installation of water conservation measures in existing businesses and homes that exceed state standards.
- Require water efficiency audits at point of sale for commercial and residential properties.
- Provide free faucet aerators, water-efficient shower heads and low flow hose nozzles to residents at community or other events.
- Pass a water-efficient landscaping ordinance stronger than state standards, where feasible.
- Develop a training program to educate local landscapers and agency personnel on practices that reduce the use of water and toxic pesticides.
- Create a water efficient demonstration garden that includes native and drought tolerant plants and requires low volume mulch, irrigation and other water saving features.
- Implement a lawn buy-back program for residents who convert sod or grass to drought-tolerant landscaping.

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**Tip:** Greywater is wastewater generated from domestic activities such as laundry, dishwashing and bathing, which can be recycled in-site for uses such as landscape and irrigation.

**Note:** For additional stormwater management practices, visit [www.epa.gov/stormwater/best\\_practices.htm](http://www.epa.gov/stormwater/best_practices.htm).

## Promote Water Recycling and Greywater Use

- Incentivize and promote the installation of residential greywater systems that meet appropriate regulatory standards.
- Develop a local ordinance to require all new homes to have a greywater system.
- Require dual plumbing for use of recycled water for new commercial and/or residential developments.
- Provide educational resources to encourage residents to harvest rainwater.

## Educate about Water Pollution Prevention

- Install informational kiosks at agency parks to educate residents about stormwater pollution.
- Engage the public in riverbank planting events, storm drain marking or stream-cleanup programs.
- Promote bio-retention basins for stormwater collection and treatment prior to discharge.
- Promote local solutions for stormwater management, such as rain gardens, green roofs and detention ponds.
- Develop an educational community program or campaign that engages residents as watershed stewards.







The largest sources of human-generated methane, a potent greenhouse gas, comes from improperly managed landfills. Thus, waste reduction and recycling activities reduce the potential to generate methane at landfills, as well as reduces pollutants generated from transporting waste to disposal sites. Waste reduction and recycling also conserve natural resources.

# Waste Reduction and Recycling

## Options to Consider

### Agency

#### Reduce

- Implement a comprehensive waste reduction and recycling program in agency offices and facilities.
- Create and facilitate an agency employee education program highlighting waste reduction and recycling best practices.
- Adopt a policy to encourage paper reduction through activities such as:
  - Promoting a “think before you print” campaign.
  - Reducing margins and logos on agency templates, letterhead and memos.
  - Using computer software that removes blank pages and images from documents.
  - Using “eCopy” copy machines that allow users to scan paper documents and distribute electronic copies via e-mail.
  - Uploading bid documents using online resources instead of printing hard copies for contractors.
  - Requiring fewer or smaller-sized copies of project plans or submittals.
  - Establishing a policy to use electronic devices (tablets, computers and projectors) for agendas and notes at meetings, such as for board of supervisor, city council or planning commission meetings.

#### Reuse

- Reuse unwanted printed material for other purposes, such as for scratch paper or shred for use at the local animal shelter.
- Reuse or redistribute to community non-profit groups office items such as supplies, computer, furniture and cell phones in order to divert items from the landfill.
- Host a community garage sale or swap meet for the community to sell or redistribute unwanted items.
- Incorporate reuse programs at publically owned landfills and transfer stations for diverting materials to non-profits.
- Provide and encourage the use of reusable dishes and drinkware at agency facilities.

#### Recycle

- Adopt a “Buy Recycled” policy for agency departments.
- Recycle or refill ink/toner cartridges, as appropriate.

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- Provide bins for collection of used batteries and compact florescent lights for proper disposal or recycling.
- Implement a partnership with other public agency offices located within the jurisdiction for green procurement, waste reduction and recycling at those facilities.
- Require all agency demolition projects to incorporate de-construction/ construction and demolition waste recycling or recovery practices.
- Adopt agency or community waste diversion and recycling goals that are higher than existing state law.
- Evaluate current community recycling infrastructure relative to future population growth and waste generation.
- Include provisions and incentives for new recycling infrastructure and facilities to accommodate growth in land use planning and zoning.
- Work with solid waste and recycling collection providers to calculate the carbon footprint of collection system.
- Work with solid waste and recycling collection providers to reduce collection system carbon footprint.

## Organics

- Evaluate agency facilities and operations to identify opportunities to increase material recovery and beneficial use of organic material.
- Evaluate opportunities to convert agency organic waste into biofuels to use in agency vehicles.
- Distribute or post materials illustrating best practices for organics collection and composting.
- Establish a program to use the maximum amount of organic waste possible that is generated within the jurisdiction to produce compost for use on agency parks and landscaping.
- Create a vermicomposting (worm-bin) program with a complementary educational component at agency facilities, such as county detention centers and city jails.
- Approve siting of composting facility within jurisdiction.
- Distribute an annual newsletter highlighting agency and community waste reduction programs and accomplishments.

## Businesses

- Coordinate with the California Department of Resources, Recycling, and Recovery (CalRecycle) on the latest information, resources and programs to assist local businesses. [www.calrecycle.ca.gov](http://www.calrecycle.ca.gov)
- Adopt a program or ordinance to encourage or require waste audits and waste reduction plans for existing and/or new commercial developments.
- In partnership with the waste hauler(s) serving the commercial sector, institute a comprehensive waste reduction and recycling program with financial and other incentives, such as a tiered rate system that charges less for collecting recyclable materials than for collecting solid waste, to promote waste reduction and recycling for commercial/industrial waste generators.

### Note - California law now requires:

- All businesses that generate 4 or more cubic yards of waste weekly to recycle.
- Apartment communities/multi-family housing with 5 or more units to recycle.
- Apartment owners to offer recycling services to residents.
- Cities and counties to educate businesses about new recycling requirements.

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- Adopt a program or ordinance that exceeds state minimum standards by requiring businesses generating less than 4 cubic yards of waste a week to recycle.
- Work with local material collectors and economic development experts to recruit or retain regional recycling manufacturers.
- Adopt an ordinance to restrict the use of expanded-polystyrene containers at fast food restaurants and other establishments.
- Adopt a program or ordinance to restrict the availability of single-use bags at retail stores.
- Implement a green business program that rewards local businesses for sustainability measures.
- Implement a food scrap collection program for large food waste generators.
- Encourage local restaurants to use compostable foodware, where appropriate.
- Encourage local restaurants to create opportunities and signage that promotes food waste and recyclable collections.
- Require food waste and recycling at farmers markets and other community events.
- Require recycling at special events, such as through special event permit conditions.

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## Residential

- Include information about recycling opportunities on agency's website.
- Provide information to residents about how to stop receiving unwanted catalogues, phone books and weekly circulars.
- Work with landlords to include recycling requirement information in lease agreements and/or move in packets.
- Adopt a program or ordinance that exceeds state standards by requiring recycling at multi-family housing with four or fewer units.
- Offer a food waste recycling program to residential customers.
- Educate residents about the importance of not contaminating recyclable wastestreams.
- Work with solid waste service providers to adopt enforcement mechanisms for residents and businesses that misuse or contaminate green waste and recycling containers.
- Offer composting and sustainable landscaping classes to the community.
- Implement a vermiculture (worm bin) composting program where residents can "check out" or borrow composting bins and equipment from the agency to start their own composting efforts at home.
- Educate the community about "buy recycled" opportunities.

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**For other recycling-related best practices:** see Green Building and Climate-Friendly Purchasing areas.

## Additional Resources:

- ILG’s Commercial Recycling Resource Center: [www.ca-ilg.org/commercialrecycling](http://www.ca-ilg.org/commercialrecycling).
- Carbon Footprint Calculator for businesses: [www.coolcalifornia.org/business-calculator](http://www.coolcalifornia.org/business-calculator).
- Commercial Recycling Climate Calculator: [www.calrecycle.ca.gov/climate/calculator](http://www.calrecycle.ca.gov/climate/calculator).

## Schools

- Create a partnership with local schools to help encourage waste reduction and recycling.
- Collaborate with schools or nonprofit agencies to help develop and distribute educational materials related to recycling and waste reduction for use in classrooms.
- Encourage schools and other public agencies to use rubberized asphalt pavement for parking lots, where feasible.
- Encourage schools to use tire-derived products for a variety of uses, including sport facilities.

## Electronic-Waste and Hazardous Materials

- Create and distribute information about e-waste and hazardous waste disposal.
- Increase opportunities for e-waste and hazardous materials collection and recycling.
- Distribute information and create opportunities for used motor oil recycling.
- Promote proper recycling and disposal options for compact fluorescent light bulbs and batteries.
- Offer disposal options for home-generated “sharps” (needles) and prescription drugs to prevent injuries and contamination of water and wastewater.

## Construction Materials and Debris

- Adopt a program or ordinance to reduce, reuse and recycle community construction and demolition waste.
- Adopt a “deconstruction” program or ordinance to salvage and reuse materials in all community remodeling projects.
- Establish a program or ordinance that results in 100 percent recycling of all Portland cement and asphalt concrete.
- Adopt a policy to require use of rubberized asphalt concrete for streets and roads.
- Adopt a policy to use recycled asphalt pavement for streets and roads.
- Adopt a policy to use recycled asphalt pavement for commercial and community parking lots, where feasible.
- Use recycled tire rubber for playground resurfacing and other projects, where appropriate.
- Partner with local businesses to create materials reuse opportunities.





Local agencies are large consumers of goods and services. As such, their purchasing practices can have a significant impact on the environment. By purchasing products or procuring services that reduce greenhouse gas emissions relative to competing goods and services, local agencies can remain fiscally responsible while promoting practices that conserve natural resources.

**For other climate-friendly purchasing-related best practices:** see Waste Reduction and Recycling and Green Building areas.

**Tip:** See ILG's Sample Climate-Friendly Purchasing Policy at [www.ca-ilg.org/samplepurchasingpolicy](http://www.ca-ilg.org/samplepurchasingpolicy) and ILG's Greening Agency Fleets Resource Center at [www.ca-ilg.org/GreeningAgencyfleets](http://www.ca-ilg.org/GreeningAgencyfleets).

## Climate-Friendly Purchasing

### Options to Consider

#### Agency

- Review current purchasing practices to identify possible green procurement opportunities.
- Adopt and implement a procurement policy that establishes standards for purchasing climate-friendly products and services. Examples may include:
  - Office and cleaning supplies and equipment that minimize environmental impacts and that do not have a negative effect on human health, such as:
    - Paper products that contain a minimum percentage of post-consumer recycled content.
    - Cleaning products and services recognized with the GreenSeal or EcoLogo.
    - New equipment that meets Energy Star or comparable energy efficiency standards.
    - Computers that meet the highest feasible Electronic Product Environmental Assessment Tool (EPEAT) certification level.
    - Computer and lighting controls that reduce energy and computer idle time.
    - Rechargeable batteries, where appropriate.
    - Recyclable or reusable cups, plates and utensils.

Green Building materials that create a healthier and more sustainable environment, such as:

- Building and landscaping materials and systems that exceed the CALGreen building code.
- Carpeting, furnishings or plastic items that contain a minimum percentage of recycled content
- Paint or carpets that contain low or no volatile organic compounds (VOC).

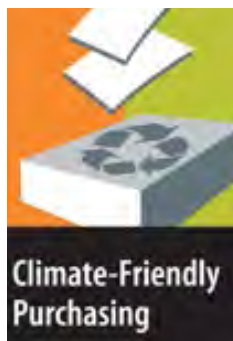
Fleets that reduce environmental impact, such as:

- Fuel efficient, dual fuel or alternative fuel fleet vehicles.
- Vehicles that have GPS or trip planning devices.

- Conduct employee awareness training on the purchasing and use of green products and services.
- Establish an interdepartmental team to promote policy implementation, track policy adherence and suggest additional items to be included in the policy.
- Report achievements of green procurement program to staff and policy makers annually.
- Consider participating in multi-agency procurement pools that have a climate-friendly purchasing component.
- Consider life cycle pricing to ensure that the maintenance, operating, insurance, disposal and replacement cost of the product or service is considered when evaluating purchase options.

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- Consider efficient transportation methods when purchasing goods and services, such as using local vendors and or locally produced goods to reduce greenhouse gas emissions.
- Consider encouraging the practice of not purchasing new materials, such as office supplies and furniture, through the reuse of existing items in surplus when appropriate and feasible.
- Ensure that minimal packaging materials are used by the agency and that all packaging materials are recycled, non-toxic and/or reusable, where feasible.

## Contracting

- Require consultants, contractors and grantees to use recycled products and supplies, when feasible.
- Require service providers to follow climate-friendly practices, or include a preference in selecting and contracting with service providers to those that use climate-friendly practices.
- Require parks maintenance staff or contractors to adopt water or Bay-Friendly practices, if applicable.
- Require agency-issued bids specifications to exceed state law requirements for recycled content.
- When feasible, consider the greenhouse gas emission impacts associated with transportation distances when determining which business or service providers to award contract.
- Provide incentives for the use of fuel-efficient, dual-fuel or alternative fuel vehicles for agency contracts for services involving vehicles, such as buses, waste hauling and recycling, and construction.
- When issuing proposals for services, request firms to show current green certifications that demonstrate their technical knowledge and commitment to sustainability.

## Community

- Educate the public about climate-friendly procurement opportunities through the agency's website, traditional marketing and social media.
- Work with the business community to educate them about climate-friendly procurement opportunities through social media and traditional marketing.
- Educate the public about climate-friendly procurement actions being implemented by a local agency.







Transportation is the largest generator of greenhouse gas emissions in California. Efficient transportation systems, encouraging alternatives to single occupancy vehicles, and reducing the miles that vehicles travel can reduce greenhouse gas emissions, help conserve fuel and cut fuel costs, improve air quality, reduce traffic congestion and make streets safer for pedestrians, bicyclists, transit users and motorists.

**Note:** Metropolitan Planning Organizations and Regional Transportation Planning Agencies can provide guidance on inter-agency collaboration and technical support for the adaptation and use of transportation models.

**For other efficient transportation-related best practices:** see Land Use and Community Design area.

# Efficient Transportation

## Options to Consider

### Agency

#### Planning

- Assess the long-term mobility (the ability for people to get around) needs of the community, including the efficient movement of people and goods.
- Update transportation models to reflect all types (or modes) of transportation, such as walking, bicycling, private vehicles, commercial vehicles, buses, trains and other forms of transit.
- Include transportation mitigation measures for new development which enhance all modes of travel rather than only focusing on automobile delay or speeds.
- Develop short and long-range community transportation goals, objectives and policy statements and include all appropriate goals, objectives and policies in the circulation element of the agency's general plan.
- Develop and include a realistic long-range transportation and land use scenario (or diagram) for local and regional growth in the circulation element of the agency's general plan and other local land use plans (such as specific plans and project development plans), consistent with a regional Sustainable Communities Strategy, if appropriate.
- Collaborate with other agencies (such as cities, counties and metropolitan planning organizations) to share transportation-related information, coordinate planning goals and processes, and take advantage of opportunities to combine and leverage resources.
- Make reducing vehicle-miles traveled (VMT) a high-priority criteria in evaluation of policy, program, and project proposals and alternatives.
- Adopt a policy requiring limitations on idling for commercial vehicles, construction vehicles, buses and other similar vehicles, beyond the requirements of state law, where feasible.
- Implement programs to reduce "incident-based" traffic congestion, such as expedited clearing of accidents from major traffic arteries, airport traffic mitigation, etc.
- Develop a financial plan that covers life-cycle costs related to the development, maintenance and operation of current and future transportation facilities and services (such as transit service).
- Identify funding sources for implementing transportation plans.
- Implement transportation planning strategies that consider demand management solutions for transit, bicycle and walking growth equally with strategies to increase automobile capacity.

#### Infrastructure

- Implement Intelligent Transportation Systems (ITS) for surveillance and traffic control, such as synchronized signals, transit and emergency signal priority, and other traffic flow management techniques as appropriate, to improve traffic flow and reduce vehicle idling.

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- Install signal priority technology in agency transit systems (such as buses) to reduce number of stops and idling.
- Ensure that traffic lights have sensors to detect bicycles.
- Install roundabouts in lieu of signalized intersections as a way to improve traffic flow, reduce accidents and reduce greenhouse gases.
- Improve intersection safety through pedestrian countdown signals and high visibility crosswalks.
- Identify opportunities for infrastructure improvements such as High Occupancy Vehicle (HOV), High Occupancy Toll (HOT) lanes and dedicated bus rapid transit right-of-ways and coordinate with regional and state agencies when appropriate.
- Encourage and/or construct infrastructure for electric vehicle charging and natural gas vehicle fueling for agency vehicles and the community.
- Develop a non-motorized connectivity plan (complete streets) to create a path and roadway network and make sure that bicycle paths and pedestrian walkways connect to neighborhood destinations, schools, parks, light rail stations and essential services.
- Include bicycle, pedestrian and transit facilities in public works projects, where appropriate, as a component of a local complete streets program.
- Prepare a bicycle master plan to guide bikeway policies and development standards to make bicycling safer, more convenient and enjoyable for all bicyclists.
- Prepare a pedestrian master plan to guide walkway policies and development standards to make walking safer, more convenient and enjoyable for all pedestrians.
- Increase the number of bicycle lanes, lockers, racks, paths and signage throughout the community.
- Reduce parking requirements for projects that link or emphasize alternative types of travel.
- Use microwave technology, video detection and street embedded sensors to protect cyclists from buses, cars and motorcycles.
- Use alternative or recycled materials for road paving (such as cold central plant recycling or cold in-place recycling) to reduce energy and greenhouse gas emissions from transport and material production/processing.

**For more options:** see Renewable and Low-Carbon Fuels area.

### Agency Fleet

- Adopt a policy that sets fleet efficiency standards for new agency vehicles.
- Purchase or lease fuel efficient or alternative fuel vehicles, including zero or near-zero emission vehicles, to save fuel and money and reduce greenhouse gas emissions.
- Install low-draw emergency lighting in agency vehicles, allowing lights to be used without the engine running.
- Consider purchasing bicycles for local travel by agency employees.
- Install battery systems for vehicles with onboard equipment (such as boom tucks) to decrease truck idling while equipment is used.

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**For additional resources related to Fuel Efficient and Alternative Fuel Vehicles:** see ILG's Greening Agency Fleets Resource Center at [www.ca-ilg.org/greeningagency-fleets](http://www.ca-ilg.org/greeningagency-fleets).

- Provide fuel saving tips to drivers of fleet vehicles.
- Use Global Positioning Systems (GPS) and integrated software to control fleet vehicles, reduce misuse and increase efficiency through trip planning and location information.
- Replace buses with smaller, more fuel efficient, buses for light-traveled transit routes.
- Evaluate natural gas fueling infrastructure and sharing of facilities with other public agencies to help pay for installation and ongoing costs.
- Establish a crew-based maintenance plan (such as with parks employees) instead of individual assignments, to create a "carpool effect" that lowers the annual miles traveled for maintenance staff.
- Utilize technology options (such as digital service requests accessible by mobile devices) for field personnel to avoid extra trips back to the office.

## Agency Employee Programs

- Offer agency employees with incentives to use alternatives to single-occupant auto commuting, such as parking cash-out, flexible schedules, transit incentives, bicycle facilities, bicycle sharing programs, ridesharing services and subsidies, locker/shower facilities and telecommuting.
- Develop a real-time ridesharing program that utilizes smart phone technology.
- Incorporate a guaranteed ride home program as part of agency commuter trip reduction incentive programs.
- Provide parking spaces dedicated to employees who use alternative transportation (such as walking, bicycling, bus, etc.) for the rare occasions they need to drive to work.
- Implement a flexible work schedule for agency employees, incorporating telecommuting and modified schedules.
- Establish a "bike barn" to enable agency employees to borrow a bicycle to use for local meetings.
- Construct bicycle stations for employees that include bicycle storage, showers and bicycle repair space.
- Offer employees incentives to purchase fuel efficient or alternative fuel vehicles.

## Community

- Increase online permitting services to reduce the need to travel to agency offices for minor permits.
- Consolidate offices that community members often visit at the same time (such as building permitting and environmental health permitting) to reduce vehicle miles traveled.
- Encourage and facilitate the development of car-sharing, Dial-a-Ride (or a similar flexible-route transit service), bicycle sharing programs and other services that reduce the need to use a personal motor vehicle.
- Implement variable demand pricing for on- and off-street parking facilities in order to discourage single-occupant-vehicle and peak travel, increase parking supply, business access and parking turnover.

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**Note** - Additional resources available from ILG:

- SB 375 Resource Center: [www.ca-ilg.org/sb-375-resource-center](http://www.ca-ilg.org/sb-375-resource-center).
- Greening Agency Fleets Resource Center: [www.ca-ilg.org/greenin-gagencyfleets](http://www.ca-ilg.org/greenin-gagencyfleets).
- Safe Routes to Schools Toolkit: [www.ca-ilg.org/srts-toolkit](http://www.ca-ilg.org/srts-toolkit).

- Work with major employers in the community to offer incentives and services to increase the use of alternatives to single-occupant auto commuting (also called voluntary commute trip reduction programs).
- Develop and implement voluntary agreements to encourage commuter trip reduction programs for new commercial developments.
- Offer car and bicycle-sharing programs in the community.
- Encourage or require parking preferences for those who rideshare or use alternative fuel vehicles in public and private parking lots, garages, and on-street spaces.
- Adjust bus schedules to maximize ridership opportunities for residents.
- Provide real-time bus arrival and departure information to riders at transit stops and through the web-based services and text messaging.
- Dedicate revenues from fees and tolls to promote alternative transportation modes, to the extent permitted by law.
- Consider the public health co-benefits in promoting use of transit and other alternatives to single-occupant vehicle travel.
- Offer presentations to community groups highlighting the economic, health and environmental benefits of bicycling and walking.
- Partner with health organizations to offer incentive programs to encourage bicycling and walking.
- Partner with schools and other agencies to identify and implement safer travel opportunities for bicycles and walking between home and school (such as through Safe Routes to School Programs).
- Create and distribute bike maps and “safe routes to school” maps to community members through collaborating with local businesses, service organizations and schools.
- Include information on agency website about state and federal clean vehicle rebates.





Land Use & Community Design

Well-planned communities with a balance of housing, jobs, shopping, schools and recreation can reduce the length and frequency of trips and give people the option of walking, biking, or using transit rather than driving. This results in lower greenhouse gas emissions and also promotes physical activity and more vibrant, healthy and sustainable communities.

**For other land use and community design-related best practices:** see Green Building, Renewable Energy and Efficient Transportation areas.

# Land Use and Community Design

Options to Consider

Agency

## Encourage Compact, Efficient and Contiguous Development

- Develop general plan policies that integrate diverse land uses – including housing, employment and community services – at appropriate densities to help reduce automobile travel and promote walking, bicycling and other opportunities for physical activities.
- Work with school districts to develop school siting policies that encourage infill locations to take advantage of existing complementary uses, existing housing, and walking and bicycling opportunities, and avoid greenfield locations outside established urban areas.
- As part of general plan housing element updates, inventory potential infill development sites, and maintain a community-wide database of vacant and underutilized infill sites to monitor the community's growth and change.
- Plan, zone and provide incentives for new development and renovation of existing uses in identified infill areas.
- Streamline the entitlement process for development of high quality residential construction in older and infill areas through updates to the housing element of the general plan or the zoning code, including taking full advantage of opportunities to streamline the California Environmental Quality Act (CEQA) review for infill development.
- Implement methods (such as urban service boundaries and priority infrastructure investment areas) to limit non-contiguous development patterns and foster more compact urban form.
- Consider increasing development density in areas that are well-served by transit, including incentives and streamlining for transit-oriented development.
- Develop policies and incentives (such as minimum conservation requirements, development boundaries, density limitations and support for the Williamson Act) to promote the preservation of farmland, open space and sensitive lands.
- Establish a policy that increases the available open space (such as parks, green belts, hiking trails, etc.) to support different types of uses and the different recreational needs of the community.

## Support Alternative Energy and Waste Processing Land Use Options

- Identify appropriate sites for potential solar or wind generation facilities.
- Identify appropriate sites and zoning designations for recycling processing facilities and manufacturing that uses recycled materials.
- Adopt policy or program that mandates or offers incentives (such as Property Assessed Clean Energy (PACE) financing, streamlined permitting or fee waivers) for installation of photovoltaic and/or solar hot water systems on new or existing residential and commercial buildings and energy efficiency retrofits on existing buildings.

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**Tip:** Consider a public health approach to planning and development that encourages alternatives to single-occupant-vehicle travel and promotes active transportation in order to provide health benefits such as new exercise opportunities (walking and bicycling), pedestrian and bicyclist safety and improved air quality that reduces asthma and other health conditions and diseases.

## Land Use Policies Supporting Green Building

- As a way to provide more predictability to the development community, include in the general plan and the zoning code policies and regulations that support and encourage green building practices and development patterns that promote sustainable communities through subjects, such as green building ordinances, solar orientation of structures and subdivisions, bicycle and pedestrian access, in-fill development and alternative energy use.
- Require new housing and mixed use developments to be built to the LEED® for Neighborhood Development (LEED-ND) standard, Build It Green or equivalent standards.
- Require bicycle racks, showers and/or other amenities as part of new commercial development projects to promote bicycle use by new employees/residents.
- Provide expedited application processing for development projects that meet or exceed sustainable land use policies.

## Planning for a Variety of Transportation Choices

### Bicycle and Pedestrian Opportunities

- Assess and report to local governing body and the public on pedestrian and bicycle conditions in existing communities and neighborhoods.
- Develop and adopt a community-wide pedestrian and bicycle plan and capital investment program that maximizes the potential for residents to walk or bicycle within and between neighborhoods.
- Provide bicycle access to transit services on major transit corridors and other routes that may attract bicyclists, such as routes serving schools and colleges.
- Incorporate new overpasses and underpasses with bike lanes and pedestrian sidewalks to improve air quality by reducing GHG emissions from vehicle idling while waiting for pedestrians and bicycles crossing.
- Increase opportunities for walking and bicycling by requiring direct pedestrian and bike paths even when roadways do not connect through new and existing developments.
- Implement zoning for mixed-use development to encourage walking or biking for short trips rather than using vehicles.
- Require sidewalks in all new developments and incorporate new trees and tree wells in sidewalk areas.

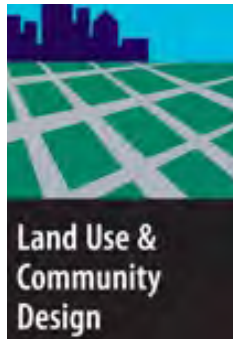
### Transit Opportunities

- Update the general plan to address multi-modal transit, mass transit, infill development, density and mixed-use and reducing greenhouse gas emissions.
- Provide incentives and remove potential barriers to the development of mixed-use and higher intensity development projects at transit nodes and along transit corridors (existing and planned).
- Require new development at transit nodes and along transit corridors to meet planning and design standards to generate, attract and facilitate transit ridership as a condition of approval; for instance, make the project more attractive to the target population (such as young, single urban individuals).

Continued on next page







## Parking Opportunities

- Reduce parking requirements, to the extent feasible, to facilitate higher density development that fosters access to walking, biking and public transit.
- Integrate park-and-ride lots and car sharing service spaces with mixed-use facilities and transportation hubs/centers.
- Promote revitalization of transit corridors by improving light rail, bus rapid transit (BRT) or other high-service transit facilities and services, and promoting an appropriate mix of housing, retail, and office space.
- Require new commercial developments to include electric vehicle charging and natural gas fueling stations in parking lots or garages.

## Streets and Roads Opportunities

- Plan and encourage roadways of smaller residential-scaled streets (generally 2 or 4 lanes maximum) with high levels of connectivity and short blocks.
- Implement design standards that require streets and sidewalks to be designed for multi-modal mobility and access, including walking and bicycling, to ensure that new development is designed, sited and oriented to facilitate pedestrian, bicycle and other mobility and access (also referred to as complete streets).
- Create residential neighborhood traffic management (traffic calming) plans to improve livability by reducing speeding and traffic volumes and increase safety for walking and bicycling.
- Cluster freight facilities near ports, airports, and rail terminals to reduce their impact on streets and roadways.

## Evaluate Greenhouse Gas Emissions and Plan for Mitigating and Adapting to Climate Change

- Adopt a climate action plan or include a greenhouse gas reduction, climate adaptation or climate mitigation plan or policies in the general plan, or include within the general plan a requirement for development and adoption of such plans.
- Ensure that the adopted climate action plan complies with the California Environmental Quality Act (CEQA) Guidelines to help streamline the CEQA review for future development projects that are consistent with the climate action plan.
- Include within a climate action plan or general plan a procedure to monitor and track greenhouse gas emissions associated with development projects and municipal operations.
- Review zoning codes and development policies to identify changes that could improve implementation of land use and transportation policies that reduce greenhouse gas emissions.
- Develop and adopt a preferred land use and transportation scenario for future development to reduce vehicle miles traveled (VMT) in alignment with the region's sustainability strategy, including through computer modeling tools.
- Work with other jurisdictions within the region to identify and address existing and potential regional sources of greenhouse gas emissions under different development scenarios.

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- Amend local CEQA guidelines to explain how to treat analysis of greenhouse gas emissions, such as including thresholds of significance.
- Adopt policies in the general plan, climate action plan or other appropriate policy document to address the potential land use and community design effects of climate change (such as sea level rise, heat events, wildfires) especially for providing essential public services (such as police, fire, etc.).

## Improve Communication, Collaboration and Inclusion

- Coordinate planning and project approval procedures to increase collaboration between planning and other agency staff (such as public works, utilities, public safety, etc.), as appropriate.
- Involve a diverse group of stakeholders in planning processes to ensure the agency's guiding plans are representative of community's diverse population and interests.
- Use non-conventional methods to gather input from diverse community groups, particularly those that do not ordinarily participate in community planning efforts (for example conduct outreach and education through community groups and non-profits prior to public hearings).
- Collaborate with local, regional and state agencies to share land use and community design-related information, coordinate planning goals and processes, and take advantage of opportunities to combine and leverage scarce resources.
- Analyze impacts of development projects on safety and involve emergency responders and public safety staff early and consistently in development of growth plans.
- Develop and implement an approach to planning that identifies and balances economic, environmental and social equity needs.
- Participate in regional planning efforts, such as processes to develop and implement the regional Sustainable Communities Strategy pursuant to SB 375 and, where appropriate, align local general plans and zoning for consistency with the regional transportation plan.





Forests, parks, agricultural lands and open space serve as “carbon sinks” by storing greenhouse gas emissions that otherwise contribute to climate change. Co-benefits of preserving open space and protecting local agriculture may include: making recreational activities available to community residents and, in some cases, reducing vehicle miles traveled.

**Note:** Greenhouse gas emissions (also called carbon emissions) generally include carbon dioxide, methane, nitrous oxide, hydro-fluorocarbons, perfluorocarbons and sulfur hexafluoride. Greenhouse gas emissions are expressed as “carbon dioxide equivalents” which are numbers that translate emissions from different types of greenhouse gases, based upon their climate warming potential, into the equivalent amount of emissions from carbon dioxide.

# Open Space and Offsetting Carbon Emissions

Options to Consider

Agency

## Plans and Policies

- Include specific goals and policies designed to reduce carbon emissions in the open space element of the agency’s general plan.
- Adopt a tree ordinance to protect urban forests, including protection for specific individual trees or tree species important to the community.
- Adopt a ridgeline and hills ordinance to restrict grading and home building on hillsides as a way to enhance public safety and preserve open space.
- Adopt a climate action plan that includes strategies to reduce carbon emissions through open space.
- Adopt a policy to thin agency trees and remove brush on agency land, as feasible and appropriate, to reduce the threat of fire and release of carbon emissions from forest and range fires.
- Adopt a policy to support waste-to-energy projects that use forest waste, food waste or other vegetative sources of methane and other greenhouse gases that would otherwise release greenhouse gases into the atmosphere.
- Apply for designation as a Tree City USA community by the Arbor Day Foundation.

## Parks

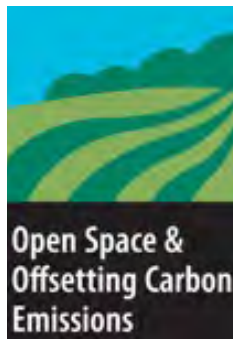
- Increase the number, type and accessibility of parks and other recreational opportunities in the community, including promoting associated public health benefits.
- Increase opportunities for recreational open space.
- Build environmentally sustainable parks by incorporating reused and recycled materials, water-efficient landscaping and water-efficient technology systems.
- Evaluate opportunities to convert closed solid waste landfills to parks or open space.

## Habitat & Open Space

- Protect natural lands through:
  - Partnerships with other agencies, stakeholders and non-profit organizations
  - Land acquisition
  - Conservation easements
  - Other long-term mechanisms
- Evaluate habitat monitoring, management and restoration protocols to consider possible future impacts of changing climatic conditions.
- Work with property owners, state and federal wildlife agencies to create a new or expanded multi-species habitat conservation plan.

*Continued on next page*





- Develop and implement a community-wide urban forestry management and reforestation program to increase the carbon storage potential of trees and other vegetation in the community.
- Manage parks, open space, recreational facilities and other natural areas owned or operated by the agency to ensure the long-term health and viability of trees and other vegetation.
- Remove invasive non-native plants in order to reduce risk of forest and grassland fires (and the associated greenhouse gas release) and promote sustainable native forests and grasslands.
- Inventory existing trees on property owned or managed by the agency, including street trees, and implement a management system to preserve and enhance the tree system.
- Plant native trees and drought tolerant vegetation throughout the community.

## Agriculture and Food Purchases

- Enact a policy to purchase locally grown food for agency food purchases, when feasible, to promote retention of local agricultural land uses.
- Where feasible, direct new development away from open space and agricultural lands in order to take advantage of carbon storage opportunities.

## Offsetting Carbon (Greenhouse Gas) Emissions

- Achieve carbon neutrality at agency-sponsored events and activities through conservation, efficiency, recycling, alternative transportation and other strategies that reduce greenhouse gas emissions.
- Purchase and retire (put out of use) third-party verified greenhouse gas emission reduction credits.
- Create incentives for community organizations, businesses and residents to reduce their carbon emissions, including the purchase of third-party verified greenhouse gas emission reductions.

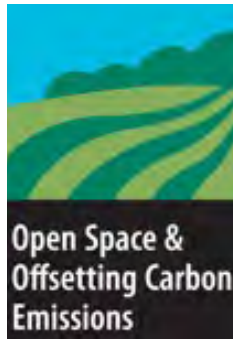
## Community

### Tree Planting

- Provide tree planting resources and information on the agency website to encourage tree planting by residents.
- Participate in regional tree planting efforts to mobilize and encourage the community to plant trees.
- Create an agency-sponsored tree planting program that offers free shade and other trees to residents, businesses, schools and non-profits, as well as education about the care and benefits from trees. Collaborate with the local utility if it has a tree planting program to help get the word out.

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## Agriculture and Food Purchases

- Assist efforts by community groups and non-profit organizations to create community gardens.
- Encourage community gardens and farmers markets to support the availability of healthy, locally grown produce.
- Provide financial incentives for low-income residents to purchase fresh produce at farmers markets in the community.
- Promote the purchase of locally-grown produce through farmers markets and other measures.
- Promote conservation tillage and other agricultural practices to retain carbon fixed in soils.
- Host workshops to showcase community supported agriculture, farm-to-school programs and local organic farms.





# Community and Individual Action

Options to Consider

Providing reliable and objective information helps inform residents about the causes, impacts and possible responses to climate change. Involving the community in the development of proposed sustainability policies and programs builds buy-in and awareness. Providing practical information that helps individuals reduce their greenhouse gas emissions empowers them to take action and make a difference.

## Inform

- Develop and implement a community climate change education program that provides community members with basic information about climate change.
- Host informational workshops to educate residents and businesses about sustainability opportunities, such as those from energy efficiency and water conservation.
- Develop information and positive messages about activities individuals and businesses can take to reduce greenhouse gas emissions.
- Inform the public about the environmental, community and financial benefits of actions that reduce greenhouse gas emissions.
- Create a sustainability handbook, available online and in hard copy, that outlines the steps residents and businesses can take to go green, such as by reducing energy and water use, recycling and using alternative transportation.
- Issue a sustainability edition of the agency newsletter.
- Include information in local agency mailings, websites and other media about actions that individuals and businesses can take to address climate change.
- Share progress with community members on the implementation of agency and/or community climate action plans and sustainability policies.
- Use the agency's social media channels, such as Facebook, Twitter, Nixle and Notify Me, to inform the community about sustainable activities in the community.
- Work with ethnic media to engage non-English speaking groups in the development of sustainability programs and policies.
- Develop public service announcements and/or talk shows related to sustainability.
- Distribute give-away items, such as reusable bags and compact fluorescent lightbulbs, to encourage environmental responsibility.
- Distribute maps showing the community bicycle and walking trail systems to encourage reduction of vehicle miles traveled.

## Consult

- Survey businesses and residents to understand attitudes and behaviors related to sustainability, energy efficiency and climate change; use this information to develop and implement community wide sustainability action items.
- Create ongoing opportunities for community members to provide feedback on proposed sustainability policies and programs, such as through surveys, online or public forums and at stakeholder meetings.

*Continued on next page*







## Involve

- Create a community sustainability commission to help with the development, implementation and tracking of a climate action or sustainability plan.
- Host a green leadership summit for community leaders, school groups and private entities to gather and share experiences, expertise, strategies and ideas for the development of a healthier and more sustainable community.
- Involve diverse stakeholders, including such groups as ethnic chambers of commerce and neighborhood groups, in developing sustainability policies and programs.
- Include sustainability and climate change-related projects as part of youth commission activities.
- Provide programs and/or incentives to individuals, groups and businesses that adopt practices that reduce their carbon footprint. Incentives can be financial or non-financial, such as official recognition of participants' efforts.
- Challenge community members to go on a "carbon diet" to promote individual action to reduce greenhouse gas emissions.

## Collaborate

- Invite community members, organizations and other local agencies to participate in ongoing conversations regarding future growth plans and policies.
- Collaborate with local utilities to create and publicize energy efficiency opportunities for residents and businesses, such as through an energy showcase home or model sustainable landscape projects that reduce water and energy.
- Collaborate with schools to educate students about opportunities to be more energy efficient and to reduce, re-use and recycle.
- Develop a sustainability or community climate change outreach and education program that enlists participation from schools, museums, service groups and business organizations, such as local chambers of commerce, neighborhood and homeowner associations and other community partners.
- Partner with the local community college and grade schools to develop classes or workshops with an environmental focus.
- Collaborate with high schools and community colleges to provide students with internship opportunities related to sustainability.
- Collaborate with other local government agencies to share information about climate change and best practices to reduce greenhouse gases.
- Partner with other organizations to implement a bulk purchase discount program for such items as energy efficiency equipment and photovoltaic solar systems.
- Create an inter-agency local or regional climate action partnership and/or action plan with one or more agencies or neighboring jurisdictions.
- Initiate a community climate action partnership with a global sister agency.

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## Empower

- Participate in the CoolCalifornia Challenge which challenges local agencies to engage residents in taking action to reduce household energy and vehicle miles traveled.
- Sponsor a program to assist local business in adopting sustainable practices.
- Host one or more events to highlight and promote sustainability programs, such as an e-waste drop off, plant a tree, bike to work day or buy local campaigns.





INSTITUTE FOR  
LOCAL GOVERNMENT<sup>SM</sup>

*Promoting Good Government at the Local Level*

# BUILDING HEALTHY & VIBRANT COMMUNITIES

Achieving Results through Community Engagement



# WHAT

## What is Land Use Planning

Land use planning determines how communities are built and what you can do with your property. Competing demands for the same space and resources can generate conflict. Local officials must balance these competing demands as they make decisions impacting the future of their communities. This publication focuses on land use planning at the local level where residents can easily be involved in, and impact, the process.

The fields of land use planning and community development have evolved to address a number of rising concerns. Some of the issues that have spurred changes in the way that communities are planned and built include:

- ! Longer commutes, rising gasoline prices, growing traffic congestion and declining mobility;
- ! Loss of farmland, wildlife habitat and natural resources as low-density development spreads into formerly undeveloped areas;
- ! Air quality and climate-change issues associated with vehicle emissions and energy use in buildings;
- ! Inefficient water use and water-intensive landscaping; and
- ! Growth that outpaces investments in infrastructure and services resulting in an increased need for maintenance and replacement.



# WHO

## Who is Involved

Everyone is affected by land use decisions. However, because planning issues can be complex, residents are often unaware of how, where and when to get involved. Local officials and planning staff have the opportunity to harness community interest by encouraging the public to actively participate in the planning process.

### Typical land use decisions involve the following:



#### City Council / Board of Supervisors

A legislative group of elected residents that oversees local government operations.



#### Developer / Applicant

Any person, firm or entity which seeks local agency approvals for all or part of a development project.



#### General Public / Community

A diverse group of people that may or may not share the same set of goals and concerns.



#### Interest Groups / Stakeholders

Organizations or individuals with an identifiable stake in the issue focused on a particular priority (i.e. agriculture, business and environment).



#### Planning Commission

A committee of residents who have been appointed by your city council or county board of supervisor to review and consider land use matters such as general plans, rezoning, use permits and subdivisions. There are also other boards and commissions, such as the architectural review board that can be involved in the process.



#### Planning Staff

Public employees that administer zoning ordinance and general plan provisions and provide technical planning services to a local agency. Additional local agency staff (such as public works, police, fire and building departments) often advise planners during the review process.

# WHY

## Why Community Engagement Matters

Public engagement processes can take time and scarce resources to implement effectively. They are not always appropriate in all situations; however, there are many practical reasons to engage residents in planning.



“ Involve the public early in the front end of designing a public process and be open to what the public wants to do. If you go in with a clear vision of what you want out of it people will sense that and get angry. Involving the public in a planning process builds credibility and support for changes that are implemented. ”

– ROD GOULD, CITY MANAGER, CITY OF SANTA MONICA



# HOW

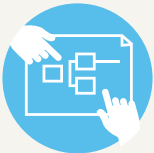
## How to Engage

There are many ways to get involved in local land use planning decisions. Your city or county may use community organizations, chambers of commerce, neighborhood associations or other groups to let you know about upcoming land use decisions. Contact the planning department in your community to learn more about the ways that you can be involved in local land use decisions. Opportunities for engagement may include:



### Advisory Committees

A representative group of typically volunteer stakeholders are convened to guide a planning effort over an extended period of time. To ensure that membership is representative, be sure to include hard to reach populations such as youth, immigrants and low-income individuals or advocates.



### Charrettes

A facilitated multiple-day process that includes interested stakeholders. Participants develop solutions that address potential concerns simultaneously.



### Focus Groups

Small groups of stakeholders brought together for a limited amount of time to provide their knowledge of a project/area and discuss their concerns.



### Participatory Mapping

Residents identify community assets, needs and opportunities on a large photo aerial map of the community. Participants can be encouraged to use sticky dots, markers or other similar items.



### Scenario Planning

A visioning process during which the public helps a local agency generate proposed alternatives future growth and development. Computer-based modeling tools are often used.



# INSTITUTE FOR LOCAL GOVERNMENT<sup>SM</sup>

*Promoting Good Government at the Local Level*

The Institute for Local Government is the nonprofit research education affiliate of the League of California Cities and the California State Association of Counties. Its mission is to promote good government at the local level with practical, impartial and easy-to-use resources for California communities.

The Institute's current program areas include:

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

## Land Use Planning Resources

- Engaging the Public in Planning, Housing & Sustainability [www.ca-ilg.org/engaging-public-planning-housing-sustainability](http://www.ca-ilg.org/engaging-public-planning-housing-sustainability)
- Understanding the Basics of Land Use Planning [www.ca-ilg.org/post/understanding-basics-land-use-and-planning-series](http://www.ca-ilg.org/post/understanding-basics-land-use-and-planning-series)
- Land Use and Environment [www.ca-ilg.org/land-use-environment](http://www.ca-ilg.org/land-use-environment)
- SB 375 Resource Center [www.ca-ilg.org/sb-375-resource-center](http://www.ca-ilg.org/sb-375-resource-center)
- Online Guide to Planning Healthy Neighborhoods <http://www.ca-ilg.org/online-guide-planning-healthy-neighborhoods>

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# GUIDE TO PLANNING HEALTHY NEIGHBORHOODS:

## Tips for Getting Started

Local officials can play a leadership role in efforts to improve community health. Planning decisions can influence health positively by presenting opportunities for healthy behavior or negatively by restricting access to healthy options. Key land-use characteristics that affect health include:

- Patterns of land use within a community or neighborhood;
- The design and construction of spaces and buildings; and
- The transportation systems that connect people to places.

Physical activity and proper nutrition can largely prevent many chronic diseases, such as heart disease and type 2 diabetes. In response to the rising rates of chronic disease, many local agencies are adopting land-use measures that support healthy eating and active living.

### Tips for Getting Started

1. **Scan:** What Has Been Done?
2. **Assess:** What Are the Needs?
3. **Identify:** What Are the Opportunities?

The *Guide to Planning Healthy Neighborhoods* includes information on land use and planning strategies to improve community health and resources to assist in crafting local efforts. The following tips are intended to help local officials consider which strategies and resources best fit the situation in their particular neighborhood or community.

### 1. Scan - What Has Been Done?

Knowing what is already being done or has been tried in the past is an essential first step. A scan can identify strategies that have been successful in previous efforts, uncover areas of redundancy, and highlight useful lessons that can be applied to future efforts. Further, renewing relationships with past partners through a scan can be a great way to identify allies and resources.

#### QUESTIONS TO CONSIDER:

- Are there local programs or policies that have been adopted to specifically improve the health and safety of residents? Have these programs or policies had a noticeable effect on health conditions? What factors or features help or hinder their effectiveness?
- Are there programs or policies put in place for reasons other than health that have had the co-benefit – whether intended or unintended – of improving the health of residents?
- Are community-based organizations already working to improve the health or safety of local neighborhoods? Are there particular local officials or departments that have been especially successful working with the community to identify and address health, safety, and related concerns?
- Have other public agencies or outside organizations partnered with the local agency (or with one another) to leverage resources and successfully improve resident's health? What have been the results of these community partnerships?

### 2. Assess – What Are the Community's Needs?

The purpose of this step is to gather information to understand the baseline health and quality-of-life needs of the community. While statistical data is important, listening to residents articulate their needs and concerns can augment the understanding of the challenges facing residents. Engaging the community also provides an opportunity to brainstorm solutions that capitalize on the residents' strengths and expertise.

**QUESTIONS TO CONSIDER:**

- What are the most serious or prevalent health issues facing the community? Are there trends in how these health issues have evolved over time?
- Are there particular groups of residents that are especially vulnerable to certain health risks or environmental hazards? Are health indicators linked to geographic location or socio-economic status?
- What are the opportunities to access nutritious food? Which neighborhoods have access to full-service grocery stores? Are there other sources of healthy food available – such as farmers markets, community gardens, or community-supported agriculture?
- Can residents find safe and convenient places to be physically active? What is the ratio of park space to residents and what is the condition of the parks? How many miles of trails and bikeways exist?
- Are there environmental hazards located near schools, residences, or other populated places? Where are areas with high rates of preventable injury to pedestrians and bicyclists?

**3. Identify – What Are the Opportunities to Get Started?**

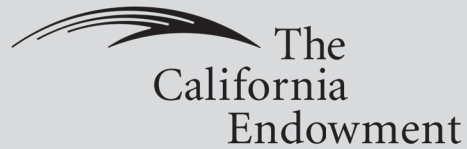
After conducting a scan to inventory past efforts and collecting data to assess key areas of need, the next step is to identify the most promising opportunities to address the needs. In some instances local officials may want to launch a new initiative for planning healthy neighborhoods. However, in many cases the existing planning process provides opportunities to integrate health considerations into land use decisions more quickly and cost-effectively.

**QUESTIONS TO CONSIDER:**

- Are there current or past policies or programs related to health and planning that can be built upon to broaden their reach, scope or effectiveness?
- Is the local agency (or a partner organization) eligible to apply for particular funding sources to support healthy neighborhood policies or programs?
- Are there planning documents in development or ready for review that can be improved by incorporating health language or by including a health impact assessment?
- Are there particular programs or projects in the local agency’s capital or operating budget that could be bolstered or modified to deliver health co-benefits?

More information is available in the *Guide to Planning Healthy Neighborhoods* and at [www.ca-ilg.org/healthynighborhoods](http://www.ca-ilg.org/healthynighborhoods).

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- Land Use and Environment
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- Public Engagement and Collaborative Governance
- Public Service Ethics



UNDERSTANDING THE BASICS OF LAND USE AND PLANNING: GUIDE TO PLANNING HEALTHY NEIGHBORHOODS TIPS FOR GETTING STARTED

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# **Your Legal Powers and Obligations**



*Disclaimer: This paper is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in this paper.*

# Legal Issues: The Law and Making Things Happen in Your Jurisdiction

## Summary and Overview

Legal considerations frequently affect how you are able to pursue the goals that you and your colleagues set for your community. A basic understanding of the legal structure that governs cities will help you provide more effective community service.

This paper highlights some of the laws and legal principles that may impact your decision-making on the city council. It is not comprehensive by any means. You will want to forge a positive relationship with the city attorney in your city, who can help navigate the relevant laws and legal principles and assist in avoiding legal mistakes that could be costly for your city.

## SECTION I: Sources of the Law and Municipal Powers

### What are the Sources of Law for Cities?

The “law” affecting California cities can be found in a number of places:

- **The California Constitution** specifies the relationship among the various levels and branches of government, and establishes a number of individual rights. Cities derive a number of their powers directly from the California Constitution. Changing the Constitution requires a vote of the people. Proposals to change the Constitution may be placed on the ballot by either the Legislature or by initiative petition.
- **City Charters**, in those cities where citizens have elected to have charters, determine how a city is organized and, in some circumstances, give cities certain home rule prerogatives even in the face of conflicting state statutes. There are two types of cities in California: “charter cities,” which operate under the city's local charter, and “general law cities,” which operate under the general laws of the state.<sup>1</sup> Charters can also contain (self-imposed) limitations on city activities.
- **State Statutes** are typically enacted by the State Legislature and are printed in a series of “codes.” The California Government Code, for example, contains a number of provisions relating to the organization of general law cities, as

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<sup>1</sup> See Cal. Gov. Code, §§ 34101 and 34102.

well as land use, planning and employee relations matters. Voters can also amend state statutes through the initiative process.

- **Local Ordinances** represent local agencies' exercise of law-making powers within their respective jurisdictional boundaries.
- **The Federal Constitution and Statutes** apply nationwide and typically act as restrictions on the exercise of power by state and local governments.
- **Judicial Decisions** interpret all of the above, frequently resolving ambiguities or conflicts among them.

## What Powers Do Cities Have and How Are They Limited?

This section provides a brief overview of the sources of city authority and the factors that may constrain a city's ability to exercise that authority. A relevant consideration is whether your city is a charter or general law city since charter cities may retain local authority even when their enactments conflict with state law.

### The "Police" Power

The California Constitution provides that a city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.<sup>2</sup> This is commonly known as the "police power," and is often referred to as the city's regulatory authority to protect the public health, safety and welfare.

### Preemption

A city's regulatory authority may be restricted if the proposed local ordinance or regulation conflicts with federal or state general laws. This is a concept known as "preemption." Federal or state law may preempt a city's ability to legislate in a particular area, either explicitly or by implication.

The test for preemption of local law by federal or state laws is similar. A local ordinance will be preempted by state law when it is in express conflict with state law.<sup>3</sup> Preemption may also occur even when there is no express conflict if the state law has fully "occupied the field" of regulation.

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<sup>2</sup> Cal. Const., art. XI, § 7.

<sup>3</sup> Cal. Const., art. XI, § 7. Note, however, that charter cities are exempt from this restriction in regard to "municipal affairs." *Johnson v. Bradley*, 4 Cal.4th 389, 397 (1992).

Determining what constitutes a “conflict with general laws” is not always easy. Sometimes the Legislature expressly declares its intent to preempt local regulation. Oftentimes, the courts may be called upon to make the final determination.<sup>4</sup>

## Charter City Powers

Perhaps the strongest expression of home rule or local control in California’s Constitution relates to a charter city’s authority over municipal affairs.<sup>5</sup> If a matter is a “municipal affair” (and not a “matter of statewide concern”), a charter city has power to act, even to the extent that the city’s action may be at odds with a state statute. The chief restriction on local action under these circumstances is whether the action would be inconsistent with the city’s charter or the California or United States Constitutions.

Courts, rather than the Legislature, are the ultimate arbiters of whether a subject is a municipal affair or a matter of statewide concern.<sup>6</sup> This determination is made on a case-by-case basis, which means that it frequently takes litigation to vindicate a charter city’s exercise of its authority. More information on charter cities can be found at [www.cacities.org/chartercities](http://www.cacities.org/chartercities).

## Operation of Public Works

The California Constitution provides that a city may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication.<sup>7</sup> It may furnish those services outside its boundaries, except within another municipal utility’s boundaries that furnishes the same service and does not consent. Persons or corporations supplying those services may operate within cities upon conditions and under regulations that the city may prescribe.<sup>8</sup>

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<sup>4</sup> For example, one court ruled that a city could not enact housing occupancy standards more stringent than the uniform standards contained in state housing law. *Briseno v. City of Santa Ana*, 6 Cal.App.4th 1378, 8 Cal.Rptr.2d 486 (1992). Another court held that a city could not regulate the storage of firearms. *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 67 Cal. Rptr. 2d 420 (1997). On the other hand, courts have found local ordinances allowing mobile home rent increases to fund capital improvements, prohibiting boisterous conduct in card clubs, and regulating nuisances related to the sale of alcoholic beverages not to be preempted by state law on related subjects. *Robinson v. City of Yucaipa*, 28 Cal. App. 4th 1506, 34 Cal. Rptr. 2d 291 (1994); *Lowe v. City of Commerce*, 59 Cal. App. 4th 1075, 69 Cal. Rptr. 2d 356 (1997); *City of Oakland v. Superior Court*, 45 Cal. App. 4th 740, 53 Cal. Rptr. 2d 120 (1996).

<sup>5</sup> See generally Cal. Const., art. XI, § 5.

<sup>6</sup> The threshold inquiry is whether a conflict exists between a charter city law and state law. If no conflict exists, the charter city law stands. If a conflict exists, the court will find the matter is a municipal affair unless it qualifies as a matter of statewide concern. Even if the subject matter is of statewide concern, the state law must be reasonably related and narrowly tailored to address that statewide concern. See *Johnson v. Bradley*, 4 Cal. 4th 389, 14 Cal. Rptr. 2d 470 (1992); see also *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista*, 54 Cal. 4th 547, 279 P. 3d 1022 (2012).

<sup>7</sup> Cal. Const., art. XI, § 9(a).

<sup>8</sup> Cal. Const., art. XI, §9(b).

## State and Federal Constitutional Limitations

Local officials' actions must also comply with the United States Constitution and federal law. Areas of federal law that frequently arise for cities include:

- The First Amendment establishment of religion, free exercise of religion and free speech clauses.
- The Fourth Amendment prohibition against unreasonable search or seizure.
- The Fifth Amendment right to remain silent (for example, in police interrogations) and the requirement of just compensation for the taking of property.
- The Fourteenth Amendment's protections of due process, equal protection and property rights.

California's Constitution also contains similar declarations of rights, as well as other provisions that may place limits on city actions. Some examples include provisions relating to water rights,<sup>9</sup> workers compensation,<sup>10</sup> alcoholic beverage regulation,<sup>11</sup> public housing projects<sup>12</sup> and the non-partisan nature of municipal government.<sup>13</sup>

City officials should also be aware of the various federal civil rights laws which prohibit public agencies from discriminating against individuals based on a number of protected characteristics (for example, race, gender, physical disability and age). The state also has a number of laws that contain similar—but not always the same—protections.

## Indemnity and Immunity

When acting within the bounds of their authority, city council members, as public officials, enjoy a number of statutory immunities that shield them from personal liability and provide immunity under most circumstances.

Except as otherwise provided by law, the city must pay any judgment or any compromise or settlement so long as the following are true: (1) the claim or action arose from an act or

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<sup>9</sup> See Cal. Const., art. X.

<sup>10</sup> See Cal. Const., art. XIV, §4.

<sup>11</sup> See Cal. Const., art. XX, §22.

<sup>12</sup> See Cal. Const., art. XXXIV.

<sup>13</sup> See Cal. Const., art. II, §6.

omission occurring within the scope of employment; (2) a request for defense is made in writing at least 10 days before trial; and (3) the employee reasonably cooperates in good faith in the defense of the claim or action.<sup>14</sup> For purposes of this discussion, council members are considered city employees, regardless of whether they are compensated or not.

But the city's duty to defend or indemnify a council member does not apply in the context of alleged conflicts of interest in violation of the Political Reform Act or other conflict of interest laws. Liability for conflicts of interest is personal to the council member. However, a council member is entitled to seek an opinion on conflict of interest issues from the Fair Political Practices Commission ("FPPC"). A written advisory letter from the FPPC will provide immunity to a public official who has requested and obtained such a letter. The same is not true for conflict advice a council member may have received from the city attorney, or for informal advice received from FPPC staff by telephone.

## **Exercising Power**

### **Taking Legislative Action**

Cities usually exercise their regulatory authority by adopting ordinances or resolutions. For general law cities, state law requires that the city attorney draft all ordinances.<sup>15</sup> Further, state law requires that the mayor of a general law city sign the ordinances and that the city clerk attest the ordinances.<sup>16</sup> The city clerk must, within 15 days after its passage, cause the ordinance to be published at least once in a newspaper of general circulation, or post the ordinance if no newspaper of general circulation is published in the city.<sup>17</sup>

After the ordinance has been introduced, it cannot be finally passed until the expiration of at least five days. The only exception is an urgency ordinance, which can be finally passed at the same meeting at which it is introduced.<sup>18</sup> An ordinance in general law cities must be passed by a majority of the entire city council.<sup>19</sup> The voting requirement also applies to resolutions.

### **Acting in a Quasi-Judicial Capacity**

The city council is primarily a legislative and administrative body, but often sits in a quasi-judicial capacity. Quasi-judicial matters may include variances, use permits, annexation protests, and personnel disciplinary actions. Quasi-judicial proceedings tend to involve the

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<sup>14</sup> Cal. Gov. Code, § 825(a).

<sup>15</sup> Cal. Gov. Code, § 41802.

<sup>16</sup> See Cal. Gov. Code, § 36932.

<sup>17</sup> See Cal. Gov. Code, § 36933.

<sup>18</sup> See Cal. Gov. Code, § 36934.

<sup>19</sup> See Cal. Gov. Code, § 36936.

application of generally adopted standards or rules to specific fact situations, much as a judge applies the law to a particular set of facts.

Those persons subject to a quasi-judicial proceeding must be given meaningful notice and an opportunity to be heard. A record should be kept of the witnesses and their testimony, the evidence introduced on both sides, and the council's findings.

"Findings" are the city council's explanation for its action. Findings are not only important to those interested in the council's decision, but to courts reviewing the council's action in the event of a legal challenge.

To satisfy due process obligations, the decision-maker must be fair and impartial.<sup>20</sup> Council members should be careful to listen to the testimony in such hearings if they vote on the matter, leaving biases, prejudices and pre-conceived ideas outside the hearing.<sup>21</sup>

## **SECTION II: The Money to Make Things Happen**

California cities raise revenue to pay for public facilities and services in a variety of ways, including through taxes, fees, assessments, and debt financing. There are numerous laws and regulations related to raising revenue, including requirements for notice to and approval by the public and affected property owners. During this conference, you will participate in a financial responsibilities and city revenues workshop, in which you will receive training and educational materials that will assist you in complying with the complex laws that govern revenue-raising activities in your city.

## **SECTION III: Ethics, Conflicts of Interest and Open Government**

As part of your participation in this conference, you will also receive what is commonly referred to as "AB 1234 training." Enacted in 2005, AB 1234 requires local elected officials to receive training every two years on the laws related to ethics, conflicts of interest and open government. The Institute for Local Government, in conjunction with the Attorney General's office and other stakeholders, has developed educational materials that will assist you in understanding these important, but often complicated, areas of the law.

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<sup>20</sup> See *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (1996) (explaining basic requisites of due process in the context of a council's quasi-judicial action on a zoning appeal); *cert. denied*, 520 U.S. 1167, 117 S. Ct. 1430, 137 L. Ed. 2d 538 (1997).

<sup>21</sup> See *Mennig v. City Council of City of Culver City*, 86 Cal. App. 3d 341, 150 Cal. Rptr. 207 (1978).





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# **Communications and Civic Engagement**

# Effective Public Engagement through Strategic Communication

Strategic communication is an essential tool for effective public engagement. This tip sheet offers advice on communication strategies before, during and after the agency's public engagement effort.

## The Public Engagement Process



## I. Before the Agency Begins a Public Engagement Effort:

### Understand the Audiences

**In order to effectively communicate about a public process or program, the starting point is to understand who the agency seeks to engage.**

- Identify key audiences and stakeholders. What are their interests? How do they connect to the project or policy?
- Identify the community values, commonly held principles or valued qualities, such as personal safety, freedom or fairness. Understanding this can help you craft your message.
- Ask stakeholders about their preferences regarding communication. What communications channels work best for them? Getting this perspective during planning both enhances understanding of these key audiences and creates a valuable communication channel for further engagement.
- Understand connections and relationships among audiences and individuals. Who are their trusted advisors? How willing are these influencers to act? Understanding these dynamics can help the agency broaden the impact of its engagement effort.

With the above information in mind, the agency can identify and prioritize communication channels that align with the needs, opportunities and resources of both the project or policy and the audiences that the agency seeks to engage.

## Consider Both the Message and the Messenger

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**In developing a message for a policy or project, succinctly and clearly articulate the message.**

- What is at stake for the community.
- Why the audience should care. Explain how the decision could affect what different people value.
- The action the agency wants the audience to take. For example, is the goal to help inform people, help them analyze and weigh in on different solutions to a problem, or take a specific step?
- What will happen if audience members do take action. Consider the choice of messenger and how it will affect the way in which people will receive the agency's message.
- Identify and support community champions who can speak with authenticity and power to the issue or need being addressed.
- Consider developing an outreach working group to help extend the agency's ability to reach into different audiences in the community.
- Empower community members as storytellers. Personal perspective on a proposed policy or project can be compelling to broader audiences and the media. Tie the agency's communication plan to the policy or project consideration process.
- What are the policy or project decision-making milestones?
- How will the agency communicate progress towards key decision-making milestones?
- How will the agency communicate how public input influenced the final outcomes of the decision-making process? Tie the agency's communication plan to the policy or project consideration process.
- What are the policy or project decision-making milestones?
- How will the agency communicate progress towards key decision-making milestones?
- How will the agency communicate how public input influenced the final outcomes of the decision-making process?

## Create a Media Plan that Integrates Both Traditional (Print, Radio and Television) and Online Outlets

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- Develop key story themes and messengers.
  - Find the right community partners and champions to help spread the agency's information and messages.
  - Develop a sequence of messages that tie to key milestones in the policy or project.
  - Scale the level of media activity to fit the time frames and capacities of the media outlets and contacts in the area.
- Create a list of media, reporters, key bloggers and online journalists who reach priority audiences.
  - Identify both larger and smaller community-based publications and outlets, including radio. Be sure to include the newsletters, blogs and events of key community partners.
  - Consider the different types of reporters and outlets who might cover various angles of the story (health, real estate, living, local agency beat, ethnic media, etc.).
- Create a planning calendar for the decision-making process on the policy or project.
  - Include key milestones, events, news happenings and announcements that can engage the public.

- Plug into other activities related to the policy or project topic locally, nationally and even internationally.
  - Brainstorm different ways to slice the story to ensure ongoing coverage.
  - List the different news opportunities (for example, at launch, when funding is secured, when a proposal is made, when success is achieved). Find the other relevant angles (for example, health, sustainability, education). Identify submission opportunities for opinion pieces and who are the right spokespeople and storytellers.
- Monitor the media for opportunities to respond to other related stories with information about your policy or project.

## II. During the Public Engagement Process:

### Create opportunities for Sustaining Communication

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**Public engagement efforts are most successful when spokespeople consider context, content and commitment in relation to the audiences they seek to reach.**

- Create opportunities for engagement through channels and events both within and outside of the public agency.
- Offer multiple opportunities for the public to communicate back to the agency (surveys, online forums and meetings) to reflect that different groups will have different preferences in terms of communications channels.
- Show progress, new information or actions as proactively and quickly as possible.
- Follow up on commitments made (for example, to get answers to questions) and (when possible) immediately ask for feedback about the agency's communications and engagement efforts.
- Recognize and thank partners and collaborating stakeholders for their efforts during the engagement process.

### Expand Opportunities for Sustained Interaction with the Media to Maximize Strategic Communication and Public Engagement

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- Train spokespeople on the needs and tendencies of media representatives.
- Develop relationships with key reporters and outlets:
  - Be respectful of deadlines.
  - Provide them with only story ideas their audiences will care about.
  - Understand which outlets do and do not have reporters who routinely cover your topic, and adjust the background material you provide accordingly.
  - Don't ask to review a quote or the story.
  - Ask for corrections only if there are grave factual errors.
  - Give them information they ask for even if it is not relevant to the policy or project.
- Pitch news stories and submit opinion pieces consistent with the agency's planning calendar. Consider an editorial board meeting with the local daily newspaper at the beginning of the effort. Another possibility is an "educational" news briefing with background information for outlets that do not have a reporter on that beat (such as ethnic media, recently downsized local papers, radio, etc.)
- Communicate progress points and/or key lessons along the way to support champions and demonstrate that the community conversation is influencing the decision-making process.
- Invite media to all community meetings and make spokespeople available for interviews.

- Be prepared to take advantage of opportunities to react to news events. Have drafts of op-eds and letters to the editor that the right community member or other stakeholder can review, sign and submit quickly.
- Share media coverage with priority audiences (for example, provide printouts at community meetings, post on the agency's website and share through other online tools).

## III. After the Public Engagement Process:

### Measure and Evaluate the Engagement

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**At the conclusion of an engagement process, use quantitative and qualitative metrics to evaluate, adjust and improve your strategy. Lessons learned from both successful and unsuccessful strategies can help to refine the agency's understanding of the values, interests and concerns of audiences and stakeholders. This will benefit future engagement efforts.**

- Gather qualitative data through surveys, interviews, focus groups or informal channels.
- Use process measures to assess what you did including:
  - Materials distributed,
  - Outreach conducted,
  - Media engaged, and
  - Staff, friends, partners and others reached.
- Use outcome measures to assess what happened:
  - Did you achieve the goals?
  - How many new people did you reach?
  - Did you receive positive media coverage?
  - Who used the key messages?
  - Did you earn endorsements?
  - Who got involved and what did they do?
- Ask for feedback and advice from stakeholders.

#### **Additional Information**

To learn more about measuring public engagement success, visit the Institute for Local Government's public engagement resources at ([www.ca-ilg.org/public-engagement](http://www.ca-ilg.org/public-engagement))

### Create Opportunities for Ongoing Communication and Concentrate on Maintaining the Relationships with Stakeholders

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**As with any relationship, maintaining communication after an engagement effort has been completed will ensure that audiences and stakeholders stay informed-making them more likely to participate in future efforts.**

- Share findings and lessons learned from debriefing and performance assessments.
- Circle back to stakeholders with information that shows how their efforts made a difference. Thank them for their involvement.
- Use existing venues (governing body meetings, public events) and resources (website, e-mail newsletters) to celebrate new approaches, new relationships or specific successful outcomes that highlight partners or collaborating stakeholders.
- Create an ongoing network for information sharing with stakeholders and community groups.
- Look for ways to support or connect with stakeholders during the periods between major engagement efforts.

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## What is Public Engagement?

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## Why Should I do it?

There are many terms that describe the involvement of the public in civic and political life. We offer one set of terms and definitions here not because we're sure these definitions are the best or most complete – or even that most people would agree with them - but because we think it's important to draw distinctions among the various ways people can become involved. This is important because understanding these differences will help local officials “fit” the best approach (or approaches) to the issue, policy or controversy at hand. The exact terms and definitions are less important than recognizing that these distinctions exist.

Local governments throughout California are applying a variety of public engagement strategies and approaches to address issues ranging from land use and budgeting to climate change and public safety. They are discovering a number of benefits that can result from the successful engagement of their residents in local decision making.

# What is Public Engagement?



## CIVIC ENGAGEMENT

This is an extremely broad term that includes the many ways that residents involve themselves in the civic and political life of their community. It encompasses volunteering as a local Little League coach, attending neighborhood or community-wide meetings, helping to build a community playground, joining a city or county clean-up effort, becoming a member of a neighborhood watch group or local commission – and much more.



## PUBLIC ENGAGEMENT

This is a general term we are using for a broad range of methods through which members of the public become more informed about and/or influence public decisions. Given our work to support good public involvement in California, we are especially focused on how local officials use public involvement practices to help inform residents and help guide the policy decisions and actions of local government.



## PUBLIC INFORMATION/OUTREACH

This kind of public engagement is characterized by one-way local government communication to residents to inform them about a public problem, issue or policy matter.

Examples could include: a website article describing the agency's current budget situation; a mailing to neighborhood residents about a planned housing complex; or a presentation by a health department to a community group about substandard housing or "bird" flu policies.



## PUBLIC CONSULTATION

This kind of public engagement generally includes instances where local officials ask for the individual views or recommendations of residents about public actions and decisions, and where there is generally little or no discussion to add additional knowledge and insight and promote an exchange of viewpoints.

Examples include typical public hearings and council or board comment periods, as well as resident surveys and polls. A public meeting that is mainly focused on asking for "raw" individual opinions and recommendations about budget recommendations would fit in this category.



## PUBLIC PARTICIPATION/DELIBERATION

This form of public engagement refers to those processes through which participants receive new information on the topic at hand and through discussion and deliberation jointly prioritize or agree on ideas and/or recommendations intended to inform the decisions of local officials.

Examples include community conversations that provide information on the budget and the budget process and ask participants to discuss community priorities, confront real trade-offs, and craft their collective recommendations; or the development of a representative group of residents who draw on community input and suggest elements and ideas for a general plan update.



## SUSTAINED PUBLIC PROBLEM SOLVING

This form of public engagement typically takes place through the work of place-based committees or task forces, often with multi-sector membership, that over an extended period of time address public problems through collaborative planning, implementation, monitoring and/or assessment.

# Why Engage the Public?

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## BETTER IDENTIFICATION OF THE PUBLIC'S VALUES, IDEAS AND RECOMMENDATIONS

Elections help identify voter preferences and communication with individual constituents provide additional information to local officials about resident views on various topics. However gaps often remain in understanding the public's views and preferences on proposed public agency actions and decisions. This can especially be the case for residents or populations that tend to participate less frequently or when simple "pro" or "con" views don't help solve the problem at hand. Good public engagement can provide more nuanced and collective views about an issue by a broader spectrum of residents.



## MORE INFORMED RESIDENTS - ABOUT ISSUES AND ABOUT LOCAL AGENCIES

Most residents do not regularly follow local policy matters carefully. While a relatively small number do, most community members are not familiar, for instance, with the ins and outs of a local agency budget and budget process, or knowledgeable about planning for a new general plan, open space use or affordable housing. Good public engagement can present opportunities for residents to better understand an issue and its impacts and to see local agency challenges as their challenges as well.



## IMPROVED LOCAL AGENCY DECISION - MAKING AND ACTIONS, WITH BETTER IMPACTS AND OUTCOMES

Members of the public have information about their community's history and needs. They also have a sense of the kind of place where they and their families want to live. They can add new voices and new ideas to enrich thinking and planning on topics that concern them. This kind of knowledge, integrated appropriately into local decision making, helps ensure that public decisions are optimal for the community and best fit current conditions and needs.



## MORE COMMUNITY BUY-IN AND SUPPORT, WITH LESS CONTENTIOUSNESS

Public engagement by residents and others can generate more support for the final decisions reached by local decision makers. Put simply, participation helps generate ownership. Involved residents who have helped to shape a proposed policy, project or program will better understand the issue itself and the reasons for the decisions that are made. Good communications about the public's involvement in a local decision can increase the support of the broader community as well.



## MORE CIVIL DISCUSSIONS AND DECISION MAKING

Earlier, informed and facilitated deliberation by residents will frequently offer a better chance for more civil and reasoned conversations and problem solving than public hearings and other less collaborative opportunities for public input.



## FASTER PROJECT IMPLEMENTATION WITH LESS NEED TO REVISIT AGAIN

Making public decisions is one thing; successfully implementing these decisions is often something else altogether. The buy-in discussed above, and the potential for broad agreement on a decision, are important contributors to faster implementation. For instance, a cross section of the community may come together to work on a vision or plan that includes a collective sense of what downtown building height limits should be. If this is adopted by the local agency and guides planning and development over time, the issue will be less likely to reoccur as an issue for the community and for local officials. In general, good public engagement reduces the need for unnecessary decision-making “do-over.”



## MORE TRUST - IN EACH OTHER AND IN LOCAL GOVERNMENT

Whatever their differences, people who work together on common problems usually have more appreciation of the problem and of each other. Many forms of public engagement provide opportunity to get behind peoples’ statements and understand the reasons for what they think and say. This helps enhance understanding and respect among the participants. It also inspires confidence that problems can be solved – which promotes more cooperation over time. Whether called social capital, community building, civic pride or good citizenship, such experiences help build stronger communities. Additionally, when a local agency promotes and is a part of these processes - and takes the ideas and recommendations of the public seriously - a greater trust and confidence in local government often results.



## HIGHER RATES OF COMMUNITY PARTICIPATION AND LEADERSHIP DEVELOPMENT

Engaging the public in new ways offers additional opportunities for people to take part in the civic and political life of their community. This may include community members who have traditionally participated less than others. These are avenues for not only contributing to local decisions but for residents to gain knowledge, experience and confidence in the workings of their local government. These are future neighborhood volunteers, civic and community leaders, commissioners and elected officials. In whatever role they choose, these are individuals who will be more prepared and more qualified as informed residents, involved citizens and future leaders.

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# Providing Language Access

## TIPS FOR LOCAL OFFICIALS !



### Did you know...

**6.9 Million** Californians have **Limited English Proficiency (LEP)**

**68%** are Spanish speakers followed by Chinese, Vietnamese, Tagalog and Korean.



- ▶ **The California Civil Rights Act** prohibits discrimination by agencies that receive state funds and requires them to provide equal access to benefits.
- ▶ **The Bilingual Services Act** requires local agencies to provide language access services to limited English-proficient speakers. Providing language access in some circumstances may be the only way to facilitate public participation in California's communities.

 **INSTITUTE FOR LOCAL GOVERNMENT**<sup>SM</sup>  
*Promoting Good Government at the Local Level*

### Tips for Providing Language Access Services

- 1** **Connect language access efforts to the larger mission and goals** of the local agency.
- 2** **Develop policies that clarify your local agency's responsibilities** for providing bilingual services and ensure that local officials understand these policies, responsibilities and existing language access services and resources.
- 3** **Partner with community-based organizations and ethnic media** to better identify language access priorities, ensure accurate and culturally appropriate interpretation and translation and more fully assess the effectiveness of language access plans.
- 4** **Translate print and online materials explaining services** into languages spoken by a substantial number of LEP residents. Minimize the use of bureaucratic or legal jargon when creating all new documents.
- 5** **Create web pages that are easy to navigate and use.** Web pages may ease fears of immigrant residents who may not feel comfortable seeking services in person.
- 6** **Encourage local departments to consider using California Multiple Award Schedules (CMAS) contracts** to obtain bilingual services whenever cost-effective.
- 7** **Use bilingual employees effectively and appropriately.** Avoid assumptions about competence and willingness of bilingual staff to provide language services.

### Resources to learn more:

Language Access Laws and Legal Issues A Local Official's Guide | [www.ca-ilg.org/language-access-laws-and-legal-issues](http://www.ca-ilg.org/language-access-laws-and-legal-issues)

Ten Ideas to Encourage Immigrant Engagement | [www.ca-ilg.org/ten-ideas-immigrant-engagement](http://www.ca-ilg.org/ten-ideas-immigrant-engagement)

Increasing Outreach | [www.ca-ilg.org/increasing-outreach](http://www.ca-ilg.org/increasing-outreach)

ca-ilg.org

# Shaping the Future Together: TIERS<sup>SM</sup> Framework for Practical Public Engagement at the Local Level



The Institute for Local Government (ILG) has developed a framework to support and assist any local government with planning and executing public engagement efforts. The Framework consists of five pillars for successful community engagement: Think, Initiate, Engage, Review and Shift.

Why TIERS? The TIERS Public Engagement Framework has been developed in direct response to what we have heard from local elected officials and staff across California. In 2015, ILG conducted a statewide survey and found that 69 percent of respondents said they do not have the sufficient staff, knowledge and financial resources for public engagement. These findings mirrored the results of a 2013 ILG & Public Agenda survey which found that 69 percent of respondents thought a lack of resources and staff could stand in the way of a deliberative [public engagement] approach.

Further, there is a lack of standard best practices for authentic and effective public engagement, which leads to a lack of common understanding of what public engagement is and how to approach it. The TIERS Public Engagement Framework and its companion program, the TIERS Learning Lab, provide a step-by-step approach to public engagement.

## How Can Your Agency Benefit from Public Engagement?

Local governments will benefit from public engagement in the following ways:

- Improved local agency decision making and actions, with better impacts and outcomes
- More community buy-in and support, with less contentiousness
- Better identification of the public's values, ideas and recommendations
- More informed residents
- More constructive discussion and decision making
- Faster project implementation with less need to revisit again
- More trust in each other and in local government
- Higher rates of community participation and leadership development





## THINK

### Step 1: Self-Assessment

- Public Engagement Project Assessment
  - Quick Assessment (1-4 hours)
  - Deeper Assessment (8 hours to 6 weeks)
  - *Template Provided*
- Agency Assessment
  - Davenport Institute's "How are WE Doing?" assessment tool

### Step 2: Consider Public Engagement Approach

- Draft Public Engagement Approach for your Specific Effort
  - *Template Provided*
- Draft Public Engagement Approach for Agency Wide Application
  - Review your agency's public engagement policies and practices, including current staffing
  - Conduct an analysis of the public engagement functions and needs across your agency

### Step 3: Contemplate Community Landscape

- Create or update a list of local community based organizations (CBOs) and others to inform outreach efforts
- Identify diverse locations to hold meetings with target audiences in mind
- *Template Provided*



## INITIATE

### Step 1: Draft Public Engagement Approach

- Choose a mix of in-person and online activities
  - Consider the timeline, budget, staff time implications (your department and other departments as applicable)
  - Who will facilitate events? Who/ how will data gathered be input, analyzed, summarized?
  - What might go wrong? How might your approach mitigate for challenges?
  - *Template Provided*

### Step 2: Develop Outreach Plan

- Create an Outreach Plan
  - Consider what you know from your 'community landscape' listing; who you are trying to reach, how much time and money available
  - *Template Provided*

### Step 3: 'Reality Check'

- Are there local, state or federal laws or regulations you need to consider?
- Are there internal organizational 'politics' or challenges to take into consideration?
- Are there larger 'Political' issues to keep in mind?
  - For example: Is there an upcoming election? A significant recent incident?

*"Society is strongest when we all have a voice. Engaged communities are often more vibrant and healthier."*

*- The James Irvine Foundation*



## ENGAGE

### Step 1: Implement Outreach Plan

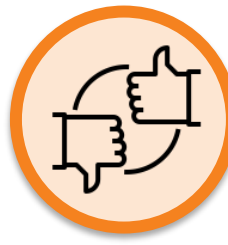
- Implement your plan, prioritizing outreach
- Ensure targeted audiences are represented (authentically) within your plan
  - Double check with local leaders to ensure authentic voices are reached

### Step 2: Implement Public Engagement Approach

- Execute your plan; ensure roles are clear; adjust as appropriate
- *Template Provided*

### Step 3: 'Reality Check'

- Are there internal organizational 'politics' or challenges that have changed and need to be considered?
- Check in with key community leaders on a regular basis to understand new or coming issues; mitigate accordingly



## REVIEW

### Step 1: Evaluate Public Engagement Approach

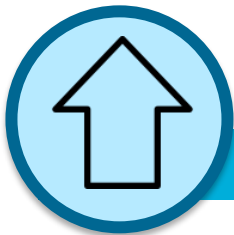
- What worked? What could have gone better? See ILG resources like Rapid Review Worksheets
- Is training needed for any staffers in order to execute more effectively in the future? (e.g. facilitation skills; graphic design; survey question construction; meeting design)

### Step 2: Evaluate Outreach Plan

- What worked? What could have gone better?
- Is training needed for any staffers in order to execute more effectively in the future? (e.g. challenging people; communications skills; small group facilitation)
- Are there community leaders with whom the agency should build stronger ties?

### Step 3: What Barriers Did You Overcome?

- What internal organizational barriers did you overcome?
- What other political barriers did you overcome?



## SHIFT

### Step 1: Internal Organizational

- Consider beneficial organizational shifts
  - For example: public engagement assigned within job description(s); commitment to train electeds and staff in public engagement policy and/or skills; ongoing communication strategies that go beyond traditional methods such as ethnic media
  - Send out periodic surveys to understand satisfaction with public engagement related efforts and policies
  - Ask for help when needed from organizations like ILG, Davenport Institute and/or consultants

### Step 2: External |Your Community

- Consider beneficial shifts in external relations
  - For example: set and track metrics related to in-person and phone meetings with diverse and underrepresented community members, choose time bound goals; engage with local leadership programs

### Step 3: Policy Change

- Consider policy review/ change/ adoption
  - Commitment to review public engagement related policies if they have not been systematically reviewed in the last ten years; Adopt a resolution demonstrating commitment to public engagement

## TIERS<sup>SM</sup> Public Engagement Learning Lab

The TIERS Public Engagement Learning Lab is an interactive, results-oriented 6 month program led by ILG that provides participants in California local government with hands-on instructions, exclusive TIERS public engagement tools, individualized support of your public engagement project, follow up private consulting, and peer-to-peer learning.

### Program Benefits + Takeaways:

- 1 Reframe your public engagement from a necessary burden to a beneficial and productive process
- 2 Learn new tactics and tools to manage and respond to diverse viewpoints and navigate contentious stakeholders
- 3 Learn how to drive higher turnout for your big events
- 4 Gain new ideas and digital strategies to move your public engagement 'Beyond the Usuals' and reach new residents and stakeholders
- 5 Increase your organization's internal buy-in for your public engagement work
- 6 Connect with others in your region to share real-world case studies and provide mutual support for successful public engagement work

To learn more about the TIERS Learning Lab and other training opportunities in your region, please contact ILG's Public Engagement Program at [publicengagement@ca-ilg.org](mailto:publicengagement@ca-ilg.org)

## About the Institute for Local Government

The Institute for Local Government's (ILG) mission is to promote good government at the local level with practical, impartial and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities, the California State Association of Counties and the California Special Districts Association.

To access the Institute's resources on public engagement, visit [www.ca-ilg.org/engagement](http://www.ca-ilg.org/engagement)

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The TIERS Framework was developed with a generous grant from The James Irvine Foundation.

# Beyond the Usuals

## Ideas to Encourage Broader Public Engagement in Community Decision Making

Given the challenges facing cities and counties in California, local officials are increasingly asking residents to participate in public engagement efforts whose outcomes will help shape the future of their communities. These discussions are about land use, budgeting, affordable housing, climate change, transportation, public safety and many other local and regional issues.

However even with the best of intentions to encourage broad participation, local officials often find that only a relatively small number of community members actually take part in public conversations and forums.

A failure to involve a cross-section of residents limits the effectiveness of these public engagement efforts and negatively impacts the breadth and quality of ideas contributed. It can also reduce community support for the final decisions.

Most California communities have diverse populations and some have experienced rapid demographic changes. Residents vary by age, gender, ethnicity, immigrant status and income level. Some own homes and some rent. Community members may be long-time residents or new arrivals. People read and speak English with different degrees of proficiency. Some have disabilities. Individual residents, as well as whole communities, may have more or less experience, confidence, or capacity to participate.

Based on the ideas of many individuals and organizations, and on the experiences of communities throughout California, here are a number of ideas for achieving broader representation in local public engagement efforts.

### CONTENTS



Develop Relationships



Build Participation  
Capacity



Fit Your Process  
to the Participants



Get Help



Communicate  
Respectfully



Be Flexible



Have Specific Goals



Stay in Touch



Say Thank You



Keep Learning

## DEVELOP RELATIONSHIPS

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Less engaged communities are often critical of the public engagement process. Developing personal relationships with the community can lead to a more inclusive process and community buy-in.

## BUILD COMMUNITY CAPACITY TO PARTICIPATE

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Community members have varying degrees of familiarity with local government processes and functions. Providing educational materials or process at the beginning of the public engagement process will allow more meaningful participation from the broad community.

## FIT YOUR PROCESS TO THE PARTICIPANTS

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Once you determine the *purpose* of a public engagement process, think about the range of *participants* you hope to involve *before* selecting your approach or *process(es)* for that involvement. This will help you create opportunities for participation that will be more appropriate and welcoming for participants and reach the diversity community.

## GET HELP

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Identify and consult community-based and intermediary organizations, including neighborhood and grassroots leadership groups, local clergy, faith-based organizations, community and ethnic media, and others that can as provide two-way conduits for communication between local officials and community residents on specific issues and policies.

## COMMUNICATE EFFECTIVELY AND RESPECTFULLY

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Stay current with your communities changing demographics, and develop culturally and linguistically appropriate communications material and strategies. Recognize the importance of communicating with residents in their first language to ensure their maximum understanding of issues. As appropriate, promote public engagement through ethnic media and other intermediary organizations that already serve and work with the communities you wish to reach. Plan ahead for translation services. Transportation assistance and childcare (perhaps through respected intermediary organizations) can often be helpful.

## BE FLEXIBLE

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Hold public meetings or other public engagement processes in community settings that are known and accessible to the communities you wish to reach. Explore what engagement tools and processes will best meet the needs and conditions of specific populations.

## HAVE SPECIFIC GOALS

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Take the time to create targeted goals for harder to reach communities. In general, encourage attention and learning about inclusive engagement throughout your agency, and include public information officers in these discussions. Individual departments can develop their own outreach plans to reach specific less-engaged communities or populations.



## STAY IN TOUCH

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As appropriate, keep current lists of organizations and groups concerned about given issues and keep them informed of opportunities to participate.



## SAY THANK YOU & FOLLOW-UP

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Express your appreciation for those who do become involved. Let participants know how their input was considered and impacted decisions.



## KEEP LEARNING

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Follow up after specific engagement efforts to determine what worked and what could be improved.



## BUILD IT IN

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Explore the integration of diverse community voices as a part of your overall strategy to inform and support the goals and programs of local government.

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# Partnering with Community-Based Organizations for More Broad-Based Public Engagement

This publication is for local government officials interested in collaborating with local community-based organizations to enhance the breadth and depth of participation by community residents in local decision-making. Interviews with both local officials and community leaders throughout California were used to generate guidance for those who are getting started or want to enhance their relationships with more of their community.

## Why Partner?

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Many local officials report that the residents they see participating in their public meetings are a narrow slice of the whole community.<sup>1</sup> To address this challenge, many local agencies use a strategy of nurturing relationships with community-based organizations (CBO) to better reach and engage a broader cross section of residents. The important benefits they cite from these partnerships include the ability to:

- Extend the agency's education and outreach capacities so more residents are aware and informed
- Balance the most involved advocates with perspectives representing more of the community
- Reduce misperceptions and mistrust, and reduce contentiousness
- Identify broader community-based resources and recommendations
- Develop communication channels for keeping people informed over time
- Enhance the cultural competency of engagement plans, and increase the ability to translate issues into relevant questions/framing and accessible language
- Reach people emotionally as well as physically

Local government agencies using this approach have learned that being very intentional about the purposes and parameters of their partnerships can make a dramatic difference in their effectiveness.

## Types of Community-Based Organizations

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All jurisdictions have non-profit organizations committed to improving the quality of life in their community. Examples include parent-teacher organizations, congregations, sports leagues, adult education programs

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<sup>1</sup> 76 percent of city and county officials say that public meetings are dominated by people with narrow agendas. [Testing the Waters](http://www.ca-ilg.org/research-public-engagement-local-government-decision-making), May 2013 report with findings from 900 California local officials, available at: [www.ca-ilg.org/research-public-engagement-local-government-decision-making](http://www.ca-ilg.org/research-public-engagement-local-government-decision-making). The link has a companion report of research conducted among 500 leaders of civic organizations.

and service clubs such as Rotary or Kiwanis. These kinds of organizations can complement those that may already participate actively in public meetings, such as the chamber of commerce and neighborhood associations.

Partnerships are often sought as a way to elicit unheard perspectives on how an issue or problem is experienced, which can enhance specific policy directions or recommendations. Some agencies have a practice of sharing lists and information about community-based organizations across departments as a way to leverage past investments in these relationships. Instead of developing a new outreach effort and list for each new issue and decision process, they have a ready cross section of the greater community already oriented to some aspect of local decision making. It is also helpful to investigate and acknowledge existing collaborations and networks between organizations to understand how information flows in the community.

## Clarifying Purpose and Alignment

The desired demographic and geographic audiences are often the starting point for deciding which community organization(s) will be the most effective partners.



It is also important to identify the purpose and what type of public education and public input is desired. Many officials find this continuum from the International Association for Public Participation (IAP2) a useful way to summarize different types of engagement:

The best way to determine the right fit is by having an exploratory discussion to assess how the group’s focus matches the audiences, topics and activities the local public agency is contemplating for engagement. If after meeting with a community organization, it turns out that there is not an immediate fit for a partnership, valuable information about that part of the community’s perspective will still have been gained. At times, it may be important for a period of relationship building, both organizational and personal, to take place before a new partnership is launched. The local agency may financially support some of the staff work or other costs involved in the CBO’s partnership activities. If a grant is sought to help pay for the outreach and engagement efforts, the CBO should be involved in the planning and budgeting for its activities.

## Types of Partnerships

Planning departments, health and human service departments, metropolitan planning organizations, public information officers and many other local agency offices are employing CBO partnerships. Frequently, local agency staff have limited time to be present in multiple communities

### Sample Roles in a Partnership

#### The Community-Based Organization:

Help get desired sector(s) of the community to attend and actively participate in community conversations, possibly serving as a co-hosting partner.

#### The Local Government Agency:

Design public conversations in such a way that the invited input is meaningful and will be used in decision-making.

#### Together:

Ensure that communications, information and accommodations support the intended audience and that outcomes are shared with the community.

often enough to build the kind of rapport that invites engagement, so they connect and partner with a range of CBOs in various ways. Common examples of CBO partner tasks include:

- Expand awareness of upcoming public engagement processes
- Co-host public input sessions in locations more familiar to community members
- Help agency staff understand the community's current level of understanding about an issue so materials can provide helpful background context
- Help adapt information about the issue into language and a format that make sense to nontechnical experts and people with varying levels of education
- Translate information and provide bilingual facilitation if appropriate
- Recruit attendees and provide any needed support such as transportation and child care
- Help with reporting back to the community about how their input was used in the final decision and ways that they can stay involved and informed

Depending on the extent of the work involved, many agencies provide some kind of compensation to the community organization for their efforts. Sometimes a local community foundation or other funder may help underwrite such costs.

## Creating the Right Conditions

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When forming a working partnership, as with developing any relationship, no single “formula” exists for developing effective plans, communications and trust. Instead, both local officials and community leaders shared that the following conditions were an important starting point:

- There is adequate advance dialogue between the agency and the CBO to determine the *mutual* interests of the partnership. The desired community engagement needs to be positioned so that it aligns with the community organization's as well the local agency's priorities.
- The local government agency's decision-makers are on board and committed to the intended outcome of the partnership. They are making an authentic request for community input that will be seriously considered in the decision-making process.
- The partnership is based on mutual respect for what each party brings. For example, the CBO can provide insight into which attitudinal barriers different sectors of the community may have about interacting with local government. If there is a history of mistrust, it helps to bring it out in the open.
- The local agency and CBO(s) have clearly defined roles and expectations for each other.
- The agency is prepared to support the information and communication needs of the broader cross section of the public who tend to know far less than more experienced advocates and local government enthusiasts.

*“Are you thinking about these community groups as constituents to be managed or placated — or as genuine partners collaborating with you on a shared goal of expanding participation?” — City official*

Local officials' experience suggests that the most effective partnerships were used for the whole decision-making cycle: the front-end public introduction of the issue, the community input and dialogue, and the reporting out of how public input was used in the final decision. Another helpful practice when entering into the relationship with the CBO is to set up periodic checkpoints to review milestones and correct

course on the outreach as needed. Include an explicit debrief of what worked well and what can be improved for the next time. In summary, local officials and CBO leaders should honestly share their respective goals and needs and then work out a mutually accepted plan for tasks and task completion, for meetings and other communications, for CBO partner compensation (where appropriate), for how decisions will be made in relationship to shared work, and whether and how they plan to assess the work done once completed.

*“I get a call asking: ‘Can you get 50 parents to the meeting?’  
First I want to talk about what people in the community care about.”  
— Leader of a large nonprofit organization*

## Navigating Around Common Pitfalls

Partnerships tend to work well if they are based on mutual goals, clear communication and trusting relationships. But many times the partnership between a local agency and community-based organizations hits trouble spots. Here are some of the most commonly reported pitfalls and helpful practices to enhance the likelihood of success.

Common Pitfalls	Helpful Practices
Treating the CBO as a “supplier” for one-way communication to the community, especially to enlist support for an existing recommendation.	Develop processes for two-way communications about mutually defined concerns — without assuming what the final policy recommendation will be.
Unrealistic expectations for the CBO partner — not enough time or resources allocated for robust engagement.	Start early, establish shared understanding about what is feasible, and consider using a network of multiple CBOs.
Selecting organizations that already have a fixed point of view that limits discovery of common ground.	Look beyond the most visible groups engaged in public dialogue, and find those interested in general quality of life in the community.
The recruitment worked but the meeting process and/or information did not match the audience.	Partner with the CBOs to develop materials and questions that make sense to the broader community.
There is a perception that decision-makers do not treat the new community voices brought in through the partnership with equal respect.	Involve decision-makers in the goals for the community engagement and what kinds of input they will be receiving and can listen for.
Partnership agreement is too vague. It’s unclear who has responsibility for which part of the process.	Create an explicit set of responsibilities for the CBO and the local public agency, and revisit as needed.
The community feels “used” spending time providing input with no information about outcome.	Explain decisions and next steps. Continue to invest in opportunities for two-way communication.

Busy local officials are often encouraged to focus their activities on concrete short-term deliverables with high likelihood for success. Because it takes time to nurture and sustain partnerships with community organizations, some tend to make this practice a lower priority. Others may have had past experiences where some aspects of the partnership worked well but other aspects did not, and they are reluctant to re-engage in something that was not an unqualified success. However, elected local officials and staff may choose to recognize the longer-term value of such partnerships and the more informed, inclusive decision-making — and public trust — that can result from these efforts. They can embrace a learning-oriented mindset and work with community partners to reflect on and improve public engagement processes.

## Resources to Learn More

**Why Engage the Public?** - [www.ca-ilg.org/document/why-engage-public](http://www.ca-ilg.org/document/why-engage-public)

**Beyond the Usuals** - [www.ca-ilg.org/BeyondUsuals](http://www.ca-ilg.org/BeyondUsuals)

**Expand Your Community Connections** - [www.ca-ilg.org/expanding-your-agencys-community-networks](http://www.ca-ilg.org/expanding-your-agencys-community-networks)

**Planning Public Engagement: Key Questions for Local Officials** - [www.cailg.org/PublicEngagementKeyQuestions](http://www.cailg.org/PublicEngagementKeyQuestions)

**Clergy and Congregations** - [www.ca-ilg.org/document/local-officials-guide-working-clergy-and-congregations](http://www.ca-ilg.org/document/local-officials-guide-working-clergy-and-congregations)

**Immigrant Engagement Guide** - [www.ca-ilg.org/local-officials-guide-immigrant-civic-engagement](http://www.ca-ilg.org/local-officials-guide-immigrant-civic-engagement)

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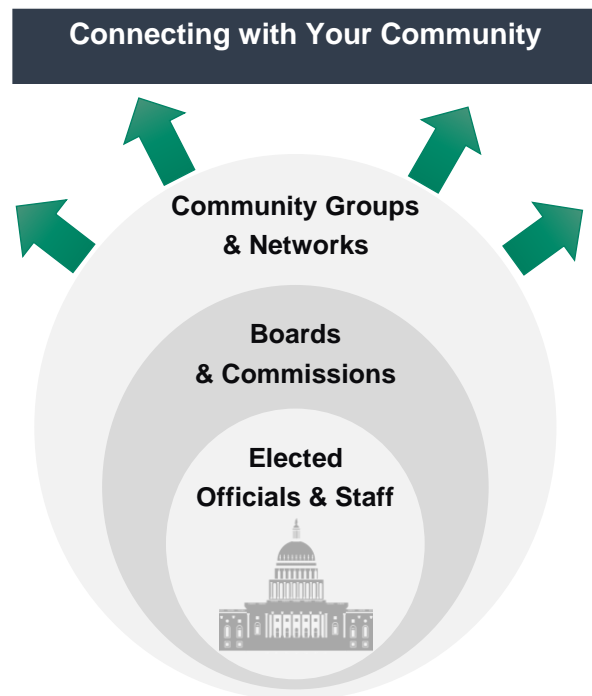
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# Expand Your Agency's Community Connections

Many public officials have a wide variety of relationships in their communities, often related to specific projects and initiatives. Examples include interactions with schools, groups serving specific populations, business associations, faith-based organizations and more. Yet these groups and networks may not come to mind when an agency is planning and announcing public meetings.

Use the following list to identify different partners, network contacts and “key connectors” in your agency’s jurisdiction. The next time the agency wants to reach out beyond the small slice of the public that most frequently attends public meetings, consider reaching out to the community through some of the types of organizations listed here. Add these contacts to the agency’s outreach list, so this wider range of contacts is ready whenever needed.



## Groups Close to Local Government Decision-Making and Operations

- Board and commission members in the jurisdiction
- Past and present members of community task forces and working groups
- Public agency-sponsored citizen academies and resident leadership programs
- Local multi-sector leadership groups and business roundtables
- Advocates and service providers whose work relates to the issue under review



## Networks Where Community Members Affiliate by Interest

- Parent-teacher associations/ organizations, school support organizations
- Youth: groups not tied to schools (Boys' and Girls' Clubs, youth sports leagues, scouts, YMCA, youth centers, etc.); parent groups/mother's clubs
- Business: chambers of commerce, ethnic chambers; small business associations and incubators
- Labor associations
- Community-oriented and ethnic media
- Internet-based groups and blogs
- Neighborhood organizations and homeowners' associations
- Civic membership groups: Rotary, Elks, Kiwanis, etc.
- Friends of the Library
- Good government groups, League of Women Voters
- Adult education: community colleges, adult schools, English as a second language programs
- Safety: Community Emergency Response Teams (CERT), Neighborhood Watch
- Community health and wellness groups
- Sports leagues
- Seniors' groups
- Early childhood groups: First 5 Commission, child care councils
- Social equity/social justice
- Environmental groups and outdoor recreation
- Arts groups: music, visual, dance, theater, ethnic culture

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# **AB 1661 Sexual Harassment Training**



# U.S. Equal Employment Opportunity Commission FACT SHEET

## Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

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FIND THIS ARTICLE ON THE WEB AT:

Facts About Sexual Harassment FSE/4  
<http://www.eeoc.gov/facts/fs-sex.html>

SEE ALSO:

Filing a Charge of Discrimination  
<http://www.eeoc.gov/employees/charge.cfm>

# TRANSGENDER RIGHTS IN THE WORKPLACE

# DFEH



## WHAT DOES “TRANSGENDER” MEAN?

Transgender is a term used to describe people whose gender identity differs from the sex they were assigned at birth. Gender expression is defined by the law to mean a “person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.” Gender identity and gender expression are protected characteristics under the Fair Employment and Housing Act. That means that employers may not discriminate against someone because they identify as transgender or gender non-conforming. This includes the perception that someone is transgender or gender non-conforming.

## WHAT IS A GENDER TRANSITION?

1. “Social transition” involves a process of socially aligning one’s gender with the internal sense of self (e.g., changes in name and pronoun, bathroom facility usage, participation in activities like sports teams).

2. “Physical transition” refers to medical treatments an individual may undergo to physically align their body with internal sense of self (e.g., hormone therapies or surgical procedures).

A person does not need to complete any particular step in a gender transition in order to be protected by the law. An employer may not condition its treatment or accommodation of a transitioning employee upon completion of a particular step in a gender transition.

## FAQ FOR EMPLOYERS

### • What is an employer allowed to ask?

Employers may ask about an employee’s employment history, and may ask for personal references, in addition to other non-discriminatory questions. An interviewer should not ask questions designed to detect a person’s gender identity, including asking about their marital status, spouse’s name, or relation of household members to one another. Employers should not ask questions about a person’s body or whether they plan to have surgery.

### • How do employers implement dress codes and grooming standards?

An employer who requires a dress code must enforce it in a non-discriminatory manner. This means that, unless an employer can demonstrate business necessity, each employee must be allowed to dress in accordance with their gender identity and gender expression. Transgender or gender non-conforming employees may not be held to any different standard of dress or grooming than any other employee.

### • What are the obligations of employers when it comes to bathrooms, showers, and locker rooms?

All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee’s gender identity, regardless of the employee’s assigned sex at birth. In addition, where possible, an employer should provide an easily accessible unisex single stall bathroom for use by any employee who desires increased privacy, regardless of the underlying reason. Use of a unisex single stall restroom should always be a matter of choice. No employee should be forced to use one either as a matter of policy or due to harassment in a gender-appropriate facility. Unless exempted by other provisions of state law, all single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency must be identified as all-gender toilet facilities.

## FILING A COMPLAINT

If you believe you are a victim of discrimination you may, within three years\* of the discrimination, file a complaint of discrimination by contacting DFEH.

To schedule an appointment, contact the Communication Center below.

If you have a disability that requires a reasonable accommodation, the DFEH can assist you by scribing your intake by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or you can contact us below.

## CONTACT US

Toll Free: (800) 884-1684  
TTY: (800) 700-2320  
contact.center@dfeh.ca.gov  
www.dfeh.ca.gov



## Preventing Discrimination is Good Business

**Preventing discrimination makes good business sense.** Complying with the law may increase employee productivity, retention, and morale and limit legal expenses. You may even be entitled to tax benefits for hiring individuals with disabilities or making your business accessible to individuals with disabilities! See <http://www.eeoc.gov/eeoc/publications/adahandbook.cfm#appendixa> for more information.

**The EEOC can help small business owners!** The EEOC is the federal government agency that enforces the federal laws against employment discrimination based on race, color, religion, sex, national origin, disability, age, and genetic information. These laws also prohibit retaliation (punishment) for opposing or reporting discrimination or participating in a discrimination investigation or lawsuit.

### Your Responsibilities

- **Ensure that employment decisions** are not based on race, color, religion, sex, national origin, disability, age, or genetic information.
- **Ensure that work policies and practices** are related to the job and do not disproportionately exclude people of a particular race, color, religion, sex, national origin, disability, or age.
- **Ensure that employees are not harassed** because of race, color, religion, sex, national origin, disability, age, or genetic information.
- **Provide equal pay to male and female employees who perform the same work**, unless you can justify a pay difference under the law.
- **Respond promptly and adequately to discrimination complaints.** Stop, address, and prevent harassment and discrimination. Ensure that employees are not punished for complaining.
- **Provide reasonable accommodations** (changes to the way things are normally done at work, such as permitting a schedule change so an employee can attend a doctor's appointment or can observe a religious holiday) **to applicants and employees who need them for medical or religious reasons**, if required by law.
- **Display a poster** that describes the federal employment discrimination laws. (Download one for free at <http://www1.eeoc.gov/employers/poster.cfm>).
- **Keep any employment records** (such as applications or personnel records) as required by law.

You may have additional responsibilities under federal, state, or local laws.

For additional information, contact your local EEOC Small Business Liaison (<http://www.eeoc.gov/employers/contacts.cfm>).

### How We Can Help

- **We can answer your questions** about the laws we enforce.
- **We can provide suggestions** to help you prevent harassment, retaliation, and other forms of unlawful discrimination.
- **We can train you and your employees** about workplace rights and responsibilities.
- **We can help you resolve EEOC charges (complaints) of discrimination** through mediation. EEOC mediation is a free, informal, confidential process to resolve disputes that may save you time and money.



Contact Us!

**EEOC staff across the country are available to help you. Don't wait; contact us today!**  
Free language assistance is available, if needed.

▪ **Need EEOC information or training?**  
Contact your local EEOC Small Business Liaison (<http://www.eeoc.gov/employers/contacts.cfm>) or call us at 1-800-669-4000 (TTY: 1-800-669-6820).

▪ **Need information about the laws we enforce?**  
Call us at (202) 663-4691.

▪ **Have questions about an EEOC charge of discrimination against your business?**  
Contact the EEOC investigator assigned to your charge.

We look forward to hearing from you!

# Equal Employment Opportunity is

# THE LAW

## **Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations**

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

### **DISABILITY**

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

### **AGE**

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

### **SEX (WAGES)**

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.



## **GENETICS**

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

## **RETALIATION**

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

## **WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED**

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected: The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at [www.eeoc.gov](http://www.eeoc.gov) or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at [www.eeoc.gov](http://www.eeoc.gov).

## **Employers Holding Federal Contracts or Subcontracts**

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### **INDIVIDUALS WITH DISABILITIES**

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

## **DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS**

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

## **RETALIATION**

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at [OFCCP-Public@dol.gov](mailto:OFCCP-Public@dol.gov), or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

## **Programs or Activities Receiving Federal Financial Assistance**

## **RACE, COLOR, NATIONAL ORIGIN, SEX**

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

## **INDIVIDUALS WITH DISABILITIES**

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.



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# **AB 1234 Ethics Training**



# Ethics Law Principles for Public Servants:

## KEY THINGS TO KNOW

*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, public officials should consult agency counsel.*

### Personal Financial Gain

Generally speaking, public officials:

- Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- Must disclose their financial interests to the public.
- Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests.
- Cannot have a financial interest in a contract made by their agency.
- Cannot be involved in agency decisions affecting a potential future employer once the official and employer each have expressed an interest in a professional relationship.
- Cannot lobby their agency for pay for a year following their departure from the agency.

### Perk Issues: Including Compensation, Use of Public Resources and Gifts

Generally speaking, public officials:

- Receive limited compensation for their service to the public.
- Cannot receive compensation for speaking, writing an article or attending a conference.
- May be reimbursed for only those active and necessary expenses allowed in agency expense reimbursement policies.
- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political supplies or purposes.
- Cannot send or be featured in mass mailings at public expense.
- Cannot make gifts of public resources or funds.
- Must disclose gifts they receive from each single source that has given gifts worth \$50 or more in a single calendar year.
- May not receive gifts worth a total of \$500 (2019-20 amount) from a single source in a single calendar year. Note: this amount changes every two years.



- May only accept free trips and travel expenses under limited circumstances.
- May not accept free or discounted transportation from transportation companies.
- May not use campaign funds for personal benefits not directly related to a political, legislative, or governmental purpose.

## Transparency

Generally speaking, public officials must:

- Disclose their economic interests when they take office, annually while they are in office and when they leave office. These economic interests can include: sources of income, property ownership, investments, certain family members' interests, business interests, loans, contracts and gifts received.
- Disclose information about who has agreed to donate significant resources (\$5,000 or more) to legislative, governmental or charitable purposes at an elected official's request.
- Disclose campaign contributions and abide by applicable limits.
- Conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Allow the public to participate in meetings, and listen to the public's views before making decisions.
- Allow public inspection of documents and records generated, owned, used, or retained by public agencies, except when non-disclosure is specifically authorized by law.
- Disclose gifts given to the public agency and how they are ultimately used.

## Fair Process and Merit-Based Decision-Making

Generally speaking, public officials:

- Cannot receive loans from other staff, officials or contractors, and must disclose and comply with certain requirements for loans from others.
- Cannot engage in vote-trading.
- Have a responsibility to ensure fair and competitive agency contracting processes.
- Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- Must conduct public hearings in accordance with fair process principles.
- Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner and dependent children).
- Cannot simultaneously hold certain other public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings—such as proceedings regarding land use permits— involving campaign contributors (does not apply to elected bodies).
- Cannot solicit campaign contributions of more than \$250 from permit applicants while an application is pending and for three months after a decision (if sitting on an appointed body).
- Cannot directly solicit agency employees for political support or donations for their political causes.
- Cannot retaliate against whistle-blowers who report improper government activities.



# A Public Official's Conflict of Interest Checklist

## KEY CONCEPTS

- A public agency's decision should be based solely on what best serves the public's interests.
- The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- Having a conflict of interest does not imply that a public official has done anything wrong; it just means that the official has financial or other disqualifying interests.
- Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials, and may lead to proceedings to remove the official from office. Don't take that risk.

## BASIC RULE

A public official may not participate in a decision — including trying to influence a decision — if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

## WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. A public official should talk with agency counsel early and often and when an action by the public agency may affect (positively or negatively) any of the following:

- Income.** Any source of income of \$500 or more (including promised income) during the prior 12 months to the official or official's spouse/domestic partner.
- Immediate Family.** The official's spouse/domestic partner and dependent children.
- Business Management or Employment.** An entity for which the official serves as a director, officer, partner, trustee, employee or manager.
- Real Property.** A direct or indirect interest in real property of \$2,000 or more that the official or official's immediate family has, including such interests as ownership, leaseholds (but not month-to-month tenancies) and options to purchase.
- Gift Giver.** A giver of one or more gifts worth a total of \$500 (2019-20 amount) or more to the official in the prior 12 months, including promised gifts.

- Lender/Guarantor.** A source or guarantor of a loan to the official.
- Personal Finances.** The official or official's immediate family's personal expenses, income, assets or liabilities.
- Contract.** A contract that the agency is considering entering into, in which the official or a member of the official's immediate family may have an interest (direct or indirect).
- Business Investment.** An interest in a business that the official or the official's immediate family have a direct or indirect investment worth \$2,000 or more.
- Related Business Entity.** An interest in a business that is the parent, subsidiary, or is otherwise related to a business in which the official:
  - Has a direct or indirect investment worth \$2,000 or more; or
  - Is a director, officer, partner, trustee, employee or manager.
- Business Entity Owning Property.** Real property owned by a business entity or trust of the official.
- Campaign Contributor.** A campaign contributor of the official (applies to appointed decision-making bodies only).
- Other Personal Interests and Biases.** The official has important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on the official's ability to make a fair decision.

## WHAT WILL HAPPEN NEXT?

Agency counsel will advise the official whether 1) the official may participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the California Attorney General's Office regarding their opinion about the political conflict.

## EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Officials should ask themselves whether members of the public will question whether the officials are acting solely in the public's interest. If even a perceived conflict exists, officials should consider excusing themselves voluntarily from that particular decision-making process.





## Beyond the Law: Ethics and Values

- Ethics is what one ought to do in a given situation. It's the kind of conduct that would make the world a better place if everyone engaged in it.
- The law provides only minimum standards for ethical conduct. Just because a course of action is legal doesn't mean it is right.
- What one ought to do is typically tied to a series of values:
  - » Trustworthiness
  - » Respect
  - » Responsibility
  - » Compassion
  - » Loyalty
  - » Fairness

ILG developed a Good Governance Checklist to help local officials identify ways they can go above and beyond legal requirements to promote public trust and confidence. To access the checklist visit:

[www.ca-ilg.org/goodgovernance](http://www.ca-ilg.org/goodgovernance).

## AB 1234 Trainings

California law requires local officials to periodically receive training on public service ethics laws and principles (AB 1234). ILG offers trainings and self-test options to help local officials comply with this law. ILG offers two, one-hour self-study exercises as an option for local officials to satisfy AB 1234 requirements. The self-study materials can also be used to make up for time missed at in-person sessions if the official either arrived late or left early. Find out more at:

[www.ca-ilg.org/ab1234selfstudy](http://www.ca-ilg.org/ab1234selfstudy).

ILG can also come to your community to train your local officials and staff. Contact ILG at [ethicsmailbox@ca-ilg.org](mailto:ethicsmailbox@ca-ilg.org) for more information on how to schedule an ethics workshop.

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The Institute for Local Government is the nonprofit training and education affiliate of the League of California Cities, the California State Association of Counties and the California Special Districts Association.

Its mission is to promote good government at the local level.

The Institute's current program areas include:

- Leadership and Governance
- Public Engagement
- Sustainable Communities
- Workforce and Civics Education

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Understanding the Basics of

# PUBLIC SERVICE *ETHICS*

# LAWS



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- » Sustainable Communities
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- » Ethics and Transparency
- » Local Government Basics
- » Collaboration and Partnerships

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Understanding the Basics of  
**Public Service Ethics Laws**

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# CHAPTER 1: Introduction



## What Is an Ethics Law?

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

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

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

For more information on these principles, see [www.ca-ilg.org/ethics](http://www.ca-ilg.org/ethics).

# Understanding California Ethics Laws

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

Keeping four core principles in mind helps:

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

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

## » Chapter 2: Personal Financial Gain Laws.

This chapter covers the prohibitions against receiving favors or money for official actions, stepping aside from the decision-making process when there is an economic interest in the outcome, and restrictions on employment in certain capacities after leaving public office.

## » Chapter 3: Gifts and Other Perks.

This chapter focuses on laws and regulations related to compensation, reimbursement of expenses, restrictions on the use of public resources, gifts to public officials, and the use of campaign funds.

## TYPES OF ETHICS LAWS

### Prohibitions

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

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

### Transparency Requirements

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

### Fairness

Other ethics laws require that public agency decision-making processes meet minimum standards of fairness.<sup>3</sup>

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

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

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

## The Key Laws to Know

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

- » **Brown Act:** Requires the governing bodies of local agencies to conduct open and public meetings, subject to limited exceptions, and to post meeting agendas beforehand. See Chapter 4 for more information.
- » **Government Code section 1090:** Prohibits public officials and employees from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members. See Chapter 2 for more information.
- » **Political Reform Act:** Governs campaign financing and prohibits local agency officials and employees from participating in governmental decisions affecting their financial interests. See Chapter 2 for more information.

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

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

## Laws as Minimum Standards

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

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

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

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

- » **Step One:** What, if anything, does the law say about a given course of action?
- » **Step Two:** Is the given course of action consistent with one's own values and analysis of what would constitute "ethical" conduct?
- » **Step Three:** What will the public's perception be of the conduct, given the information the public is likely to have available?

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

## The Limits of this Information

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

### FOR MORE INFORMATION

On ethics laws and principles, see:

» [www.ca-ilg.org/ppoe](http://www.ca-ilg.org/ppoe).

» [www.fppc.ca.gov/learn/public-officials-and-employees-rules-/ethics-training.html](http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/ethics-training.html).

## Endnotes

- 1 Rushworth M. Kidder, *How Good People Make Tough Choices* (Simon and Schuster, 1995).
- 2 Id.
- 3 Id.

CHAPTER 2:

# Personal Financial Gain Laws



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# Chapter 2: Personal Financial Gain Laws

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# Receiving Special Favors or Money for Official Actions

## BASIC RULES

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

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

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

Public officials are also forbidden from receiving a reward for appointing someone to public office or permitting someone to perform the duties of their offices.<sup>7</sup>

## PENALTIES

### California Law Penalties

#### *Bribery*

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

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

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

#### *Extortion*

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

#### *Appointing Someone to Office*

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

### DON'T COUNT ON A CODE OF SILENCE

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

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

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

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

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

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

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

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

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

## FEDERAL PENALTIES

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

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

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

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

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

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## MAKING A FEDERAL CASE OUT OF CORRUPTION

### Honest Services Fraud

Under federal wire and mail fraud laws, the public has the right to the “honest services” of public officials.<sup>24</sup>

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

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

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

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

**For more information,** see “Making a Federal Case Out of Corruption,” available at [www.ca-ilg.org/fedcase](http://www.ca-ilg.org/fedcase).

# Disqualification Based on Financial Interests Under the Political Reform Act

## BASIC RULES

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

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

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

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

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



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

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

Note that disqualified officials do not count toward the establishment of a quorum.<sup>30</sup>

### Updates to the Political Reform Act Conflict of Interest Regulations

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

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

## Imprecise Terminology: Abstentions, and Disqualifications

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

### Voluntary Abstention

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

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

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

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

### Mandatory Disqualification

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

# Political Reform Act – The Four Step Conflict of Interest Test

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

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

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

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

## ETHICS CODE VERSUS LOCAL CONFLICT OF INTEREST CODES

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

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

## FOR MORE INFORMATION

See the following resources:

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

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



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

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

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

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

# Identifying Economic Issues

## WHAT KINDS OF ECONOMIC INTERESTS ARE A CONCERN?

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

- » **Sources of Income.** Receiving \$500 or more in income from one source (including any income received from a business, nonprofit organization, government agency, or individual) within twelve months prior to the decision creates an economic interest. “Sources of income” includes a community property interest in a spouse or domestic partner’s<sup>33</sup> income, but not separate property income.<sup>34</sup> Additionally, if someone promises an official \$500 or more twelve months prior to the decision, the person or entity promising the money is a source of income, even if the income has yet to be received by the official, as long as the official has a legally-enforceable right to the promised income.<sup>35</sup>
- » **Investments.** An economic interest is created if the official, the official’s spouse or domestic partner<sup>41</sup> (even as separate property), or dependent children (or anyone acting on their behalf) has an investment worth \$2,000 or more in a business entity (even if the official does not receive income from the business).<sup>42</sup> Investments include stocks and corporate (though not government) bonds.
- » **Business Employment or Management.** If the official serves as a director, officer, partner, trustee, employee or otherwise serves in a management position in a company, an economic interest is created.<sup>43</sup> Note this does not apply to a member of the board of a nonprofit entity.
- » **Related Businesses.** The official has an economic interest in a business that is the parent, subsidiary or is otherwise related to a business where the official:
  - Has a direct or indirect investment worth \$2000 or more; or
  - Is a director, officer, partner, trustee, employee, or manager.<sup>44</sup>
- » **Personal Finances.** An official has an economic interest in their own expenses, income, assets, or liabilities and those of the official’s immediate family (spouse or domestic partner<sup>36</sup> and dependent children).<sup>37</sup>
- » **Real Property.** An interest in real property worth \$2,000 or more creates an economic interest.<sup>38</sup> The interest may be held by the official, the official’s spouse or domestic partner<sup>39</sup> (even as separate property) and children (or anyone acting on their behalf). Real property interests can also be created through leases, loans, mortgage, or security interests in property.<sup>40</sup>
- » **Business-Owned Property.** A direct or indirect ownership interest in a business entity or trust that owns real property is another form of economic interest.<sup>45</sup>
- » **Loans.** A loan from someone (or guarantee on a loan) can create an economic interest unless the loan is from a commercial institution, made in the regular course of business and is on the same terms as are available to members of the public.<sup>46</sup>
- » **Gifts.** Receiving gifts totaling \$460 (2015-16) or more in a twelve-month period prior to the decision from any one person or organization may create an economic interest depending on the type of public official involved and whether the gift-giver is in the agency’s jurisdiction.<sup>47</sup> Being promised a gift of \$460 (2015-16) or more within a twelve-month period prior to the decision can also create a disqualifying financial interest.<sup>48</sup> The limit is adjusted every two years to reflect changes in the cost of living.<sup>49</sup> For more discussion of the gift issue, please see Chapter 3, and [www.ca-ilg.org/ GiftCenter](http://www.ca-ilg.org/GiftCenter).

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

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

## DISCLOSURE OF CONFIDENTIAL INFORMATION

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

## REAL PROPERTY INTERESTS

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

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

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

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

## THE “PUBLIC GENERALLY” ANALYSIS

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

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

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

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

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

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

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

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

## WHAT HAPPENS IF AN OFFICIAL IS DISQUALIFIED?

### General Rule

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

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

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

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

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

### Exceptions to the Leave-the-Room Requirement

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

These include when the subject of the discussion is:

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

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

### Note on Closed Sessions

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

### Effect of Disqualification

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

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

Those who are disqualified from participating in the decision are not counted toward the quorum.<sup>68</sup>

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

#### FOR MORE INFORMATION

See the following resources:

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

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

## PENALTIES

### Political Reform Act Penalties

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

These penalties can include any or all of the following:

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

### Effect on Agency and Those Affected by Agency’s Decision

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

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

#### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Interests in Agency Contracts Barred

## BASIC RULES

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

This prohibition applies to elected and appointed officials as well as public agency employees and consultants.<sup>77</sup>

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

Key things to keep in mind include the following.

- » **Making a Contract.** The prohibition applies to preliminary discussions, negotiations, planning and solicitation of bids, as well as voting on the contract itself. This means the affected official can't be involved in those as well.
- » **Disqualification Doesn't Fix the Problem.** When the prohibition applies, the agency may not enter into the contract in question. Members of the governing board of a local agency (including a board of supervisors, board of directors, city council or school board members) are deemed to have made any contract executed by the board, or any person or agency under its jurisdiction, even if officials disqualify themselves from participating in the contract.

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

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

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



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## FPPC JURISDICTION OVER SECTION 1090 QUESTIONS

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

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

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

### WHAT IS THE THEORY OF NOT ALLOWING DISQUALIFICATION?

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

## EXCEPTIONS TO RULES

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

### Non-Interest Exception

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

### Remote Interest Exception

A local agency may enter into a contract when an official has a “remote” interest so long as the official does not attempt to influence another member of the board or council.<sup>81</sup> Government Code section 1091 lists more than a dozen types of remote interests, including:

- » Being an employee of the contracting party, if the contracting party has ten or more employees, the employee began his or her employment at least three years prior to initially assuming office, and certain other requirements are met;<sup>82</sup> or

- » Being a supplier of goods or services to the party contracting with the agency, when those goods or services have been supplied to the contracting party by the public official for at least five years prior to assuming office.<sup>83</sup>

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

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

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

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

## LIMITED RULE OF NECESSITY

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

### Types of Ethics Laws

#### SPECIAL RULE FOR SCHOOL DISTRICT BOARDS

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

#### FOR MORE INFORMATION

See the following resources:

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

For specific questions, please contact agency counsel.

## PENALTIES

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

#### Criminal Penalties

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

#### Effect on Contract

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

#### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

### Types of Ethics Laws

#### GETTING ADVICE AND STAYING OUT OF TROUBLE ON CONTRACT ISSUES

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

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

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

# Employment-Related Restrictions

## BASIC RULES

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

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

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

### FOR MORE INFORMATION

On employment restrictions, see “Revolving Door Restrictions for Local Officials,” available at [www.ca-ilg.org/revolvingdoor](http://www.ca-ilg.org/revolvingdoor).

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

## WHEN AN EMPLOYEE RUNS FOR A SEAT ON THE GOVERNING BOARD

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

This restriction applies to cities, counties, special districts, and other public agencies and corporations.<sup>97</sup>

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

These restrictions prevent the dual role conflicts associated with being both in the role of employee and employer.<sup>101</sup>

## PENALTIES

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

These penalties can include any or all of the following:

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

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Endnotes and Additional Information

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

- 1 Cal. Penal Code §§ 7 (definition number 6), 68(a).
- 2 See Cal. Penal Code §§ 68(a), 86.
- 3 *Id.*; See also *People v. Anderson*, 75 Cal. App. 365, 242 P.2d 906 (1925).
- 4 See 18 U.S.C. § 201.
- 5 See Cal. Penal Code § 518.
- 6 *In re Shepard*, 161 Cal. 171 (1911) (in the context of removal- from-office proceedings for misconduct).
- 7 Cal. Penal Code § 74.
- 8 See generally Cal. Penal Code § 68(a). See also Cal. Elect. Code § 20 (making those convicted of making or receiving a bribe ineligible for public office).
- 9 See Cal. Penal Code § 85.
- 10 Cal. Penal Code § 521.
- 11 Cal. Penal Code § 19.
- 12 Cal. Gov't Code §§ 3060-3074.
- 13 Cal. Penal Code § 74.
- 14 See Cal. Gov't Code § 995.8. See also *Los Angeles Police Protective League v. City of Los Angeles*, 27 Cal. App. 4th 168, 32 Cal. Rptr. 2d 574 (1994) (finding city was not required to provide the defense of police officers accused of vandalism and conspiracy to commit vandalism).
- 15 See Cal. Gov't Code § 995.2(a)(2) (public agency may refuse defense of civil action if, among other reasons, the agency finds the official acted because of "actual fraud, corruption or actual malice.") See also Cal. Gov't Code § 822.2 (immunity from liability for misrepresentation does not apply in instances of corruption).
- 16 See Cal. Gov't Code § 818.
- 17 California Rules of Professional Conduct for Lawyers, Rule 3-600(A); *Ward v. Superior Court*, 70 Cal. App. 3d 23, 138 Cal. Rptr. 532 (1977) (county counsel's client is county, not assessor in his individual capacity).
- 18 18 U.S.C. § 666.
- 19 See 18 U.S.C. §§ 666 (specifying maximum 10-year prison term and fine "under this title"), 3571 (general fine for violating federal criminal laws).
- 20 26 U.S.C. § 7201.
- 21 *Id.*
- 22 26 U.S.C. § 7206(1).
- 23 *U.S. v. Gaytan*, 342 F.3d 1010 (9th Cir. 2003).
- 24 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).
- 25 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).
- 26 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision- making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350, 362-63 (1987) (Justice Stevens, dissenting).
- 27 See *Skilling v. U.S.*, 130 S.Ct. 2896, 2931(2010) (holding that in order to avoid unconstitutional vagueness, 18 USC § 1346 only criminalizes bribes and kick-back schemes).
- 28 18 U.S.C. §§ 1341 ("... shall be fined under this title or imprisoned not more than 20 years, or both."), 1343 ("shall be fined under this title or imprisoned not more than 20 years, or both").
- 29 See Cal. Gov't Code §§ 87100-87105.
- 30 2 Cal. Code Regs. § 18707(a)(1)(C).
- 31 2 Cal. Code Regs. § 18700(d).
- 32 Cal. Gov't Code § 87300.
- 33 2 Cal. Code Regs. § 18229.
- 34 Cal. Gov't Code §§ 82030, 87103(c); 2 Cal. Code Regs. §§ 18700, 18700.1.
- 35 Cal. Gov't Code § 87103(c). See also *Larsen Advice Letter*, No. A-82-192 (1982).
- 36 2 Cal. Code Regs. § 18229 (referring to Cal. Gov't Code § 82029 defining "immediate family").
- 37 2 Cal. Code Regs. § 18700.
- 38 Cal. Gov't Code § 87103(b); 2 Cal. Code Regs. § 18700(c)(6)(B).
- 39 2 Cal. Code Regs. § 18229.
- 40 See Cal. Gov't Code §§ 82033, 87103(b).
- 41 2 Cal. Code Regs. § 18229.
- 42 Cal. Gov't Code §§ 82034, 87103(a); 2 Cal. Code Regs. § 18700(c)(6)(A).
- 43 Cal. Gov't Code § 87103(d); 2 Cal. Code Regs. § 18700(c)(6)(D).
- 44 2 Cal. Code Regs. §§ 18700(c)(6)(D), 18700.2(b).
- 45 Cal. Gov't Code § 82033 (pro rata interest, if own 10 percent interest or greater).
- 46 Cal. Gov't Code § 82030(b)(8), (10).
- 47 Cal. Gov't Code §§ 82028, 87103(e); 2 Cal. Code Regs. §§ 18940(c), 18940.2(a)..
- 48 Cal. Gov't Code § 87103(e); 2 Cal. Code Regs. §§ 18940(c), 18940.2(a).
- 49 Cal. Gov't Code § 89503(f).

- 50 See generally Cal. Gov't Code § 87103. See also 2 Cal. Code Regs. § 418700(c)(6)(C), (E).
- 51 See Cal. Gov't Code § 1098(a).
- 52 *Id.*
- 53 See Cal. Gov't Code § 1098(b).
- 54 See generally, 2 Cal. Code Regs. § 18702.2.
- 55 2 Cal. Code Regs. § 18702.2(a)(5).
- 56 2 Cal. Code Regs. § 18703.
- 57 2 Cal. Code Regs. § 18703(b),(c).
- 58 See 2 Cal. Code Regs. § 18707.
- 59 2 Cal. Code Regs. §18707(a)(1)(A).
- 60 2 Cal. Code Regs. §18707(a)(3)(C).
- 61 2 Cal. Code Regs. § 18704(d)(2)(A).
- 62 2 Cal. Code Regs. § 18704(d)(2)(B).
- 63 2 Cal. Code Regs. § 18229.
- 64 2 Cal. Code Regs. § 18704(d)(2)(C).
- 65 See 2 Cal. Code Regs. § 18707(a)(2). See also *Hamilton v. Town of Los Gatos*, 213 Cal. App. 3d 1050, 261 Cal. Rptr. 888 (1989).
- 66 See Cal. Gov't Code § 36810 (for general law cities). See also Cal. Civ. Code § 12; Cal. Civ. Proc. Code § 15.
- 67 See Cal. Gov't Code § 25005; Cal. Educ. Code §§ 35164 (K-12 districts), 72000(d)(3) (community college districts).
- 68 2 Cal. Code Regs. § 18707(a)(1)(C); *Farwell v. Town of Los Gatos*, 222 Cal. App. 3d 711, 271 Cal. Rptr. 825 (1990) (subsequently ordered not published). See also 62 Cal. Op. Att'y Gen. 698, 700 (1979).
- 69 *Farwell v. Town of Los Gatos*, 222 Cal. App. 3d 711, 271 Cal. Rptr. 825 (1990) (subsequently ordered not published). See also 62 Cal. Op. Att'y Gen. 698, 700 (1979).
- 70 See generally Cal. Gov't Code §§ 91000-14.
- 71 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 72 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 73 Cal. Gov't Code § 91000(b). See also Cal. Gov't Code § 83116(c) (providing that the FPPC may impose administrative penalties of up to \$5,000 per violation of the Political Reform Act).
- 74 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 75 See Cal. Gov't Code § 91003(b).
- 76 California Attorney General, Conflicts of Interest, 55 (2010), available at <http://ag.ca.gov/publications/coi.pdf>.
- 77 *Id.*
- 78 See *California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc.* (2007) 148 Cal.App.4th 682.
- 79 Cal. Gov't Code § 1097.1.
- 80 See Cal. Gov't Code § 1091.5.
- 81 See Cal. Gov't Code § 1091(a), (c).
- 82 See Cal. Gov't Code § 1091(b)(2).
- 83 See Cal. Gov't Code § 1091(b)(8).
- 84 2015 Cal. Stat. ch. 495, § 1 (amending Cal. Gov't Code § 1091).
- 85 See Cal. Gov't. Code § 1091.
- 86 California Attorney General, Conflicts of Interest, 67(2010), available at <http://ag.ca.gov/publications/coi.pdf>.
- 87 See 70 Cal. Op. Att'y Gen. 45 (1987).
- 88 See Cal. Educ. Code § 35107(e).
- 89 *People v. Chacon*, 40 Cal. 4th 558, 53 Cal. Rptr. 3d 876 (2007).
- 90 See Cal. Gov't Code § 12519.
- 91 See Cal. Gov't Code § 1097.
- 92 *Thomson v. Call*, 38 Cal. 3d 633, 214 Cal. Rptr. 139 (1985).
- 93 See Cal. Gov't Code § 1092.
- 94 Cal. Gov't Code § 87406.3; 2 Cal. Code Regs. § 18746.3.
- 95 Cal. Gov't Code § 87407.
- 96 Cal. Gov't Code § 53227(a).
- 97 Cal. Gov't Code § 53227.2(a).
- 98 Cal. Educ. Code § 35107(b)(1).
- 99 Cal. Educ. Code § 72103(b)(1).
- 100 Cal. Gov't Code § 53227(a); Cal. Educ. Code §§ 35107(b)(1), 72103(b)(1).
- 101 *Bd. of Retirement of Kern County Employees' Retirement Ass'n v. Bellino*, 126 Cal. App. 4th 781, 24 Cal. Rptr. 3d 384 (2005).
- 102 See generally Cal. Gov't Code §§ 91000-14.
- 103 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 104 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 105 Cal. Gov't Code § 91000(b). See also Cal. Gov't Code § 83116(c) (providing that the FPPC may impose administrative penalties of up to \$5,000 per violation of the Political Reform Act).
- 106 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).

CHAPTER 3:

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





# Chapter 3: Perk Issues, Including Compensation, Use of Public Resources, and Gift Laws

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# Compensation Issues

## BASIC RULES

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

## COUNTIES

County boards of supervisors set their salaries; supervisors' salaries are subject to referendum.<sup>5</sup>

## SPECIAL DISTRICTS

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

### WITH MONEY COMES EDUCATION

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

For more information on these requirements, see [www.ca-ilg.org/AB1234compliance](http://www.ca-ilg.org/AB1234compliance).

## Special Districts

Type of District	Per Day/Meeting Maximum	Maximums
Airport districts	\$100 for attending each board meeting	Not to exceed four meetings in a calendar month <sup>7</sup>
Cemetery districts	\$100 for attending each board meeting	Not to exceed four meetings in a calendar month <sup>8</sup>
Community Services districts	\$100 per day	Not to exceed six days of compensated service per month <sup>9</sup>
Fire Protection districts	\$100 for attending each board meeting	Not to exceed four meetings in a calendar month <sup>10</sup>
Harbor districts	No per day salary	\$600 per month <sup>11</sup>
Hospital districts	\$100 for attending each board meeting	Not to exceed five meetings in a calendar month <sup>12</sup>
Park and Recreation districts	\$100 for attending each board meeting	\$500 per month <sup>13</sup>
Sanitation districts	\$100 per day for board meetings or service provided at the request of the board	Not to exceed six days per month <sup>14</sup>
Utility districts	\$100 per day	\$600 per month <sup>15</sup>
Vector Control districts	Trustees serve without compensation	Trustees serve without compensation <sup>16</sup>

## Irrigation Districts

Irrigation districts of less than 500,000 acres	\$100 per day	Not to exceed six days of compensated service <sup>17</sup>
Irrigation districts of less than 500,000 acres that produce or deliver electricity	\$100 per day OR \$600 per month	An annual cap of \$15,000 <sup>18</sup>
Irrigation districts of 500,000 acres or more	No per day salary	Salary to be fixed by ordinance and subject to referendum but cannot exceed the salary of a member of the Imperial County Board of Supervisors <sup>19</sup>

## Water Districts

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

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

- » A meeting of any “legislative body” as defined by California’s open meeting laws;
- » A meeting of an advisory body; and
- » Conference attendance or educational activities, including ethics training.<sup>25</sup>

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

## CITIES

### Charter Cities

For charter cities, elected official compensation is a matter of local concern which may be addressed in the city’s charter.<sup>28</sup>

### General Law Cities

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

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

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

Elected mayors may receive additional compensation.<sup>33</sup>

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

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

### DISCLOSURE REQUIREMENTS WHEN MAKING COMPENSATED APPOINTMENTS

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

The disclosure is on a form provided by the Fair Political Practices Commission and must be posted on the agency's website.<sup>37</sup>

## LOCAL AGENCY CHIEF EXECUTIVES AND STAFF

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

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

The California Constitution provides that “[a] local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been into and performed in whole or in part, or pay

a claim under an agreement made without authority of law.”<sup>43</sup> Thus, even if a public employee's compensation is later deemed to be inadequate, it is not legal for a local agency to compensate the employee over and above the amount fixed by contract or law.

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

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

If an employee is subsequently convicted of abuse of position (as defined<sup>49</sup>), the employee must reimburse:

- 1) any severance payments paid,<sup>50</sup> and
- 2) any paid leave provided pending charges.<sup>51</sup>

### FOR MORE INFORMATION

On executive compensation issues, see [www.ca-ilg.org/post/executive-compensation-issues](http://www.ca-ilg.org/post/executive-compensation-issues).

For specific questions, please contact agency counsel.

## SPECIAL ISSUE: SPEAKING AND OTHER FEES

### Basic No-Honoraria Rule

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

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

### Exceptions to No-Honoraria Rules

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

- » **Payments Voluntarily Made to Charitable and Similar Organizations.** An organization may recognize a public official's speech, article or meeting attendance by making a direct contribution to a bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organization.<sup>55</sup> A public official may not make such donations a condition for the speech, article or meeting attendance.<sup>56</sup> In addition, the official may not claim the donation as a deduction for income tax purposes.<sup>57</sup> Nor may the donation have a reasonably foreseeable financial effect on the public official or on any member of the official's immediate family.<sup>58</sup> The official may not be identified to the nonprofit organization in connection with the donation.<sup>59</sup>
- » **Payments Deposited in Local Agency General Fund.** An honorarium given to an official that is unused may be deposited into the local agency's general fund within 30 days of receipt, so long as it is not claimed by an official as a deduction from income for income tax purposes.<sup>60</sup>
- » **Income from Bona Fide Occupation.** An official may be paid income for personal services if the services are provided in connection with a bona fide business, trade, or profession (such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting) and the services are routinely provided in connection with the trade, business or profession.<sup>61</sup> This exception does not apply, however, when the main activity of the business or profession is making speeches.<sup>62</sup>

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

## PENALTIES

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

These penalties can include any or all of the following:

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

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Reimbursement of Expenses

## BASIC RULES

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

### When May Expenses Be Reimbursed?

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

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

### Process Requirements

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

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

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

All expense reimbursement requests and supporting documentation are public records.<sup>77</sup>

### Amounts

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

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

Officials who spend more than allowed under their agencies' reimbursement policies have the option of simply paying the extra costs themselves.<sup>80</sup>

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

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

## FOR MORE INFORMATION

See the following resources:

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

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



## PENALTIES

### California Law Penalties

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

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

At some point, personal use of public resources becomes embezzlement—a form of theft.<sup>87</sup>

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

### Federal Law Penalties

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

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

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

If the program has any degree of federal funding, the federal criminal laws against corruption and embezzlement will also apply.<sup>93</sup>

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Restrictions on Use of Public Resources

## BASIC RULES

### No Personal or Political Use of Public Resources

Under California law, using public resources for either personal or political purposes is illegal.<sup>94</sup> “Public resources” include such things as:

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

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

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

In addition, subsequent reimbursement or payment for resources misused is not a defense.<sup>98</sup>

### No Use of Public Resources on Ballot Measure Related Activities

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

#### FOR MORE INFORMATION

On ballot measure activities, see [www.ca-ilg.org/ballot-measure-activities](http://www.ca-ilg.org/ballot-measure-activities).

### Prohibition Against Mass Mailings at Public Expense

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

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

#### FOR MORE INFORMATION

On mass mailings, see the following resources:

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

## PENALTIES

Public officials face both criminal and civil penalties for using public resources for personal or political benefit.<sup>104</sup>

Criminal penalties include:

- » Two- to four-years in state prison;<sup>105</sup> and
- » Permanent disqualification from public office.<sup>106</sup>

Civil penalties include fines of up to:

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

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

Additionally, the FPPC may impose an administrative fine of up to \$5,000 per violation.<sup>109</sup>

Misuse of public resources is also punishable under laws prohibiting misappropriation of public resources and embezzlement.<sup>110</sup>

Both intentional and negligent violations of the law are punishable.<sup>111</sup>

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

### ETHICS CODES VERSUS LOCAL CONFLICT OF INTEREST CODES

The Political Reform Act requires local agencies to adopt local conflict of interest codes.<sup>112</sup>

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

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

# Gifts to Public Officials

## BASIC RULES

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

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

Generally speaking, California public officials must:

- » Report gifts worth \$50 or more on their Statement of Economic Interests.<sup>115</sup> Gifts from a single source must be added up over the course of a calendar year. An official's reporting obligation is triggered when the combined value of a series of gestures from a single gift-giver reaches \$50 or more.
- » Not receive gifts that exceed \$460 (2015-16) from a single source per calendar year.<sup>116</sup> This limit can be exceeded by accepting a single large gesture or a series of gestures over the course of a calendar year from the same gift-giver that total more than \$460 (2015-16).<sup>117</sup>
- » Having accepted gifts may keep a public official from participating in the decision-making process. If a public official accepts gestures with a value of more than \$460 (2015-16) from a single gift-giver in the twelve months preceding the official's involvement in a decision affecting that gift giver, the official may have to disqualify himself from participating in that decision-making process.<sup>118</sup>

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

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

## COMPLIANCE STRATEGY:

### Questions for Public Officials to Ask About Nice Gestures

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

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

Explanations of each of questions are available at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter).

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

- » Has a monetary value;
- » Provides the official with a personal benefit, and
- » For which the official doesn't pay full value.<sup>121</sup>

## EXCEPTIONS/GIFTS SUBJECT TO SPECIAL RULES

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

### Special Rules Relating to Who Receives the Gift

(Question 1 at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter))

- Gifts to family members<sup>122</sup>

### Gifts Subject to Special Valuation Rules

(Question 2 at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter))

- Air transportation<sup>123</sup>
- Nonprofit or political fundraiser tickets<sup>124</sup>
- Other tickets and passes<sup>125</sup>
- Invitation only events<sup>126</sup>

### Special Rules for Certain Sources of Gifts

(Question 3 at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter))

- Someone who is an intermediary for another<sup>127</sup>
- Group gifts<sup>128</sup>
- Family gifts<sup>129</sup>
- Gestures received in the context of certain relationships:
  - Bona fide dating relationships<sup>130</sup>
  - Existing personal or business relationship<sup>131</sup>
  - Long term relationships<sup>132</sup>
- Acts of neighborliness<sup>133</sup>
- Agency gifts<sup>134</sup>
  - Gifts from public agencies to agency officials<sup>135</sup>
  - Agency provided tickets or passes<sup>136</sup>
  - Agency raffles or gift exchanges<sup>137</sup>

### Gestures that Are Part of An Exchange

(Question 4 at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter))

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

### Additional Special Rules Based on Type of Gift

(Question 5 at [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter))

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

### Gifts can be:

- » Tangible or intangible
- » Real property or personal property
- » Goods or services<sup>165</sup>

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

## TRAVEL PASSES FROM TRANSPORTATION COMPANIES

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

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

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

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

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

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

## FOR MORE INFORMATION

On gift laws, see the following resources:

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

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

## WHAT TO DO ABOUT UNWANTED GIFTS?

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

Under such circumstances, an official has the following options:

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

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

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

## PENALTIES

### California Law Penalties

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

These penalties can include any or all of the following:

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

### Federal Law Penalties

#### *Honest Services Fraud*

Under federal wire and mail fraud laws, the public has the right to the “honest services” of public officials.<sup>182</sup>

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

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

#### *Extortion*

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

## INCOME TAX VIOLATIONS

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

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

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

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).



# Use of Campaign Funds

## BASIC RULE

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

### FOR MORE INFORMATION

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

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

## PENALTIES

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

These penalties can include any or all of the following:

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

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Endnotes and Additional Information

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

- 1 For example, the salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary. Cal. Gov't Code § 36516(b). A council member appointed or elected to fill a vacancy is compensated in the same amount as his or her predecessor. A directly-elected mayor may receive additional compensation with the consent of the electorate or by ordinance of the city council. Cal. Gov't Code § 36516.1.
- 2 *County of San Diego v. Milotz*, 46 Cal. 2d 761, 767, 300 P. 2d 1, 4 (1956) (action to recover fees from court reporter for faulty work).
- 3 *Id.*
- 4 Cal. Gov't Code §§ 53234-35. See [www.ca-ilg.org/ab1234compliance](http://www.ca-ilg.org/ab1234compliance).
- 5 Cal. Const. art. XI, § 1(b).
- 6 See, e.g., Cal. Pub. Res. Code § 5784.15(a), (b) (park and recreation district board members may be compensated a maximum of \$100 per day for board meetings and \$500 per month); Cal. Health & Safety Code § 6489 (sanitation district board members may receive \$100 per day for board meetings or service rendered at request of board, not to exceed six days per month); Cal. Water Code §§ 20201, 20202 (water district officials—as defined—may, by ordinance, provide for compensation of \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request; not to exceed 10 days service/ meetings per month); Cal. Water Code §§ 34740-41 (California water districts must adopt bylaws fixing compensation paid to officers, but may not exceed \$100 per day for attendance at board meetings and for each day's service at the request of the board); Cal. Water Code § 30507 (county water district directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed six days service/meetings per month); Cal. Water Code § 30507.1 (Contra Costa County Water District directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed 10 days service/ meetings per month); Cal. Water Code § 21166 (irrigation district directors in districts of less than 500,000 acres receive 1) compensation of up to \$100 per day, not to exceed six days, 2) irrigation district directors in districts that produce or deliver electricity receive one of the following: up to \$100 per day or \$600 per month, with an annual cap of \$15,000); Cal. Water Code § 22840 (irrigation districts of 500,000 acres or more receive a salary to be fixed by ordinance and subject to referendum but cannot exceed the salary of a member of the Imperial County Board of Supervisors);

- Cal. Water Code § 71255 (municipal water district directors receive compensation not to exceed \$100 per day for each day's attendance at board meetings or each day's service rendered at the board's request but not to exceed six days service/ meetings per month).
- 7 Cal. Pub. Util. Code § 22407.
- 8 Cal. Health & Safety Code § 9031(a).
- 9 Cal. Gov't Code § 61047(a).
- 10 Cal. Health & Safety Code § 13857(a).
- 11 Cal. Harb. & Nav. Code § 6060.
- 12 Cal. Health & Safety Code § 32103.
- 13 Cal. Pub. Res. Code §§ 5784.15(a), (b).
- 14 Cal. Health & Safety Code § 6489(a).
- 15 Cal. Pub. Util. Code § 11908.1(a).
- 16 Cal. Health & Safety Code § 2030(a).
- 17 Cal. Water Code § 21166.
- 18 *Id.*
- 19 Cal. Water Code § 22840.
- 20 Cal. Water Code §§ 20201, 20202.
- 21 Cal. Water Code §§ 34740-41.
- 22 Cal. Water Code § 30507.
- 23 Cal. Water Code § 30507.1.
- 24 Cal. Water Code § 71255.
- 25 Cal. Gov't Code § 53232.1(a).
- 26 Cal. Gov't Code § 53232.1(b).
- 27 Cal. Gov't Code § 53232.1(c).
- 28 Cal. Const. art. XI, § 5(b)(4).
- 29 See Cal. Gov't Code § 36516.
- 30 See Cal. Gov't Code § 36516(a).
- 31 Cal. Gov't Code § 36516(a)(4).
- 32 See Cal. Gov't Code § 36516.5 (providing a change of compensation does not apply during the same term but allowing adjustment when one or more members serving staggered terms begin new terms).
- 33 See Cal. Gov't Code § 36516.1.
- 34 See Cal. Gov't Code § 36516(c).
- 35 *Id.*
- 36 2 Cal. Code Regs. § 18702.5(b)(3).

- 37 *Id.* The form is called "Form 806." More information regarding Form 806 is available from the Fair Political Practices Commission website at: <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/agency-report-of-public-official-appointments-form-806.html>.
- 38 Cal. Gov't Code § 53262 (a) ("All contracts of employment with a superintendent, deputy superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, city manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency shall be ratified in an open session of the governing body which shall be reflected in the governing body's minutes.").
- 39 Cal. Gov't Code § 54956(b) ("Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.").
- 40 2016 Cal. Stat. ch. 175, § 1 (amending Cal. Gov't Code § 54953).
- 41 Cal. Gov't Code § 53262(b) ("Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.").
- 42 Cal. Gov't Code §§ 53891, 53892, 53908.
- 43 Cal. Const. art. XI, § 10(a).
- 44 Cal. Gov't Code § 3511.1(c) (defining local agency as "a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency").
- 45 Cal. Gov't Code § 3511.1(d) (defining "local agency executive" as "any person employed by a local agency who is not subject to the Meyers-Milius-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements: (1) the person is the chief executive officer of the local agency, or (2) the person is the head of a department of a local agency).
- 46 Cal. Gov't Code § 3511.2 ("On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following: (a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment....").
- 47 Cal. Gov't Code § 3511.2 ("On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:... (b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.") See also Cal. Gov't Code § 53260(a) ("All contracts of employment between an employee and a local agency employer shall include a provision that provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract...").
- 48 Cal. Gov't Code § 53262(b) ("Copies of any contracts of employment, as well as copies of the settlement agreements, shall be available to the public upon request.").
- 49 Cal. Gov't Code § 53243.4 ("For purposes of this article, 'abuse of office or position' means either of the following:
- (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.
- (b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.").
- 50 Cal. Gov't Code §§ 53243.2 ("On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position."), 53243.3 ("On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.").
- 51 Cal. Gov't Code §§ 53243 ("On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position."), 53243.3 ("On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.").
- 52 See Cal. Gov't Code § 89501 (definition of honorarium).
- 53 See Cal. Gov't Code § 89502 (general prohibition).
- 54 See Cal. Gov't Code § 89501(b)(2).
- 55 See 2 Cal. Code Regs. § 18932.5(a)(1) (direct charitable contributions excluded from honorarium definition).
- 56 See 2 Cal. Code Regs. § 18932.5(a)(2).
- 57 See 2 Cal. Code Regs. § 18932.5(a)(3).
- 58 See 2 Cal. Code Regs. § 18932.5(a)(4).
- 59 See 2 Cal. Code Regs. § 18932.5(a)(5).
- 60 See Cal. Gov't Code § 89501(b)(2).
- 61 See Cal. Gov't Code § 89501(b)(1).
- 62 *Id.*
- 63 2 Cal. Code Regs. § 18932.4(e).

- 64 See generally Cal. Gov't Code §§ 91000-14.
- 65 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 66 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 67 Cal. Gov't Code § 91000(b).
- 68 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 69 Cal. Gov't Code § 53232.2(a).
- 70 Cal. Gov't Code § 53232.2(b).
- 71 65 Cal. Op. Att'y Gen. 516, 522 (1982) (citing *Collins v. Riley*, 24 Cal. 2d 912, 918, 152 P.2d 169 (1944) and determining that the expenses of a handicapped council member met this standard); 61 Cal. Op. Att'y Gen. 303 (1978) (citing *Gibson v. Sacramento County*, 37 Cal. App. 523, 174 P. 935 (1918)); *Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).
- 72 See *People v. Bradley*, 208 Cal. App. 4th 64 (2012), reh'g denied (2012), rev. denied (2012) (upholding the conviction of city manager and council member of misappropriating public funds Penal Code section 424-when they made charges on city credit card for expenses that they had also received cash advances for).
- 73 Cal. Gov't Code § 53232.3(a).
- 74 Cal. Gov't Code § 53232.3(c).
- 75 *Id.*
- 76 Cal. Gov't Code § 53232.3(b).
- 77 Cal. Gov't Code § 53232.3(e).
- 78 Cal. Gov't Code § 53232.2(c).
- 79 Cal. Gov't Code § 53232.2(f).
- 80 Cal. Gov't Code § 53232.2(g).
- 81 See Cal. Gov't Code § 53232.2(b).
- 82 See Cal. Const. art. XI, § 5. *County of Sonoma v. Comm'n on State Mandates*, 84 Cal. App. 4th 1264, 101 Cal. Rptr. 784 (2000).
- 83 Cal. Gov't Code § 53232.4(a).
- 84 Cal. Gov't Code § 53232.4(b).
- 85 Cal. Gov't Code § 53232.4(c). See also Cal. Gov't Code § 8314.
- 86 Cal. Gov't Code § 53232.4(d). See Cal. Penal Code § 424. See also Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).
- 87 Cal. Penal Code § 504.
- 88 Cal. Penal Code § 514. See also Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).
- 89 See 26 U.S.C. § 7201.
- 90 See 26 U.S.C. § 7203.
- 91 See generally 18 U.S.C. §§ 1341-46.
- 92 See generally 18 U.S.C. § 3571(b), (d).
- 93 See, e.g., 18 U.S.C. §§ 641 (crime of embezzlement against the United States), 648 (misuse of public funds).
- 94 See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- 95 See *People v. Bradley*, 208 Cal. App. 4th 64 (2012) (upholding the conviction of city manager and council member of misappropriating public funds— Penal Code section 424— when they made personal charges on city credit card).
- 96 Cal. Gov't Code § 8314(b)(4).
- 97 Cal. Gov't Code § 8314(b)(1).
- 98 See *People v. Bradley*, 208 Cal. App. 4th at 81-82 (holding restitution was not a defense because misappropriation occurs as soon as credit card was used for personal purpose or unused cash advances were not promptly returned; this is particularly the case when restitution is prompted by a criminal investigation).
- 99 *Vargas v. City of Salinas*, 46 Cal. 4th 1, 35-37, 92 Cal. Rptr. 3d 286, (2009). See also *Choice-in-Education League v. Los Angeles Unified School Dist.*, 17 Cal. App. 4th 415, 429-431, 21 Cal. Rptr. 3d 303 (1993) (school district did not illegally expend public funds by holding and broadcasting school board meeting at which the board took position opposing a statewide ballot initiative); *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee*, 203 Cal. App. 3d 529, 560, 250 Cal. Rptr. 3d 161 (1988). See also Cal. Elect. Code § 9282.
- 100 Cal. Gov't Code § 54964(b)(3).
- 101 *Vargas*, 46 Cal. 4th at 40, citing *Stanson v. Mott*, 17 Cal. 3d 206, 130 Cal. Rptr. 697 (1976).
- 102 See Cal. Gov't Code § 89001.
- 103 See 2 Cal. Code Regs. § 18901.
- 104 See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- 105 Cal. Penal Code § 424
- 106 See Cal. Penal Code § 424. See also Cal. Elect. Code § 20 (making those convicted of embezzlement or theft of public money ineligible for public office).
- 107 Cal. Gov't Code § 8314(c)(1).
- 108 Cal. Gov't Code § 91012.
- 109 Cal. Gov't Code § 83116.

- 110 Cal. Penal Code § 424 (“(a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:
1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,
  2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law . . .”).
- 111 Cal. Gov’t Code § 8314(c)(1).
- 112 Cal. Gov’t Code § 87300.
- 113 Cal. Penal Code §§ 68(a), 518; 18 U.S.C. §§ 201, 872-880.
- 114 Under federal wire and mail fraud laws, the public has the right to the “honest services” of public officials. 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services). The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary. *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law). That duty is violated when a public official makes a decision that is not motivated by his or her constituents’ interests but instead by his or her personal interests. *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).
- 115 Cal. Gov’t Code § 87207(a)(1). For more information, see <http://www.ca-ilg.org/StatementofEconomicInterests>.
- 116 Cal. Gov’t Code § 89503; 2 Cal. Code Regs. § 18940.2 (the FPPC adjusts the limit biennially).
- 117 If the limit is exceeded one has several options, any of which must be exercised within 30 days of receiving the gift. One may return the gift unused to the donor, reimburse the donor for all or a portion of the value of the gift or donate the gift, without claiming a tax deduction, to a 501(c)(3) charitable organization or government agency. 2 Cal. Code Regs. § 18941(c).
- 118 Cal. Gov’t Code § 87103(e); 2 Cal. Code Regs. § 18700(c)(6) (E). This is because public officials may not make, participate in making, or influence governmental decisions which affect their personal financial interests. Cal. Gov’t Code § 87100. The law makes a judgment that one is financially self-interested in a decision when one accepts gifts exceeding the \$460 (2015-16) gift limit from someone affected by that decision. Cal. Gov’t Code § 89503; 2 Cal. Code Regs. § 18940.2(a).
- 119 2 Cal. Code Regs. §§ 18940(d), 18730(b)(8.1)(A) (application of the gift disclosure rules). See also 2 Cal. Code Regs. §§ 18701(a), 18730(b)(9) (application of the disqualification/conflict of interest rules). See also 2 Cal. Code Regs. § 18940.1(b) (definition of “official”).
- 120 See generally 2 Cal. Code Regs. § 18942 (list of exceptions in the regulations).
- 121 See generally 2 Cal. Code Regs. § 18940(a).
- 122 2 Cal. Code Regs. § 18943.
- 123 2 Cal. Code Regs. § 18946.5.
- 124 2 Cal. Code Regs. § 18946.4.
- 125 2 Cal. Code Regs. § 18946.1.
- 126 2 Cal. Code Regs. § 18946.2.
- 127 Cal. Gov’t Code §§ 87210, 87313; 2 Cal. Code Regs. § 18945(b) (the source of the payment is the source of the gift).
- 128 2 Cal. Code Regs. § 18945.2.
- 129 2 Cal. Code Regs. § 18942(a)(3).
- 130 2 Cal. Code Regs. § 18942(a)(18)(A).
- 131 2 Cal. Code Regs. § 18942(a)(19).
- 132 2 Cal. Code Regs. § 18942(a)(17)(C).
- 133 2 Cal. Code Regs. § 18942(a)(17).
- 134 2 Cal. Code Regs. § 18944.
- 135 2 Cal. Code Regs. § 18944.3.
- 136 2 Cal. Code Regs. § 18944.1.
- 137 2 Cal. Code Regs. § 18944.2.
- 138 See Cal. Gov’t Code § 82028(a).
- 139 2 Cal. Code Regs. § 18941(c)(3).
- 140 2 Cal. Code Regs. § 18942(a)(8)(A).
- 141 2 Cal. Code Regs. § 18942(a)(8)(B).
- 142 2 Cal. Code Regs. § 18944.2(d) (does not apply to tickets or passes that come from someone outside the agency).
- 143 See Cal. Gov’t Code § 82028(a).
- 144 Cal. Gov’t Code §§ 89501, 89502.
- 145 2 Cal. Code Regs. §§ 18942(a)(13), 18942.3.
- 146 See Cal. Gov’t Code §§ 82030, 82030.5, 87207.
- 147 See Cal. Gov’t Code §§ 82005, 87207, 87209.
- 148 See Cal. Gov’t Code § 82028(a); Institute for Local Government, Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder, at 7 (2008). Available at [www.ca-ilg.org/document/commitment-nonprofit-causes-and-public-service-some-issues-ponder](http://www.ca-ilg.org/document/commitment-nonprofit-causes-and-public-service-some-issues-ponder).
- 149 2 Cal. Code Regs. § 18942(a)(14).
- 150 2 Cal. Code Regs. § 18942(a)(7).
- 151 2 Cal. Code Regs. §§ 18942(a)(1), 18942.1.
- 152 2 Cal. Code Regs. § 18942(a)(5).
- 153 2 Cal. Code Regs. § 18942(a)(9).
- 154 2 Cal. Code Regs. § 18942(a)(10).
- 155 2 Cal. Code Regs. § 18942(a)(6).
- 156 2 Cal. Code Regs. §§ 18946.3, 18942(b)(2).
- 157 2 Cal. Code Regs. §§ 18950-18950.3.

- 158 See Cal. Const. art. XII, § 7 (“A transportation company may not grant free passes or discounts to anyone holding an office in this state . . .”).
- 159 2 Cal. Code Regs. §§ 18492(a)(13), 18942.1(c), 18946.1, 18946.2, 18946.4.
- 160 See Cal. Gov’t Code § 82015 (note the behested payment reporting requirement also applies to candidates). For more information, see [www.ca-ilg.org/BehestedPayments](http://www.ca-ilg.org/BehestedPayments).
- 161 2 Cal. Code Regs. § 18942(a)(15).
- 162 2 Cal. Code Regs. § 18942(a)(16).
- 163 2 Cal. Code Regs. § 18942(a)(18)(B).
- 164 2 Cal. Code Regs. § 18942(a)(19).
- 165 2 Cal. Code Regs. § 18940(a).
- 166 See generally 2 Cal. Code Regs. § 18943.
- 167 See Cal. Const. art. XII, § 7 (“A transportation company may not grant free passes or discounts to anyone holding an office in this state . . .”).
- 168 See 3 Cal. Op. Att’y Gen. 318 (1944).
- 169 74 Cal. Op. Att’y Gen. 26 (1991).
- 170 *Id.*
- 171 67 Cal. Op. Att’y Gen. 81 (1984).
- 172 80 Cal. Op. Att’y Gen. 146 (1997).
- 173 2 Cal. Code Regs. § 18941(c)(1).
- 174 2 Cal. Code Regs. § 18946.1 (b)(3) (“A pass or ticket has no reportable value unless it is ultimately used or transferred to another person.”).
- 175 2 Cal. Code Regs. § 18941(c)(2).
- 176 2 Cal. Code Regs. § 18941(c)(3).
- 177 See generally Cal. Gov’t Code §§ 91000-14.
- 178 See Cal. Gov’t Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 179 See Cal. Gov’t Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 180 Cal. Gov’t Code § 91000(b).
- 181 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 182 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).
- 183 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).
- 184 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).
- 185 See *Skilling v. U.S.*, 130 S.Ct. 2896, 2931(2010) (holding that in order to avoid unconstitutional vagueness, 18 USC §1346, defining “scheme or artifice to defraud,” only criminalizes bribes and kick-back schemes).
- 186 *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005).
- 187 18 U.S.C. §§ 1341 (“...shall be fined under this title or imprisoned not more than 20 years, or both.”). 1343 (“shall be fined under this title or imprisoned not more than 20 years, or both.”). See generally 18 U.S.C. § 3571(b), (d).
- 188 18 U.S.C. § 1951.
- 189 18 U.S.C. § 1951(a). See generally 18 U.S.C. § 3571(b).
- 190 See Cal. Elect. Code § 20 (making those convicted of a felony involving bribery, embezzlement, extortion or theft of public money ineligible for public office).
- 191 26 U.S.C. § 7201.
- 192 *Id.*
- 193 26 U.S.C. § 7206(1).
- 194 See Cal. Gov’t Code §§ 89510-22. Campaign funds include “any contributions, cash, cash equivalents, and other assets received or possessed” by a campaign committee. Cal. Gov’t Code § 89511(b)(1).
- 195 Cal. Gov’t Code § 89512 (an expenditure of campaign funds must be reasonably related to a legislative or governmental purpose, unless the expenditure confers a substantial personal benefit, in which case such expenditures must be directly related to a political, legislative or governmental purpose). “Substantial personal benefit” means a campaign expenditure which results in a direct personal benefit with a value of more than \$200. Cal. Gov’t Code § 89511(b)(3).
- 196 See generally Cal. Gov’t Code §§ 91000-14.
- 197 See Cal. Gov’t Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 198 See Cal. Gov’t Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 199 Cal. Gov’t Code § 91000(b).
- 200 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).

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CHAPTER 4:  
**Transparency Laws**



# Chapter 4: Transparency Laws

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# Economic Interest Disclosure

## BASIC RULES

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

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

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

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

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

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

### ETHICS CODES VERSUS LOCAL CONFLICT OF INTEREST CODES

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

**For more information**, see "About Local Conflict of Interest Codes" (available at [www.ca-ilg.org/sites/main/files/file-attachments/about\\_local\\_conflict\\_of\\_interest\\_codes.pdf](http://www.ca-ilg.org/sites/main/files/file-attachments/about_local_conflict_of_interest_codes.pdf)) and FPPC materials on adopting local conflict of interest codes (see [www.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes/local-government-agencies-adopting-amending-coi.html](http://www.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes/local-government-agencies-adopting-amending-coi.html)).

## TYPES OF ECONOMIC INTERESTS THAT MUST BE DISCLOSED

- » **Sources of Income.** Disclosure is required for income of \$500 or more provided or promised to an official from one source (including any income received from a business, nonprofit organization, government agency, or individual) for the previous calendar year (for annual disclosures) or the previous 12 months (for assuming office statements).<sup>6</sup> “Income” includes a community property interest in a spouse or domestic partner’s income.<sup>8</sup>
- » **Personal Finances.** An official has an economic interest in that official’s expenses, income, assets or liabilities and those of his or her immediate family (spouse or domestic partner<sup>9</sup> or dependent children).<sup>10</sup>
- » **Real Property.** An interest in real property must be disclosed where the interest is worth \$2,000 or more. The interest may be held by the official, the official’s spouse or domestic partner<sup>11</sup> (even as separate property) or children, or anyone acting on their behalf. Real property interests can also be created through leaseholds, options and security or mortgage interests in property.<sup>12</sup>
- » **Investments.** Another disclosable interest is created when the official, the official’s spouse or domestic partner<sup>13</sup> (even as separate property), or dependent children or anyone acting on their behalf, has an investment worth \$2,000 or more in a business entity that has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior, even if the official does not receive income from the business.<sup>14</sup>
- » **Business Employment or Management.** If the official serves in a director, officer, partner, trustee, employee, or other management position in a business entity, an economic interest is created.<sup>15</sup> Note that this does not apply to a member of the board of a nonprofit entity.<sup>16</sup>
- » **Related Businesses.** The official must disclose an interest in a business that is the parent, subsidiary or is otherwise related to a business in which the official:
  - Has a direct or indirect investment worth \$2000 or more; or
  - Is a director, officer, partner, trustee, employee, or manager.<sup>17</sup>
- » **Business-Owned Property.** A direct or indirect ownership interest in a business entity or trust that owns real property is another disclosable interest.<sup>18</sup>
- » **Loans.** Another type of potentially disclosable interest is created by the receipt of a loan, unless the loan is from a commercial lending Institution or indebtedness created as part of a retail installment or credit card transaction, issued on the same terms as available to anyone in the public.<sup>19</sup>
- » **Gifts.** Gifts from a single source must be totaled up over the course of a calendar year. An official’s reporting obligation is triggered when the combined value of gifts from one source totals \$50 or more.<sup>20</sup> For more information about gifts, please see Chapter 3, and [www.ca-ilg.org/GiftCenter](http://www.ca-ilg.org/GiftCenter).<sup>23</sup>

## PENALTIES

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

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

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

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

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Campaign Contribution Disclosure

## BASIC RULES

California has an extensive framework for transparency with respect to campaign contributions.<sup>27</sup> The basic reasoning behind these laws is that the public has a right to know who gives money and other forms of support to candidates for public office. Another stated justification is that the prospect of public disclosure will discourage improper influences.<sup>28</sup>

These transparency requirements apply not only to candidates, but also to groups which organize to participate in the election process (known as “committees”).<sup>29</sup> Transparency requirements also apply to those who make large contributions, ten thousand dollars (\$10,000) or more in a calendar year, to influence elections.<sup>30</sup> Those who participate in campaigns to pass or defeat ballot measures are also subject to these requirements.<sup>31</sup>

Cities and counties may have additional campaign finance disclosure laws for candidates for offices within their jurisdiction or committees focused on local ballot measures.<sup>32</sup> Copies of these local ordinances must be filed with the FPPC.<sup>33</sup>

In addition, certain categories of local officials are subject to restrictions on campaign contributions received from people with business pending before the agency. Chapter 5 (pages \_-\_) explains these restrictions.

Chapter 3 explains the restrictions on how campaign funds may be spent.

## FOR MORE INFORMATION

On campaign contribution disclosure, see the following resources:

- » The FPPC has extensive information to guide candidates and ballot measure committees on these requirements. Visit the FPPC website at [www.fppc.ca.gov](http://www.fppc.ca.gov) or call the FPPC’s toll-free number: 1-866-ASK-FPPC (1-866-275-3772).
- » The Political Reform Division of the California Secretary of State’s office issues identification numbers to campaigns and committees, provides technical assistance to filers, and maintains disclosure reports for public access. Visit the Secretary of State’s website at [www.sos.ca.gov/prd](http://www.sos.ca.gov/prd) or call 916-653-6224.
- » For federal elections (Presidential, U.S. Senate, House of Representatives), consult the Federal Election Commission at 1-800-424-9530 or on the web at [www.fec.gov](http://www.fec.gov).

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

## PENALTIES

The PRA includes campaign contribution disclosure requirements. Violations of the PRA are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>34</sup>

These penalties can include any or all of the following:

- » Immediate loss of office;<sup>35</sup>
- » Prohibition from seeking elected office in the future;<sup>36</sup>
- » Fines of up to \$10,000 or more depending on the circumstances;<sup>37</sup> and
- » Jail time of up to six months.<sup>38</sup>

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## OTHER DISCLOSURE REQUIREMENTS

The California Public Records Act is the main source of authority providing public access to documents in the possession of public agencies in California. There are specific disclosure requirements that are useful to note that are discussed in more detail online and in other chapters of this guide:

- » General gifts to public agencies must be disclosed on a special form and posted on the agency website. For more information, see [www.ca-ilg.org/GiftsQuestion3](http://www.ca-ilg.org/GiftsQuestion3) and [www.fppc.ca.gov/learn/public-officials-and-employees-rules-/gifts-and-honoraria.html](http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/gifts-and-honoraria.html).
- » Gifts of event tickets to public agencies must be disclosed on a special form and submitted to the FPPC for posting on its website. For more information, see [www.ca-ilg.org/GiftsQuestion3](http://www.ca-ilg.org/GiftsQuestion3) and [www.fppc.ca.gov/learn/public-officials-and-employees-rules-/reporting-ceremonial-role-events-and-ticket-admission.html](http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/reporting-ceremonial-role-events-and-ticket-admission.html).
- » Campaign contributions in excess of \$250 received during the preceding 12 months from any party or participant in a pending permit or license application are discussed on chapter 5.

There are of course other disclosure and notice requirements that are not listed here; these are just some that often raise issues concerning public confidence and ethics.



# Charitable Fundraising Disclosure

## BASIC RULES

A frequently overlooked disclosure obligation relates to an official or candidate's charitable or other fundraising activities. This obligation is referred to as the "behested payments" requirement. The reasoning behind these laws is that the public has a right to know who is contributing to an elected official's favorite charities and other causes.

The disclosure requirement is triggered when:

- » A person or entity donates \$5,000 or more in a calendar year;
- » The donation is for a legislative, governmental or charitable purpose; and
- » The donation is made at the behest of the a public official. This means the official or candidate (or their employee or agent):
  - Has requested or suggested the donation;
  - Controls or directs the donation; or
  - Plays a cooperating, consulting, or coordinating role with respect to the donation.<sup>39</sup>

The report must contain the following information:

- » The contributor's name and address;
- » The dollar amount or fair market value of the contribution;
- » The date or dates on which the contributions were made;
- » The name and address of the recipient of the contribution;
- » If goods or services were contributed, a description of those goods and services; and
- » A description of the purpose or event for which the contribution was used.<sup>40</sup>

The official must make this report once contributions from a single donor (whether an individual or an organization) have reached the \$5,000 aggregate threshold for any calendar year. Once this occurs, all contributions the donor makes or made for the calendar year must be disclosed within 30 days after: 1) the date the \$5,000 threshold was reached, or 2) the date the payment was made, whichever occurs later.<sup>41</sup>

Within 30 days of the donor reaching the \$5,000 threshold, the elected official must file a report with his or her agency (typically through the agency's filing officer)<sup>42</sup>. The FPPC's "Form 803 - Behested Payments Report" should be used to make this disclosure.<sup>43</sup>

What is a "legislative, governmental or charitable" purpose? The law does not define these words, but charitable causes typically involve Internal Revenue Code section 501(c)(3) organizations. A "governmental" cause might include such things as fundraising for a new public library. The reference to a "legislative" cause apparently has its roots in a 1996 FPPC advice letter which addressed a situation in which a State Senator asked a private party to pay the airfare and expenses for a witness to come testify at a legislative hearing.<sup>44</sup>

Of course, when a public servant conditions his or her official actions on a contribution to a worthy cause it is criminal extortion under both state and federal law.<sup>45</sup>

See discussion in the next section.

### FOR MORE INFORMATION

On charitable fundraising, see the following resources:

- » "Raising Funds for Favorite Causes," available at [www.ca-ilg.org/fundraising](http://www.ca-ilg.org/fundraising).
- » "Using Public Resources for Gifts and Charitable Purposes," available at [www.ca-ilg.org/PublicResourcesforGifts](http://www.ca-ilg.org/PublicResourcesforGifts).
- » "Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder," available at [www.ca-ilg.org/nonprofits](http://www.ca-ilg.org/nonprofits).
- » "Understanding the 'Behested Payments' Issue," available at [www.ca-ilg.org/BehestedPayments](http://www.ca-ilg.org/BehestedPayments).

For specific questions, contact the FPPC or agency counsel.

## PENALTIES

These disclosure requirements are part of the PRA. PRA violations are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>46</sup>

### Penalties for Extortion under State and Federal Law

#### *California Law*

If an official demands, solicits, or otherwise compels a contribution to a charitable organization in exchange for performing an official act favorable to the person making the contribution, the official's act of compelling the contribution could be prosecuted as extortion. Extortion under color of official right is a misdemeanor under California law.<sup>47</sup> Misdemeanors are punishable by up to six months in county jail, a fine of up to \$1,000, or both.<sup>48</sup> Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings for official misconduct.<sup>49</sup>

#### *Federal Law*

If the official's extortion affects interstate commerce, it is chargeable as a federal offense, which, under federal law, has a maximum penalty of 20 years in prison and a \$250,000 fine.<sup>50</sup>

### Honest Services Fraud

Under federal wire and mail fraud laws, the public has the right to the "honest services" of public officials.<sup>51</sup>

The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to that owed by a trustee or fiduciary.<sup>52</sup> That duty is violated when a public official makes a decision that is not motivated by his or her constituents' interests but instead by his or her personal interests.<sup>53</sup>

In one instance, federal authorities prosecuted a city treasurer whose decisions to award contracts were motivated in part by whether the firm contributed to political and charitable causes favored by the treasurer.<sup>54</sup>

The maximum penalty for wire and/or mail fraud includes a jail term of up to 20 years and a \$250,000 fine.<sup>55</sup>

## FOR MORE INFORMATION

On penalties for violations of ethics laws, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# The Public's Right to Access Records

## BASIC RULES

There are two sets of laws and regulations that govern public records in California. One set governs the public's right to access public records.<sup>56</sup> The other set governs which records an agency must retain and for how long.<sup>57</sup>

Pursuant to the California Public Records Act ("CPRA"), the public has the right to access materials that are created in the course of conducting the people's business.<sup>58</sup> These materials include any writing prepared, owned, used or retained by a public agency, with some exceptions.<sup>59</sup> "Writings" include, among other things, documents, computer data, e-mails, facsimiles and photographs.<sup>60</sup>

Public agency records are generally subject to public disclosure unless a specific exemption applies.<sup>61</sup> A few of the exemptions worth noting are:

- » The "pending litigation" exemption, which exempts from disclosure documents prepared in support of ongoing litigation (but for this protection, lawyers suing an agency could obtain all documents containing the agency's legal strategy just by asking for them).<sup>62</sup>
- » The "drafts" exemption, which exempts from disclosure preliminary drafts, notes or other interagency or intra-agency memoranda not retained in the agency's ordinary course of business. The public agency also must be able to demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure.<sup>63</sup>
- » The "personal privacy" exemption, which exempts from disclosure personnel files, medical records or other such files, the disclosure of which would constitute an unwarranted invasion of personal privacy.<sup>64</sup>

Despite these exceptions, the safe assumption is that most materials used, prepared, or simply maintained by a public agency—including e-mails—are records subject to disclosure.

A person may make a request for records in any manner, whether orally in person or over the phone, or in a writing mailed, emailed, faxed or personally delivered to the agency.<sup>65</sup> There are two ways for a person to gain access to requested records, and the requester may choose either or both: 1) inspecting the records at the local agency's

office during regular business hours; and 2) receiving copies of the requested records.<sup>66</sup>

A request for records must be specific and clear enough for the local agency to be able to determine what records the requester seeks.<sup>67</sup> However, if the request is overly broad or unclear, the local agency must assist the requester with revising the request so that it seeks more easily identifiable records; for instance, the local agency can describe the kind of records it possesses that may be relevant given the purpose of the request and how those records are maintained.<sup>68</sup>

Within ten calendar days of receiving a CPRA request, a local agency must respond to the requester notifying them of whether there are records responsive to the request that the agency will disclose.<sup>69</sup> If the agency is withholding any records pursuant to one or more applicable exemptions, the response must be in writing and identify the exemption(s) invoked to justify the nondisclosure.<sup>70</sup> Sometimes records will contain both nonexempt and exempt information, and the agency must redact a writing to conceal the portions that are exempt before disclosing the writing.<sup>71</sup> Although the CPRA sets a specific deadline for *responding* to a records request, the CPRA simply states that the nonexempt records must be actually *disclosed* to the requester "promptly."<sup>72</sup>

## RECORDS RETENTION

Counties and cities generally must retain public records for a minimum of two years, but for special districts, the duration of time varies based on the type of records sought to be destroyed.<sup>73</sup> Most local agencies adopt record retention schedules as part of their records management system. These define which records must be retained and for how long. The California Secretary of State provides local agencies with record management guidelines.<sup>74</sup>



*A safe assumption is that most materials involved in one's public service are public records subject to disclosure.*

## FOR MORE INFORMATION

On Public Records, see the following resources:

- » *The People's Business: A Guide to the California Public Records Act*, 2008. Available at the League of California Cities website at [www.cacities.org/PRAGuide](http://www.cacities.org/PRAGuide) or in hardcopy form from [www.cacities.org/publications](http://www.cacities.org/publications) or by calling (916) 658-8217.
- » *The People's Business December 2014 Guide Supplement*, 2014. Available at the League of California Cities website at [www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications](http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications).
- » *The People's Business: 2014 Chart of Frequently Requested Information and Records*, 2014. Available at the League of California Cities website at [www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications](http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications).
- » *Summary of the California Public Records Act*, 2004. Available on the California Attorney General's website at [http://ag.ca.gov/publications/summary\\_public\\_records\\_act.pdf](http://ag.ca.gov/publications/summary_public_records_act.pdf).

For specific questions, please contact agency counsel.

## PENALTIES

Anyone can sue the agency to enforce the right to access public records which are subject to disclosure.<sup>75</sup> If the agency loses, it must pay costs and attorney's fees.<sup>76</sup>

## FOR MORE INFORMATION

On penalties for violations of ethics laws, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Conducting the Public's Business in Public

## BASIC RULES

The underlying philosophy of California's open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government.

The Ralph M. Brown Act (Brown Act) is California's open meeting law for the governing bodies of nearly all local agencies.<sup>77</sup> The Brown Act provides minimum legal requirements for local agency transparency in decision-making.<sup>78</sup> (Please note that community college boards are subject to less stringent requirements than are other local agencies. Check the endnotes for specific references to open meeting laws pertaining to community college districts.)<sup>79</sup>

Under the Brown Act, elected and most appointed local agency decision-making bodies, including many advisory committees, must conduct their business in open and public meetings to assure that the local decision-making process is observable by the public.<sup>80</sup> The issue of what kinds of bodies are subject to open meeting laws may require careful legal analysis. For purposes of clarity, this guide uses the term "decision-making body" and "decision-makers," but the reader should be aware that this term is imprecise.

A "meeting" is any congregation of a majority of the members of a decision-making body to discuss, hear, deliberate, or make a decision on any item within the agency's jurisdiction. In other words, a majority of a decision-making body cannot hear a presentation or talk privately about an issue within its subject matter jurisdiction, no matter how the conversation occurs, whether by telephone or e-mail, on a private blog, or at a local coffee shop.<sup>81</sup>

The following are some key things to keep in mind:

» **Committees and Advisory Bodies.** Advisory groups or committees formally created by a governing body are subject to the open meeting laws. Standing committees are subject to the open meeting laws if they have a continuing subject-matter jurisdiction or have a meeting schedule fixed by charter or formal action of the governing body.<sup>82</sup>

» **Serial Meetings.** Avoid unintentionally creating a "serial" meeting—a series of communications that result in a majority of decision-makers conferring on an issue. For example, if two members of a five-member decision-making body consult with each other outside of a public meeting (which is not in and of itself a violation) about a matter of agency business, and then one or both of those individuals consults with a third member on the same issue, a majority of the body has consulted on the same issue and a violation of the open meeting law has occurred. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member polling decision-makers members in a way that reveals the members' positions to one another.<sup>83</sup>

However, separate communications of an employee or official of a local agency with individual decision-makers to answer questions or provide information are permissible, as long as those communications do not communicate information about other decision-makers' comments or positions.<sup>84</sup> For example, the General Manager of a special district may have an individual meeting with Board Member A to answer questions or provide information about a proposal, and then the General Manager may have a similar meeting with Board Member B, as long as the General Manager does not communicate Board Member A's comments or position on the proposal to Board Member B.

## GOOD ETHICS EQUALS GOOD POLITICS



*The media is highly vigilant in monitoring compliance with open government requirements—and quick to report on perceived violations.*

- » **Posting and Following the Agenda.** The Brown Act requires that at least 72-hours before a regular meeting, and 24-hours before a special meeting, a local agency must post an agenda for the meeting, including on the agency's website, if the agency maintains one.<sup>85</sup> In general, public officials may only discuss and act on items included on the posted agenda for that meeting.<sup>86</sup> However, decision-makers or staff may briefly respond to questions or statements during the public comments section of the meeting even if the questions or statements are unrelated to any agenda items. Officials can also request staff to look into a matter or place a matter on the agenda of a subsequent meeting.<sup>87</sup> Action may be taken on a matter not on the agenda only when the decision-making body determines by a majority vote that an emergency situation exists or the decision-making body determines by a two-thirds vote of those officials present at the meeting that there is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda being posted.<sup>88</sup>
- » **Permissible Gatherings.** Not every gathering of members of a decision-making body outside of a noticed meeting violates the law. For example, an open meeting violation would not occur if a majority of a decision-making body attends the same educational conference or a meeting not organized by the local agency as long as certain requirements are met.<sup>89</sup> Neither is attendance at a social or ceremonial event in and of itself a violation.<sup>90</sup> The basic rule to keep in mind is a majority of members of a decision-making body cannot discuss agency business (including at conferences or social events) except at an open and properly noticed meeting.
- » **Closed Sessions.** The open meeting laws allow for closed discussions only under very limited circumstances.<sup>91</sup> For example, a governing body may generally meet in a closed session to receive advice from its legal counsel regarding pending or reasonably anticipated litigation.<sup>92</sup> However, the reasons for holding the closed session must be noted on the

agenda and different disclosure requirements apply to different types of closed sessions.<sup>93</sup> See the table on the next page for information on what kinds of closed sessions are permissible.

Because of the complexity of the open meeting laws, close consultation with the agency's legal advisor is necessary to ensure that all requirements are met.

### FOR MORE INFORMATION

On open meeting laws, see the following resources:

- » Open and Public V: A Guide to the Ralph M. Brown Act, 2016. Available on the League of California Cities website at [www.cacities.org/OpenandPublicV](http://www.cacities.org/OpenandPublicV) or in hardcopy form by visiting [www.cacities.org/publications](http://www.cacities.org/publications) or by calling (916) 658-8217.
- » The Brown Act: Open Meetings for Local Legislative Bodies, 2003. Available on the California Attorney General's website at <http://oag.ca.gov/open-meetings>.
- » "Closed Session Leaks: Discretion is the Better Part of Valor - and Ethics," available at [www.ca-ilg.org/closed-session-leaks](http://www.ca-ilg.org/closed-session-leaks).
- » The use of technology and public meetings is discussed in Meetings and Technology: Finding the Right Balance, 2013. Available at [www.ca-ilg.org/technology-and-meetings](http://www.ca-ilg.org/technology-and-meetings).

For specific questions, please contact agency counsel.

## TYPICAL CLOSED SESSION ISSUES

Local agency open meetings laws vary in terms of what kinds of closed sessions are allowed. Below is a list of matters that generally may be addressed in closed session. The list is illustrative, but not comprehensive, and in many cases, there are statutory limitations and requirements that must be considered. Consult with agency counsel concerning 1) whether a particular type of closed session is permissible and 2) under what circumstances.

- **Personnel.** To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints against an employee; however, where the body will be hearing complaints against an employee, at least 24-hours before the time for holding the session, the employee must receive a written notice of his or her right to require that the hearing be in open session.<sup>94</sup>
- **Pending Litigation.** To confer with or receive advice from the agency's legal counsel with respect to existing, threatened or potential litigation.<sup>95</sup>
- **Real Estate Negotiations.** To grant authority to the agency's negotiator regarding the price and terms for the purchase, sale, exchange, or lease of real property on the agency's behalf.<sup>96</sup>
- **Labor Negotiations.** To meet with the agency's labor negotiator regarding salaries, benefits, and other matters within the scope of labor negotiations.<sup>97</sup>
- **Student Disciplinary Issues (for School Districts and Community College Districts).** To consider discipline of a student if a public hearing would result in the prohibited disclosure of private information, after notifying the student (and his or her parents in the case of minor students) and not receiving in response a request for a public hearing.<sup>98</sup>
- **Grand Jury Proceedings.** To allow testimony in private before a grand jury (either individually or collectively).<sup>99</sup>
- **License Applicants with Criminal Records.** To allow an agency to determine whether an applicant for a license or license renewal with a criminal record is sufficiently rehabilitated to obtain the license.<sup>100</sup>
- **Public Security.** To confer with designated law enforcement officials regarding threats to public facilities or services, or the public's right of access to those facilities or services.<sup>101</sup>
- **Multi-jurisdictional Law Enforcement Agency.** To discuss ongoing multi-jurisdictional criminal investigations.<sup>102</sup>
- **Hospital Peer Review and Trade Secrets.** To discuss issues related to medical quality assurance or involving hospital trade secrets.<sup>103</sup>

Just because a topic may be discussed in closed session does not mean that it always must be discussed in closed session. However, sometimes there are reasons for discussing a matter during a permissible closed session. For example, the governing body should discuss an employee disciplinary matter in a closed session meeting to protect the privacy interests of the employee, unless the affected employee gives permission for the governing body to discuss the matter in open session. Other times, the governing body may decide that an open session is in the public's best interest, even if not required (for example, in determining negotiating positions for the agency). Keep in mind that the decision of whether a meeting should be open or closed (where the governing body has authority to decide) is a collective one, not an individual one. However, also keep in mind that a closed session is permissible only where a statute specifically allows it. Otherwise, the matter must be discussed in open session.



## PENALTIES

### Nullification of Decision

Many decisions that are not made according to the open meeting laws are voidable.<sup>104</sup> After asking the agency to cure the violation, either the District Attorney or any interested person may sue to have the action declared void.<sup>105</sup>

### Criminal Sanctions

Additionally, members of the governing body who intentionally violate the open meeting laws may be guilty of a misdemeanor.<sup>106</sup> The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.<sup>107</sup>

### Other Consequences

Either the District Attorney or any interested person may sue to remedy past, and prevent future, violations of the open meeting laws.<sup>108</sup> Another remedy, under certain circumstances, is for a court to order all closed sessions be electronically recorded.<sup>109</sup> Costs and attorney fees may be awarded to those who successfully challenge open meeting law violations.<sup>110</sup>

#### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## A NOTE ABOUT BLOGGING AND SOCIAL NETWORKING SITES

Decision-makers who are covered by open meeting laws must avoid situations in which the majority of a decision-making body uses the Internet to communicate with each other about a matter of agency business. For this reason, decision-makers must take special care when responding to each other's emails, blogs, or posts on social networking sites (such as Facebook or LinkedIn).

The so-called "Web 2.0" creates opportunities for people to present information on websites in the form of a journal. These sites also allow visitors to make comments or ask questions (called "posts" or "postings") in response to the others' comments.

For many decision-makers, blogging offers an effective way to share information with and communicate with constituents. For example, rather than having to respond to 10 e-mails asking the same question, an official can simply post a response on his or her blog and refer folks to the answer. Blogging can also be a good way to keep the public informed, especially as fewer people turn to traditional media for information.

However, a majority of decision-makers participating in a blog or other web-based conversation could constitute a "meeting" within the meaning of the open meeting laws. This means that the meeting must be held in accordance with all open meeting requirements, in an appropriate (accessible to those with disabilities) location, with prior notice and an agenda.

What is the reasoning underlying these restrictions? One is that the public has a right to know about discussions and decision-making on any issue that may affect them. There is also an underlying belief that decision-makers should deliberate on issues in front of, and facing, their constituents. Another proposed justification is that officials should hear the thoughts of the full range of constituents (not just those on the Internet), should constituents choose to offer them. Further, public discussions and decision-making prevents fears of secret backroom deals made without public knowledge.

For more information, see "Legal Issues Associated with Social Media" (available at [www.ca-ilg.org/SocialMediaLegalIssues](http://www.ca-ilg.org/SocialMediaLegalIssues)) and "Taking the Bite Out of Blogs: Ethics in Cyberspace" (available at [www.ca-ilg.org/blogs](http://www.ca-ilg.org/blogs)).

# The Public's Right to Participate in Meetings

## BASIC RULES

Another element of open meeting laws is the public's right to address the governing body at any open meeting. An elected official's duty is to both hear and evaluate these communications. There are a number of basic rules that govern this right. (Again, check the endnotes for specific references to requirements for community college boards.)<sup>111</sup>

### Posting and Following the Agenda

The open meeting laws provide requirements for informing the public of the date, time, and location of meetings, and the items of business to be addressed at the meetings.<sup>112</sup> The agenda must be posted at least 72-hours in advance of a regular meeting.<sup>113</sup>

Members of the public may request that a copy of the agenda packet be mailed to them at the time the agenda is posted or upon distribution to the governing body.<sup>114</sup> Local agencies must post these materials on their website, if the agency has a website.<sup>115</sup>

There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances.<sup>116</sup> These exceptions, where applicable, also permit an agency to take action on or discuss items not on the agenda.<sup>117</sup> The agency may also hold special meetings on 24-hours' notice<sup>118</sup> or on less than 24-hours' notice if a true emergency exists.<sup>119</sup>

### The Public's Right to Materials Not Included in the Agenda Packet

Any documents or other materials relating to an agenda item for an open session of a regular meeting of a governing body distributed less than 72 hours before the meeting must be made available to the public. This must occur when the materials are distributed to the members of the governing body at a public office or location that the agency designates for this purpose. Local agencies must list the address of this office or location on the agendas for all meetings of their governing body.<sup>120</sup>

Any documents distributed during a public meeting must also be made available to the public. This must occur at the meeting if the document is prepared by the agency, or after the meeting if the document is prepared by someone else, such as a member of the public.<sup>121</sup>

## SPECIAL ISSUES

### Electronic Recording of Meetings is Allowed

Anyone attending a meeting may photograph or record it with an audio or video recorder unless the governing body reasonably finds that the noise, illumination, or obstruction of view would disrupt the meeting.<sup>122</sup>

Any audio or video recording of a meeting made by the local agency becomes a public record that must be made available to the public for at least 30 days.<sup>123</sup>

### Sign-In Must Be Voluntary

Members of the public cannot be required to register their name or fulfill any other condition for attendance at a meeting. If an attendance list is used, it must clearly state that signing the list is voluntary.<sup>124</sup>

### The Public's Right to be Heard

Generally, every agenda must include an opportunity for the public to address the governing body on any item of interest to the public within the body's jurisdiction.<sup>125</sup> If the issue of concern is one pending before the governing body, the opportunity must be provided before or during the body's consideration of that issue.<sup>126</sup>

### Reasonable Time Limits May Be Imposed

Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.<sup>127</sup>

When many people wish to comment on an issue, for example, an agency may assign a time limit to each speaker to ensure that everyone has a chance to be heard and the agency can complete its business (individuals using a translator must be allotted at least twice the amount of time of a English speaker). However, every effort should be made to avoid artificially short time limits; this gives the public a reasonable chance to share their views and demonstrates the agency's commitment to considering the public's perspectives.

### *Handling Disruptions*

If an individual or group willfully interrupts a meeting and order cannot be restored, the room may be cleared.<sup>128</sup> Members of the media must be allowed to remain (except those participating in the disturbance) and only matters on the agenda can be discussed.<sup>129</sup>

The chair may encourage everyone to be civil and mutually respectful during the meeting and have disruptive individuals removed from the room.<sup>130</sup> However, speakers may not be prevented from criticizing the governing body.<sup>131</sup>

Finally, note that other California laws may provide additional, subject-specific notice requirements.

## **GOOD ETHICS EQUALS GOOD POLITICS**

Community relations—and the public's opinion of an official's responsiveness—are seriously undermined when it appears an official is not listening to input provided by the public. There can be even more damage if an official expresses disagreement in a hostile or disrespectful way with a position that is being advocated.

Even if one disagrees with the views being offered, the statesperson-like approach is to treat all speakers with the same respect one would like to be treated with if the roles were reversed. This is an application of the value of respect.

## **FOR MORE INFORMATION**

On public participation in meetings, see the following resources:

- » The Brown Act: Open Meetings for Local Legislative Bodies, 2003. Available on the California Attorney General's website at <http://oag.ca.gov/open-meetings>.
- » Institute resources on civility, see [www.ca-ilg.org/civility](http://www.ca-ilg.org/civility).

For specific questions, please contact agency counsel.

## PENALTIES

### Nullification of Decision

As a general matter, decisions that are not made according to the open meeting laws are voidable.<sup>132</sup> After asking the agency to cure the violation, either the District Attorney or any interested person may sue to have the action declared void.<sup>133</sup>

### Criminal Sanctions

Additionally, members of the governing body who intentionally violate the open meeting laws may be guilty of a misdemeanor.<sup>134</sup> The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months, a fine of up to \$1,000, or both.<sup>135</sup>

### Other Measures

Either the District Attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws.<sup>136</sup> Another remedy, under certain circumstances, is for a court to order that all closed sessions be electronically recorded.<sup>137</sup> Costs and attorney's fees may be awarded to those who successfully challenge open meeting law violations.<sup>138</sup>

### Potential Civil Rights Violations

By implementing policies or taking actions to regulate or limit the public's right to participate in meetings, other than those regulations and limitations specifically allowed under California law and constitutional law principles, the governing board exposes the local agency to liability for violations of individuals' civil rights<sup>139</sup> including liability for attorney fees.<sup>140</sup>

## FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## VOTERS SUPPORT OPEN GOVERNMENT

In 2004, California voters made public agency transparency a state constitutional and statutory requirement. The California Constitution now provides that "[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."<sup>141</sup>

# Endnotes and Additional Information

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

- 1 Political Reform Act. Cal. Gov't Code §§ 87200-10.
- 2 Cal. Gov't Code § 82019.
- 3 See Cal. Gov't Code § 87500.2.
- 4 Cal. Gov't Code §§ 87202-04, 87302. See 2 Cal. Code Regs. § 18722.
- 5 Cal. Gov't Code § 87300.
- 6 See Cal. Gov't Code § 87103(c).
- 7 2 Cal. Code Regs. § 18229.
- 8 Cal. Gov't Code §§ 82030, 87103(c).
- 9 2 Cal. Code Regs. § 18229.
- 10 Cal. Gov't. Code § 82029.
- 11 2 Cal. Code Regs. § 18229.
- 12 See Cal. Gov't Code §§ 82033, 87103(b).
- 13 2 Cal. Code Regs. § 18229.
- 14 Cal. Gov't Code §§ 82034, 87103(a) .
- 15 Cal. Gov't Code § 87103(d).
- 16 See Cal. Gov't Code § 82005.
- 17 Cal. Gov't Code §§ 82034, 87103(a), (d).
- 18 Cal. Gov't Code § 82033 (pro rata interest, if own 10 percent interest or greater).
- 19 Cal. Gov't Code § 82030(a),(b)(8), (10).
- 20 Cal. Gov't Code § 87207(a)(1).
- 21 See *generally* Cal. Gov't Code §§ 91000-14.
- 22 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 23 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 24 Cal. Gov't Code § 91000(b).
- 25 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 26 Cal. Gov't Code § 91013.
- 27 See *generally* Cal. Gov't Code §§ 84100-511.
- 28 See Cal. Gov't Code § 81002(a).
- 29 See, e.g., Cal. Gov't Code §§ 82013, 84101.
- 30 See Cal. Gov't Code § 82013(c).
- 31 See Cal. Gov't Code § 84202.3.
- 32 See Cal. Gov't Code §§ 81013, 81009.5.
- 33 Cal. Gov't Code § 81009.5(a). Local disclosure requirements can be found on the Fair Political Practices Commission's website, available at <http://www.fppc.ca.gov/learn/campaign-rules/local-campaign-ordinances.html>.
- 34 See *generally* Cal. Gov't Code §§ 91000-14.
- 35 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 36 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 37 Cal. Gov't Code § 91000(b).
- 38 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 39 See Cal. Gov't Code § 82015(b)(2)(B)(iii); 2 Cal. Code Regs. § 18215.3(a). See also Cal. Fair Political Practices Commission, *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans*, at 8 (2015), available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/StateGiftFactSheet.pdf>.
- 40 See Cal. Gov't Code § 82015(b)(2)(B)(iii). See also Fair Political Practices Commission, California Form 803 - Behested Payments Report Instructions, available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf>.
- 41 Cal. Gov't Code § 82015(b)(2)(B)(iii).
- 42 Cal. Gov't Code § 82015(b)(2)(B)(iii); Fair Political Practices Commission, California Form 803 - Behested Payments Report Instructions, available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf>.
- 43 Fair Political Practices Commission, California Form 803 - Behested Payments Report, available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf>.
- 44 See *Schmidt Advice Letter*, No. A-96-098 (March 26, 1996); S. Rules. Comm., S.B. 124 S. Floor Analysis, 1997-1998 Sess., (Cal. Sept. 2, 1997).
- 45 Cal. Penal Code § 518; *In re Shepard*, 161 Cal. 171 (1911). See also 18 U.S.C. § 666(a)(1)(B) .

- 46 See generally Cal. Gov't Code §§ 91000-14.
- 47 Cal. Penal Code § 521.
- 48 Cal. Penal Code § 19.
- 49 Cal. Gov't Code §§ 3060-3074.
- 50 18 U.S.C. §§ 1951(a), 3571(b).
- 51 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).
- 52 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).
- 53 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).
- 54 *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005). In *Skilling v. U.S.*, 130 S.Ct. 2896, 2931 (2010), the U.S. Supreme Court held that in order to avoid unconstitutional vagueness 18 USC §1346 (honest services fraud) only criminalizes bribes and kick-back schemes.
- 55 18 U.S.C. §1341 (“... shall be fined under this title or imprisoned not more than 20 years, or both.”).
- 56 See Cal. Gov't Code §§ 6250-70.
- 57 See Cal. Gov't Code §§ 34090-34090.8.
- 58 See generally Cal. Gov't Code §§ 6250-70.5. See also Cal. Const. art. I, § 3(b)(1).
- 59 See Cal. Gov't Code §§ 6252-53.
- 60 Cal. Gov't Code § 6252(g) (“‘Writing’ means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”)
- 61 *State ex rel. Division of Industrial Safety v. Superior Court*, 43 Cal. App. 3d 778, 117 Cal. Rptr. 726 (1974); *Cook v. Craig*, 55 Cal. App. 3d 773, 127 Cal. Rptr. 712 (1976).
- 62 Cal. Gov't Code § 6254(b).
- 63 Cal. Gov't Code § 6254(a).
- 64 Cal. Gov't Code § 6254(c).
- 65 League of California Cities, *The People's Business: A Guide to the California Public Records Act*, 11 (2008), available at <http://www.cacities.org/PRAGuide> (citing *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381).
- 66 *Id.* at 10.
- 67 *Id.* at 11 (citing *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159).
- 68 *Id.* at 12 (citing Cal. Gov. Code § 6253.1; *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177).
- 69 *Id.* at 11 (citing Cal. Gov't Code § 6253(c)).
- 70 *Id.* at 13 (citing Cal. Gov't Code § 6255).
- 71 *Id.* (citing Cal. Gov. Code § 6253(a); *ACLU Foundation v. Deukmejian* (1982) 32 Cal.3d. 440).
- 72 *Id.* (citing Cal. Gov. Code § 6253(b); 88 Ops.Cal.Atty.Gen. 153 (2005); 89 Ops.Cal.Atty.Gen. 39 (2006)).
- 73 Cal. Gov't Code §§ 26202 (counties), 34090(d) (cities), 60201 (special districts). Note that in California, the Public Records Act is not a records retention statute. See *Los Angeles Police Dept. v. Superior Court*, 65 Cal. App. 3d 661 (1977).
- 74 The Secretary of State's Local Government Records Management Guidelines may be viewed at <http://www.sos.ca.gov/archives/admin-programs/local-gov-program>.
- 75 Cal. Gov't Code § 6258.
- 76 Cal. Gov't Code § 6259(d).
- 77 See generally Cal. Gov't Code §§ 54950-63 (for cities, counties, special districts and school districts).
- 78 See Cal. Gov't Code § 54953.7.
- 79 Cal. Educ. Code §§ 72121-29 (for community college district governing boards).
- 80 See Cal. Gov't Code § 54952.2(a).
- 81 Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.
- 82 Cal. Gov't Code § 54952(b).
- 83 Cal. Gov't Code § 54952.2.
- 84 Cal. Gov't Code §§ 54954.2; 54956.
- 85 Cal. Gov't Code § 54952.2(b)(2).
- 86 *Wolfe v. City of Fremont*, 144 Cal. App. 4th 533, 50 Cal. Rptr. 3d 524 (2006); see also S.B. 1732, 2007-2008 Leg., Reg. Sess. (Cal. 2008) (clarifying Cal. Gov't Code § 54952.2 to include both communications that result in a collective concurrence and those that are part of the process of developing collective concurrence).
- 87 Cal. Gov't Code § 54954.2; Cal. Educ. Code § 72121.5.
- 88 Cal. Gov't Code § 54954.2(a)(2), See Cal. Educ. Code § 72121.5.
- 89 Cal. Gov't Code § 54954.2(b).
- 90 Cal. Gov't Code § 54952.2(c)(2).
- 91 Cal. Gov't Code § 54952.2(c)(5).
- 92 See, e.g., Cal. Gov't. Code §§ 54956.5-54957, 54957.6, 54957.10, 54962; Cal. Educ. Code § 72122.
- 93 Cal. Gov't Code § 54956.9.
- 94 Cal. Gov't Code §§ 54957(b)(1), (2).
- 95 Cal. Gov't Code § 54956.9.
- 96 Cal. Gov't Code § 54956.8.
- 97 Cal. Gov't Code §§ 3549.1 (school and community college districts), 54957.6 (other local agencies).

- 98 Cal. Educ. Code §§ 35146, 72122.
- 99 Cal. Gov't Code § 54953.1.
- 100 Cal. Gov't Code § 54956.7.
- 101 Cal. Gov't Code § 54957(a).
- 102 Cal. Gov't Code § 54957.8.
- 103 Cal. Gov't Code §§ 37606, 37624.3; Cal. Health & Safety Code §§ 1461, 1462, 32106, 32155.
- 104 Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).
- 105 *Id.*
- 106 Cal. Gov't Code § 54959.
- 107 See Cal. Penal Code § 19.
- 108 Cal. Gov't Code § 54960(a).
- 109 Cal. Gov't Code § 54960(b).
- 110 Cal. Gov't Code § 54960.5.
- 111 Cal. Educ. Code §§ 72121-29 (for community college district governing boards).
- 112 Cal. Gov't Code § 54954.2(a); Cal. Educ. Code § 72121.
- 113 *Id.*
- 114 Cal. Gov't Code § 54954.1.
- 115 See Cal. Gov't Code § 54954.2. This requirement currently only applies to:
- » The governing body of a local agency or any other local body created by state or federal statute; or
  - » A commission, committee, board, or other body of a local agency, created by charter, ordinance, resolution, or formal action of a legislative body, if the members are compensated for their appearance, and at least one member is also the member of a governing body created by state or federal statute.
- However, per 2016 Cal. Stat. ch. 265, § 1 (amending Cal. Gov't Code § 54954.2), beginning January 1, 2019, the agenda for a meeting of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state must be posted on the local agency's "primary Internet Web site homepage" if the local agency has a webpage.
- 116 Cal. Gov't Code § 54954.2(b).
- 117 Cal. Gov't Code § 54954.2(b)(2).
- 118 Cal. Gov't Code § 54956.
- 119 Cal. Gov't Code § 54956.5.
- 120 Cal. Gov't Code § 54957.5.
- 121 Cal. Gov't Code § 54957.5(c).
- 122 Cal. Gov't Code § 54953.5(a).
- 123 Cal. Gov't Code § 54953.5(b).
- 124 Cal. Gov't Code § 54953.3.
- 125 Cal. Gov't Code § 54954.3(a); Cal. Educ. Code § 72121.5.
- 126 Cal. Gov't Code § 54954.3(a).
- 127 Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).
- 128 Cal. Gov't Code § 54957.9.
- 129 *Id.*
- 130 Cal. Gov't Code § 54957.9; *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010).
- 131 Cal. Gov't Code § 54954.3(c); *Perry Educational Association v. Perry Local Educators' Association*, 460 U.S. 37, 46 (1983); *Acosta v. City of Costa Mesa*, 718 F.3d 800 (9th Cir. 2013).
- 132 Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).
- 133 *Id.*
- 134 Cal. Gov't Code § 54959.
- 135 See Cal. Penal Code § 19.
- 136 Cal. Gov't Code § 54960(a).
- 137 Cal. Gov't Code § 54960(b).
- 138 Cal. Gov't Code § 54960.5.
- 139 See 42 U.S.C. § 1983.
- 140 See 42 U.S.C. § 1988.
- 141 Cal. Const. art. I, § 3(b)(1).





CHAPTER 5:

# Fair Process Laws and Merit-Based Decision-Making



# Chapter 5: Fair Process Laws and Merit-Based Decision-Making

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# The Right to Fair and Unbiased Decision-Makers

## BASIC RULES

Although California statutes largely determine when public officials must disqualify themselves from participating in decisions, common law (judge-made law) and some constitutional principles still require a public official to exercise his or her powers free from personal bias—including biases that have nothing to do with financial gain or losses.

Under the common law doctrine, an elected official has a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of private interests. It should be noted that the interest need not be financial.<sup>1</sup>

*Local officials are much less constrained when the body is acting in a legislative, as compared to a quasi-judicial capacity.*

In addition, constitutional due process principles require a decision-maker to be fair and impartial when the decision-making body is sitting in what is known as a “quasi-judicial” capacity. Quasi-judicial matters include variances, use permits, annexation protests, personnel disciplinary actions and licenses. Quasi-judicial proceedings tend to involve the application of common requirements or principles to specific situations, much as a judge applies the law to a particular set of facts.

The kinds of impermissible bias<sup>2</sup> include:

### » **Personal Interest in the Decision's Outcome.**

For example, one court found an elected official was biased and should not participate in a decision on a proposed addition to a home in his neighborhood when the addition would block the elected official's view of the ocean from the official's apartment.<sup>3</sup> Personal interest bias can also arise when hearing officers are selected and paid on an ad hoc basis, making their future work dependent on the public agency's goodwill.<sup>4</sup>

### » **Personal Bias.**

- **People.** Strong animosity about a permit applicant based on conduct that occurred outside the hearing is one example. Conversely, a strong personal loyalty toward a party could bias an official as well.<sup>5</sup>
- **Belief/Ideology.** Examples include strong ideological reactions to a proposed Planned Parenthood clinic or community center for a particular ethnic or religious group.

» **Factual Bias.** For example, information an official might receive outside the public hearing that causes the official to have a closed mind to any factual information that may be presented in a hearing. This is a variation of the “ex parte communications” doctrine, which suggests that, in quasi-judicial matters, all communications to decision-makers about the merits (or demerits) of an issue should occur in the context of the noticed hearing (as opposed to private meetings with either side of an issue, for example).<sup>6</sup>

» **Dual Role Influence.** Another example is when someone plays multiple roles in a decision making process. A court concluded that a business owner's fair hearing rights were violated when a public agency attorney made the initial decision to deny the renewal of the business's regulatory permit then acted as a legal adviser to a hearing officer reviewing that denial.<sup>7</sup>

When an official sits in a quasi-judicial capacity, that official's personal interest or involvement, either in a decision's outcome or with any participants, can create a risk that the agency's decision will be set aside by a court if the decision is challenged. Typically, having the official disqualify himself or herself removes the risk.<sup>8</sup>

Decision-makers are also well advised to step aside on participation in a quasi-judicial matter when the decision-maker has pre-judged the matter. Attributes of having “pre-judged the matter” include having a closed mind or a preconceived and unalterable view of the proper outcome without regard to the evidence.<sup>9</sup>

This rule does not preclude holding opinions, philosophies or strong feelings about issues or specific projects; it also does not proscribe expression of views about matters of importance in the community, particularly during an election campaign.<sup>10</sup> Nevertheless, if an official has made very strident and unequivocal statements for or against a pending project or issue, a court could find that the official could not participate as an unbiased decision-maker when the project or issue comes before the agency.<sup>11</sup> Also, local officials are much less constrained when the body is acting in a legislative, as opposed to quasi-judicial capacity.

#### FOR MORE INFORMATION

On fair decision-making and bias, see the following resources:

- » When an Elected Official Feels Passionately About an Issue: Fair Process Requirements in Adjudicative Decision-Making,” available at [www.ca-ilg.org/bias](http://www.ca-ilg.org/bias).
- » “When Your Decision Will Affect a Friend or Supporter,” available at [www.ca-ilg.org/resource/when-your-decision-will-affect-friend-or-supporter](http://www.ca-ilg.org/resource/when-your-decision-will-affect-friend-or-supporter).
- » Understanding the Basics of Local Agency Decision- Making, 2009, available at [www.ca-ilg.org/decisionmaking](http://www.ca-ilg.org/decisionmaking).
- » An Ounce of Prevention: Best Practices for Making Informed Land Use Decisions, 2006, available at [www.ca-ilg.org/ounce](http://www.ca-ilg.org/ounce).

For specific questions, please contact agency counsel.

## Effect of Violations

### EFFECT ON DECISION

An administrative decision tainted by bias will be set aside. The agency will have to conduct new proceedings free of the influence of the biased decision-maker.<sup>12</sup>

### DUE PROCESS VIOLATIONS

If the violation rises to the level of a denial of due process under constitutional law, the affected individual(s) may seek damages, costs and attorney’s fees.<sup>13</sup>

#### FOR MORE INFORMATION

On the effect of ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## Vote-Trading

### BASIC RULES

The California law that prohibits public officials from asking for, receiving, or agreeing to receive bribes in exchange for their votes or other official actions also forbids them from giving, or offering or promising to give, “any official vote” in exchange for another public official’s vote on the “same or another question.”<sup>14</sup>

Like bribery, vote-trading is a form of “you-do-this-for-me,-I-will-do-this-for-you” practice. In Latin, this is known as a quid pro quo (“this for that”). Quid pro quos are legally risky. Any time a public official stops making decisions based on what’s best for the public, the transparency and integrity of the policy-making process is compromised.

Note that the California Attorney General has concluded that the prohibition against vote-trading applies to exchanges of votes between public officials and not to commitments made by jurisdictions in an inter-agency agreement.<sup>15</sup>

#### FOR MORE INFORMATION

On vote trading, see [www.ca-ilg.org/votetrading](http://www.ca-ilg.org/votetrading). For specific questions, please contact agency counsel.

## PENALTIES

Penalties for vote trading include “imprisonment in the state prison for two, three, or four years and . . . by a restitution fine of not less than two thousand dollars (\$2,000) or not more than ten thousand dollars (\$10,000) . . .”<sup>16</sup> A conviction for vote-trading will also lead to an immediate loss of office and permanent disqualification from holding any office in the state.<sup>17</sup>

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## Personal Loans

### BASIC RULES

Elected officials and others may not receive a personal loan from any officer, employee, member or consultant of the official’s respective agency while in office.<sup>18</sup>

There also are limits on elected officials’ and others’ ability to receive loans from those with contracts with the agency (except for bank or credit card loans made in the regular course of the company’s business).<sup>19</sup> Personal loans over \$500 from others must meet certain requirements (for example, be in writing, clearly state the date, amounts and interest payable).<sup>20</sup> For further discussion of ethics laws related to personal loans and other economic interests, see Chapter 2.

### PENALTIES

These restrictions are part of the Political Reform Act.

Violations of these laws are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>21</sup>

These penalties can include any or all of the following:

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

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).



# Decisions May Not Benefit Family

## BASIC RULES

An important part of a fair process is that everyone, irrespective of their personal relationship to decision-makers, will have the same access to public agency benefits and approvals.

An outgrowth of this principle is the rule that public officials must disclose their interests and disqualify themselves under the Political Reform Act and other laws (for example Government Code section 1090's proscription against interests in contracts) from participating in decisions that will have the result of their immediate family's expenses, income, assets or liabilities increasing or decreasing.<sup>26</sup> "Immediate family" includes one's spouse or domestic partner and dependent children.<sup>27</sup> For further discussion of conflict of interest disclosure and disqualification, see Chapter 2.

Some jurisdictions have also adopted additional policies to prevent nepotism in hiring, promotions and appointments. For example, marital status policies regarding supervisor/supervisee relationships, consensual workplace romance policies, and anti-fraternizations policies. For more information about hiring family members, see "Hiring: When a Relative Wants a Job," available at [www.ca-ilg.org/fair-processes](http://www.ca-ilg.org/fair-processes).

## PENALTIES

The disqualification requirements relating to family members are part of the Political Reform Act. A refusal to disqualify oneself is punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>28</sup>

These penalties can include any or all of the following:

- » Immediate loss of office;<sup>29</sup>
- » Prohibition from seeking elected office in the future;<sup>30</sup>
- » Fines of up to \$10,000 or more depending on the circumstances;<sup>31</sup> and
- » Jail time of up to six months.<sup>32</sup>

If the family members' interest relates to an interest in a contract, penalties for violating Government Code section 1090 apply (for example, felony prosecution or refunds of amounts paid under the contract).<sup>33</sup> For more information about Government Code section 1090, see Chapter 2.

### EFFECT ON AGENCY AND THOSE AFFECTED BY AGENCY'S DECISION

When a disqualified official participates in a decision, it can also void the decision.<sup>34</sup> This can have serious consequences for those affected by the decision as well as the public agency.

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Restrictions and Disqualification Requirements Relating to Campaign Contributions

## BASIC RULES

Generally, the ethics laws with respect to campaign contributions emphasize disclosure rather than disqualification.<sup>35</sup> Disclosure enables voters to assess the degree an official could be influenced by campaign contributors who appear before the agency. Both financial and in-kind (goods and services) support must be disclosed.<sup>36</sup> These requirements are discussed on Chapter 4.

Moreover, the courts have held the receipt of campaign contributions does not generally give rise to a duty to disqualify for bias. For example, a court determined an elected official who received a campaign contribution from a developer is not automatically barred from acting on the developer's land use permit application.<sup>37</sup> The court left open the possibility this scenario could, under certain circumstances, create a problem.

However, under limited (and sometimes counterintuitive) circumstances, certain local agency officials must disqualify themselves from participating in proceedings regarding licenses, permits and other entitlements for use if the official has received campaign contributions of more than \$250 during the previous twelve months from any party or participant.<sup>38</sup> Campaign contributions may be both monetary (dollars) and "in-kind" (goods or services) contributions.<sup>39</sup>

In addition, these officials are prohibited from receiving, soliciting or directing a campaign contribution of more than \$250 from any party or participant in a license, permit or entitlement proceeding while the proceeding is pending and for three months after the proceeding.<sup>40</sup>

### Affected Officials

Generally speaking, this requirement does not apply to officials directly elected to the board of local agencies while acting in the scope of the office for which they were elected. However, elected officials are covered by this prohibition when they sit as members of other boards to which they were not elected (such as joint powers agencies, regional government entities or local agency formation commissions).<sup>41</sup>

Other covered officials include appointed board or commission members who become or have been candidates for elective office.<sup>42</sup>

These prohibitions apply only with respect to campaign contributions from persons who are financially interested in the outcome of the specified proceedings. Those interested persons include:

- » Parties to the proceeding (such as applicants for the permit, license or entitlement); and
- » Participants.<sup>43</sup>

A participant is a person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit or other entitlement for use and who has a financial interest in the outcome of the decision.<sup>44</sup> A person qualifies as a "participant" if he or she attempts to influence the officers or employees of the agency with respect to the decision or testifies in person before the agency with respect to the decision.<sup>45</sup>

## Extortion under California and Federal Law

A demand for campaign contributions can also constitute extortion. Extortion occurs when someone obtains money through threat of harm or under color of official right.<sup>46</sup>

- » **California Law.** Extortion under California law is a misdemeanor.<sup>47</sup> Misdemeanors are punishable by up to six months in county jail, a fine of up to \$1,000 or both.<sup>48</sup> Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings for official misconduct.<sup>49</sup>
- » **Federal Law.** To be chargeable as a federal offense, the act must affect interstate commerce. The maximum penalty for extortion under federal law is 20 years in prison and a \$250,000 fine.<sup>50</sup>

## Kinds of Proceedings Affected

The general rule applies to all proceedings involving licenses and permits, including use permits. This includes:

- » Business, professional, trade and land use licenses and permits;
- » Land use permits;
- » Franchises; and
- » Contracts, other than competitively bid, labor or personal employment contracts.<sup>51</sup>

Examples of land use permits include conditional use permits,<sup>52</sup> zoning variances,<sup>53</sup> and tentative subdivision and parcel maps.<sup>54</sup> Examples of covered contracts include consulting contracts, whether engineering, architectural or legal.<sup>55</sup>

## Actions That Must Be Taken

### Disclosure

When someone files a permit or license application, that individual must publicly report all covered officials to whom the individual made contributions of more than \$250 during the previous twelve months.<sup>56</sup> Likewise, a covered official must publicly disclose on the record of the proceeding any party or participant who has contributed more than \$250 during the previous twelve months to that official.<sup>57</sup>

The disclosure must be made prior to the agency making any decision in the proceeding (without the covered official's participation).<sup>58</sup>

### Disqualification

If prior to making a decision in the proceeding, a covered official knowingly receives more than \$250 in campaign contributions from a party during the previous twelve months, that official must disqualify himself or herself from participating in the proceeding.<sup>59</sup> Likewise, with respect to contributions received from a participant, the covered official must disqualify himself or herself if he or she has reason to know, prior to making a decision in the proceeding, that the participant is financially interested in the outcome of the proceeding.<sup>60</sup>

(Note the disqualification requirement is triggered by actual receipt of campaign contributions, not simply asking for a contribution if the request is unsuccessful. Of course, there are significant ethical issues associated with soliciting campaign contributions from either parties or participants while a decision is pending).

Disqualification means the official may not participate in making any decision in the proceeding, and may not in any way attempt to use his or her official position to influence the decision.<sup>61</sup>

### Avoiding Disqualification

A covered official may avoid disqualification if he or she returns the contribution, or that portion which is over \$250, within 30 days from the time the official knows or has reason to know of the contribution and the proceeding.<sup>62</sup>

### No Contributions During the Proceeding

While the permit or license proceeding is pending and for three months after the decision, covered officials must not solicit or receive campaign contributions from either parties or participants (persons who actively support or oppose a particular decision and are financially interested in the outcome).<sup>63</sup> This prohibition includes a prohibition against soliciting, receiving or directing contributions on behalf of another person or on behalf of a campaign committee.<sup>64</sup>

Likewise, all parties and participants are prohibited during this period of time from making contributions of more than \$250 to any officials involved in the proceedings.<sup>65</sup>

## MORE ON FUNDRAISING

Even when the law does not constrain an official's political fund-raising activities (other than requiring disclosure of donors), it is important to be extraordinarily judicious in choosing those one will ask for campaign contributions.

If an individual or company has matters pending with one's agency, they (and others, including the media and one's fellow candidates) are going to perceive a relationship between the decision and whether they contribute to one's campaign. The unkind characterization for this dynamic is "shake-down."

Two important points to remember:

- Public officials who indicate their actions on a matter will be influenced by whether they receive a campaign contribution put themselves at risk of being accused of soliciting a bribe or extortion.
- The legal restrictions on campaign fund-raising are minimum standards.

## PENALTIES

The disqualification requirements are part of the Political Reform Act. A refusal to disqualify one-self is punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.<sup>66</sup>

These penalties can include any or all of the following:

- » Immediate loss of office;<sup>67</sup>
- » Prohibition from seeking elected office in the future;<sup>68</sup>
- » Fines of up to \$10,000 or more depending on the circumstances;<sup>69</sup> and
- » Jail time of up to six months.<sup>70</sup>

## FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## FOR MORE INFORMATION

See the following resources:

- » "Raising Funds for Favorite Causes," available at [www.ca-ilg.org/fundraising](http://www.ca-ilg.org/fundraising).
- » Institute resources on ethics on the campaign trail, see [www.ca-ilg.org/campaigning-office](http://www.ca-ilg.org/campaigning-office).
- » "FPPC resources on campaign contribution limits, see [www.fppc.ca.gov/learn/campaign-rules/state-contribution-limits.html](http://www.fppc.ca.gov/learn/campaign-rules/state-contribution-limits.html).
- » "Campaign Disclosure Manual 2 - Information for Local Candidates, Superior Court Judges, Their Controlled Committees, and Primarily Formed Committees for Local Candidates," 2016. Available at [www.fppc.ca.gov/learn/campaign-rules/campaign-disclosure-manuals.html](http://www.fppc.ca.gov/learn/campaign-rules/campaign-disclosure-manuals.html).

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

# Agency Staff and Political Activities

## BASIC RULES

There are a number of laws designed to insulate public employees from having to participate in the campaign activities of candidates for their agency's governing board.

### **Employment Decisions, Soliciting Support and Campaign Contributions**

California law forbids candidates and officials from conditioning employment decisions on support of a person's candidacy.<sup>71</sup>

Soliciting campaign funds from agency officers or employees is also unlawful.<sup>72</sup> There is an exception if the solicitation is made to a significant segment of the public that happens to include agency officers or employees.<sup>73</sup> Candidates also may not offer or arrange for an increase in salary for an agency employee in exchange for a political contribution.<sup>74</sup>

Note that members of the International City/County Management Association and the City Attorneys Department of the League of California Cities place a high value on maintaining their independence from the political process. As a result, both organizations encourage their members not to make campaign contributions to local officials.<sup>75</sup>

### **Engaging in Political Activities During Work Hours or While in Uniform**

Engaging in political activities during work hours violates prohibitions against the political use of public resources.<sup>76</sup> Local agencies and school districts may impose additional restrictions on the political activities of employees during working hours or while on agency property.<sup>77</sup> Such restrictions can include wearing political buttons during work hours and displaying political signs at one's workstation.<sup>78</sup>

Additionally, California law prohibits employees or officers of local agencies from engaging in political activities of any kind while in uniform.<sup>79</sup>

For more information about the use of public resources for political purposes, see Chapter 3.

## PENALTIES

Violation of the prohibition against soliciting campaign funds from agency staff is punishable as a misdemeanor.<sup>80</sup> Offering or arranging a raise for an agency employee in exchange for a contribution is punishable by up to a year in county jail, a fine of up to \$5,000 or both.<sup>81</sup>

No penalties are specified in the code sections creating the prohibitions against conditioning employment decisions on political support or against engaging in political activities while in uniform.<sup>82</sup> Presumably violations would fall into the catchall penalty for misconduct in office, which is loss of office.<sup>83</sup>

Public officials face both criminal and civil penalties for using public resources for political benefit.<sup>84</sup> See Chapter 3 for more details.

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

## Holding Multiple Public Offices

There is such a thing as too much public service; the law limits the degree to which public officials can simultaneously hold multiple offices. The reason is, when an official assumes a public office, he or she takes on responsibility to the constituents of that agency to put their interests first. When an official occupies multiple offices in multiple agencies, fulfilling that responsibility becomes more complicated, both legally and ethically.

Potential legal issues include:

- » Political Reform Act issues when the official is in the position of making decisions that affect the official's economic interests. This issue is covered in Chapter 2;
- » Section 1090 issues when the official's position is such that the official has an interest in a contract in which the agency is involved. This issue is also covered in Chapter 2; and
- » Incompatibility of office issues (for example, membership on the city council and serving on the board of another local agency) when the official's offices are such that the official may be subjected to conflicting loyalties.<sup>85</sup>

The incompatible office holding problem differs from a conflict of interest that involves a potential clash between one's private interest and one's public duties, incompatibility of offices normally refers to the "public-public" situation where no personal conflict of interest is involved. Instead there is a potential clash between one's responsibility to two sets of constituents.

A similar but different conflict can arise when a local agency officer engages in incompatible employment activities. Here, there is only one public office with the conflict arising from the outside employment activity.<sup>86</sup>

## BASIC RULES

California law prohibits public officers from simultaneously holding multiple offices that are "incompatible" with one another.<sup>87</sup> Offices are incompatible when:

- » Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;
- » Based on the powers and jurisdiction of the offices, there is a possibility of significant clashes of duties or loyalties between the offices; or
- » Public policy considerations make it improper for the position of making decisions that affect the official's economic interests. This issue is covered in Chapter 2;

The notion underlying the prohibition is that it can be unfair and unwise to have decision-makers who are supposed to have just one agency's (and one agency's constituents) interests at heart assume multiple decision-making roles. As the Attorney General observed, the public is entitled to utmost loyalty from those who occupy offices.<sup>89</sup>

This restriction on holding multiple public offices only applies to positions that are considered to be offices—including appointed or elected members of a governmental board, commission, committee, or other body.<sup>90</sup> The restriction does not apply to positions of employment in an agency,<sup>91</sup> although employees may be prohibited from serving on the governing bodies of agencies in which they are employed.<sup>92</sup>

Note there can be specific legislative exceptions to this rule.<sup>93</sup> Under some circumstances, local agencies may allow simultaneous occupancy of what would otherwise be incompatible offices.<sup>94</sup>



*When one assumes a public office, one takes on responsibility to the constituents of that agency to put their interests first. When one occupies multiple offices in multiple agencies, that job becomes more complicated...*

## SPECIAL ISSUES

### Employees Who Run for the Governing Board of Their Public Agency Employers

Generally, an individual may not serve as an elected or appointed member of a local agency's governing board if he or she is an employee of the local agency.<sup>95</sup> If the employee does not resign, the individual's employment automatically terminates upon being sworn into office.<sup>96</sup> Volunteer firefighters are exempt from these provisions if the firefighter receives no salary.<sup>97</sup>

### Individual Agency Guidelines

Local agencies must adopt rules regarding incompatible employment activities.<sup>98</sup>

#### FOR MORE INFORMATION

On holding multiple offices see "Holding Two Positions" available online at [www.fppc.ca.gov/learn/public-officials-and-employees-rules-/conflict-of-interest/holding-two-positions.html](http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/conflict-of-interest/holding-two-positions.html).

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

## PENALTIES

If an official accepts a second office that is incompatible with an office he or she currently holds, the prior office automatically terminates when the official is sworn into the second office.<sup>99</sup>

#### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).



# Competitive Bidding Processes for Public Contracts

## BASIC RULES

Public contracting laws — including those adopted at the local level — are designed to give all interested parties the opportunity to do business with the government on an equal basis.<sup>100</sup>

This keeps contracts from being steered to businesses or individuals because of political connections, friendship, favoritism, corruption or other factors. It also assures that the public receives the best value for its money by promoting competition among businesses.<sup>101</sup>

Many competitive bidding requirements are locally imposed, for example by charter cities as part of their municipal affairs authority.<sup>102</sup> California law also authorizes local agencies to adopt procedures for acquisition of supplies and equipment.<sup>103</sup> Most purchasing ordinances require competitive bids for contracts in excess of designated dollar amounts.

For public works projects, California law defines when general law cities and counties must use competitive bidding. For general law cities, public works projects over \$5,000 are subject to the state's competitive bidding requirements.<sup>104</sup> For county projects, the threshold is based on population: \$6,500 (counties with populations of 500,000 or over),<sup>105</sup> \$50,000 (counties with populations of 2 million or over)<sup>106</sup> and \$4,000 (all other counties).<sup>107</sup> Note that it is a misdemeanor to split projects to avoid competitive bidding requirements.<sup>108</sup>

The contract for a competitively bid public project must be awarded to the lowest responsible bidder.<sup>109</sup> A responsible bidder is one who is able to perform the contract if awarded.<sup>110</sup>

## EXCEPTIONS

### Emergency

Contracts may be awarded without competitive bidding if the legislative body makes a finding by a four-fifths vote that an emergency exists.<sup>111</sup>

### Professional Services

Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, and surveying, or construction management firms need not be competitively bid, but must be awarded on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.<sup>112</sup> However, if the professional services are too closely akin to the work typically performed by public works construction contractors (for example, some services performed by construction managers), then competitive bidding may be required.<sup>113</sup>

### Special Services

The legislative body of any public agency may contract with and employ persons for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required.<sup>114</sup> The test as to whether services are special services depends on the nature of the services, the necessary qualifications required of a person furnishing the services, and the availability of the service from public sources.<sup>115</sup>

## Design-Build

Design-build is a method of project delivery in which the design and construction functions are combined and contracted to a single entity (called the “design builder”). Local agencies (defined to include cities, counties and special districts<sup>116</sup>), with approval of the agency’s governing body, may use design-build contracting for building construction projects over one million dollars.<sup>117</sup> Local agencies may award design-build projects using either the lowest responsible bidder or best value.<sup>118</sup>

### FOR MORE INFORMATION

On public agency procurement processes, see the Institute resources available at [www.ca-ilg.org/post/fair-procurement](http://www.ca-ilg.org/post/fair-procurement).

## PENALTIES

An agency that improperly awards a bid to any bidder other than the lowest responsible bidder may be liable for reimbursing the low bidder’s actual cost in submitting the bid, but will not be liable for the low bidder’s lost profits.<sup>119</sup>

### HONEST SERVICES, FRAUD AND EXTORTION

Under federal wire and mail fraud laws, the public has the right to the “honest services” of public officials.<sup>120</sup>

The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to a trustee or fiduciary.<sup>121</sup> That duty is violated when a public official makes a decision that is not motivated by his or her constituents’ interests but instead by his or her personal interests.<sup>122</sup> Specifically, honest services fraud refers to actions that constitute bribery and kickback schemes.<sup>123</sup>

“Kickbacks” (for example, receiving money back from proceeds paid to a company that does business with a public entity) in exchange for favorable contracting decisions is one area in which prosecutors have been particularly active.

The maximum penalty for being guilty of wire and/or mail fraud includes a jail term of up to 20 years and a \$250,000 fine.<sup>124</sup>

An official’s refusal to award a contract unless the individual receives benefits can also be prosecuted as extortion.<sup>125</sup> To be chargeable as a federal offense, the act must affect interstate commerce. The maximum penalty for extortion under federal law is 20 years in prison and a \$250,000 fine.<sup>126</sup>

**For more information** about honest services, fraud and extortion, see “Making a Federal Case Out of Corruption,” available at [www.ca-ilg.org/fedcase](http://www.ca-ilg.org/fedcase).

# Whistle-Blowing Protections

## BASIC RULES

California whistle-blowing laws make it unlawful for employers to retaliate against employees who refuse to participate in unlawful activities.<sup>127</sup> Furthermore, if an employee can demonstrate by a preponderance of evidence that his or her whistle-blowing activities were a contributing factor in an adverse employment action, the burden of proof then shifts to the employer to demonstrate by clear and convincing evidence that the employer would have taken the action for “legitimate, independent reasons” even if the employee had not been a whistle-blower.<sup>128</sup> These protections apply specifically to local agency employees.<sup>129</sup>

California law requires employers to post the state attorney general’s whistle-blower hotline number at the workplace.<sup>130</sup> Any employee or member of the public can call the hotline at (800) 952-5225 to register their concerns about potentially unlawful practices.<sup>131</sup>

### FOR MORE INFORMATION

On whistle-blower protections, see the following resources:

- » “For Whom the Whistle Blows,” available at [www.ca-ilg.org/whistle](http://www.ca-ilg.org/whistle).
- » Walking the Line: What to do When You Suspect an Ethics Problem, 2005. Available at [www.ca-ilg.org/WhatToDo](http://www.ca-ilg.org/WhatToDo).

## PENALTIES

Violation of whistle-blower protection laws is a misdemeanor.<sup>132</sup> The maximum criminal penalty for an individual is a year of jail time, a fine of \$1,000 or both.<sup>133</sup> In the case of corporations, the criminal penalty is a fine of up to \$5,000.<sup>134</sup>

In addition, retaliation against an employee for whistle-blowing activities could result in a suit for violation of the employee’s civil rights.<sup>135</sup> Such actions carry the prospect of damages<sup>136</sup> and attorney’s fees awards.<sup>137</sup>

### FOR MORE INFORMATION

On penalties for ethics law violations, see [www.ca-ilg.org/consequences](http://www.ca-ilg.org/consequences).

# Endnotes and Additional Information

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

- 1 See *Nussbaum v. Weeks*, 214 Cal. App. 3d 1589, 1597-98, 263 Cal. Rptr. 360, 365-66 (4th Dist. 1989).
- 2 See *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1234 n.23, 97 Cal. Rptr. 2d 467 (2d Dist. 2000) (finding no common law bias).
- 3 See *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (2d Dist. 1996) (finding common law bias).
- 4 *Haas v. County of San Bernadino*, 27 Cal. 4th 1017, 119 Cal. Rptr. 2d 341 (2002).
- 5 See *Breakzone*, 81 Cal. App. 4th at 1234 n.23, 97 Cal. Rptr. 2d at 490.
- 6 See, e.g., *Nightlife Partners, Ltd. v. City of Beverly Hills*, 108 Cal. App. 4th 81, 89, 133 Cal. Rptr. 2d 234, 241 (2d Dist. 2003).
- 7 *Nightlife Partners*, 108 Cal.App.4th at 97-98, 133 Cal. Rptr. 2d at 248.
- 8 See *Fairfield v. Superior Court*, 14 Cal. 3d 768, 122 Cal. Rptr. 543 (1975); *Mennig v. City Council*, 86 Cal. App. 3d 341, 150 Cal. Rptr. 207 (2d Dist. 1978).
- 9 See *Cohan v. City of Thousand Oaks*, 30 Cal. App. 4th 547, 35 Cal. Rptr. 2d 782 (2d Dist. 1994) (where local ordinance called for "person" appealing planning commission decision to city council to show cause why the commission's action should be overturned, city council's decision to appeal the action to itself was an appearance of conflict of interest and was part of overall violation of developer's substantive and procedural due process rights).
- 10 *Fairfield v. Superior Court*, 14 Cal. 3d 768, 122 Cal. Rptr. 543 (1975).
- 11 *Nasha v. City of Los Angeles*, 125 Cal. App. 4th 470, 482, 22 Cal. Rptr. 3d 772 (2004).
- 12 See generally Cal. Civ. Proc. Code § 1094.5. See *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 56 Cal. Rptr. 2d 223 (2d Dist. 1996) (requiring the council to rehear an appeal from the planning commission's decision and provide a fair hearing).
- 13 See 42 U.S.C. §§ 1983, 1988.
- 14 Cal. Penal Code § 86.
- 15 91 Cal. Op. Att'y Gen. 46 (2008).
- 16 Cal. Penal Code § 86.
- 17 See Cal. Pen. Code § 88. See also Cal. Elect. Code § 20 (making those convicted of a felony involving bribery, embezzlement, extortion or theft of public money ineligible for public office); Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 18 Cal. Gov't Code § 87460(a), (b).
- 19 See Cal. Gov't Code § 87460(c), (d).
- 20 See Cal. Gov't Code § 87461.
- 21 See generally Cal. Gov't Code §§ 91000-14.
- 22 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 23 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 24 Cal. Gov't Code § 91000(b).
- 25 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 26 2 Cal. Code Regs. § 18700.
- 27 See Cal. Gov't Code § 82029.
- 28 See generally Cal. Gov't Code §§ 91000-14.
- 29 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 30 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 31 Cal. Gov't Code § 91000(b).
- 32 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 33 See, e.g., *People v. Honig*, 48 Cal. App. 4th 289, 55 Cal. Rptr. 2d 555 (1996).
- 34 See Cal. Gov't Code § 91003(b).
- 35 This is a requirement of the Political Reform Act. See generally Cal. Gov't Code §§ 84100-511.
- 36 Cal. Gov't Code § 82015; 2 Cal. Code Regs. § 18421.1.
- 37 *Woodland Hills Residents Association v. City Council*, 26 Cal. 3d 938, 164 Cal. Rptr. 255 (1980). But see Cal. Gov't Code § 84308; 2 Cal. Code Regs. §§ 18438.1-.8 (defining who is disqualified from acting on a land use entitlement application after receipt of a campaign contribution).
- 38 Cal. Gov't Code § 84308(c).
- 39 See Cal. Gov't Code § 82015; 2 Cal. Code Regs. § 18215.
- 40 See Cal. Gov't Code § 84308(b).
- 41 See Cal. Gov't Code § 84308(a)(3); 2 Cal. Code Regs. § 18438.1.

- 42 See Cal. Gov't Code § 84308(a)(4); 2 Cal. Code Regs. § 18438.1. See also Davis Advice Letter No. A-02-344.
- 43 See Cal. Gov't Code § 84308(b), (c); 2 Cal. Code Regs. § 18438.4.
- 44 See Cal. Gov't Code § 84308(a)(2).
- 45 *Id.*
- 46 Cal. Pen. Code §§ 518; 18 U.S.C. § 1951.
- 47 Cal. Penal Code § 521.
- 48 Cal. Penal Code § 19.
- 49 Cal. Gov't Code §§ 3060-3074.
- 50 18 U.S.C. § 1951(a). See generally 18 U.S.C. § 3571(b).
- 51 See Cal. Gov't Code § 84308(a)(5); 2 Cal. Code Regs. § 18438.2.
- 52 Cal. Gov't Code § 65901.
- 53 Cal. Gov't Code § 65906.
- 54 Cal. Gov't Code §§ 66411-413.5.
- 55 Cal. Gov't Code §§ 4526, 37103, 53060.
- 56 Cal. Gov't Code § 84308(d); 2 Cal. Code Regs. § 18438.8.
- 57 Cal. Gov't Code § 84308(c).
- 58 *Id.*
- 59 *Id.*
- 60 *Id.*
- 61 *Id.*
- 62 *Id.*
- 63 Cal. Gov't Code § 84308(b).
- 64 *Id.*
- 65 Cal. Gov't Code § 84308(d).
- 66 See generally Cal. Gov't Code §§ 91000-14.
- 67 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 68 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 69 Cal. Gov't Code § 91000(b).
- 70 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 71 See Cal. Gov't Code § 3204, which reads as follows: No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.
- 72 See Cal. Gov't Code § 3205.
- 73 See Cal. Gov't Code § 3205(c).
- 74 See Cal. Gov't Code § 3205.5, which reads as follows: No one who holds, or who is seeking election or appointment to, any office shall, directly or indirectly, offer or arrange for any increase in compensation or salary for an employee of a state or local agency in exchange for, or a promise of, a contribution or loan to any committee controlled directly or indirectly by the person who holds, or who is seeking election or appointment to, an office. A violation of this section is punishable by imprisonment in a county jail for a period not exceeding one year, a fine not exceeding five thousand dollars (\$5,000), or by both that imprisonment and fine.
- 75 The ICMA Code is available on the ICMA website at: <http://icma.org/codeofethics>.
- 76 See Cal. Gov't Code § 8314.
- 77 See Cal. Gov't Code § 3207 (providing that any city, county or local agency may prohibit or restrict officers and employees engaging in political activity during working hours and political activities on agency premises); Cal. Educ. Code § 7055; 5 U.S.C. §§ 7321-26 (prohibiting employees of state and local executive agencies who work in connection with programs financed in whole or in part by federal loans or grants from engaging in political activities while on duty).
- 78 See *Cal. Teachers Ass'n v. Governing Bd.*, 45 Cal.App.4th 1383, 53 Cal.Rptr.2d 474 (1996); 5 C.F.R. § 734.306 example 16 (with limited exception, those employees working in connection with federally funded programs "may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.").
- 79 Cal. Gov't Code § 3206. See also Cal. Gov't Code § 3302.
- 80 See Cal. Gov't Code § 3205.
- 81 See Cal. Gov't Code § 3205.5, which reads as follows: No one who holds, or who is seeking election or appointment to, any office shall, directly or indirectly, offer or arrange for any increase in compensation or salary for an employee of a state or local agency in exchange for, or a promise of, a contribution or loan to any committee controlled directly or indirectly by the person who holds, or who is seeking election or appointment to, an office. A violation of this section is punishable by imprisonment in a county jail for a period not exceeding one year, a fine not exceeding five thousand dollars (\$5,000), or by both that imprisonment and fine.
- 82 See Cal. Gov't Code §§ 3204, 3206.
- 83 See Gov't Code §§ 3060-75. See also *Steiner v. Superior Court*, 50 Cal.App.4th 1771, Cal. Rptr.2d 668 (1996) (discussing the types of misconduct warranting removal from office under section 3060).
- 84 See Cal. Penal Code § 424; Cal. Gov't Code § 8314.

- 85 See Cal. Gov't Code § 1099.
- 86 See Cal. Gov't Code § 1126.
- 87 Cal. Gov't Code § 1099(a).
- 88 Cal. Gov't Code § 1099(a)(1)-(3).
- 89 91 Cal. Op. Att'y Gen. 25 (2008)
- 90 Cal. Gov't Code § 1099(a).
- 91 Cal. Gov't Code § 1099(c).
- 92 Cal. Gov't Code § 53227(a); Cal. Educ. Code §§ 35107(b)(1), 72103(b)(1).
- 93 See, e.g., Cal. Health & Safety Code § 6480(b) (relating to city officials serving on sanitary districts) See also 85 Cal. Op. Att'y Gen. 239 (2002) (noting the Legislature can create exceptions to the incompatibility doctrine).
- 94 See 66 Cal. Op. Att'y Gen. 293 (1983) (offices of city and county planning commission are incompatible but county and charter city may adopt legislation specifying otherwise).
- 95 See Cal. Gov't Code § 53227 (for cities, counties and special districts); Cal. Educ. Code §§ 35107(b)(1) (school districts), 72103(b)(1) (community college districts). See also 84 Cal. Op. Att'y Gen. 126 (2001) (community college board member may not become part-time instructor for district).
- 96 Cal. Gov't Code § 53227(a); Cal. Educ. Code §§ 35107(b)(1), 72103(b)(1).
- 97 See 85 Cal. Op. Att'y Gen. 230 (2002) ("salary" does not include per-call and equipment stipends).
- 98 Cal. Gov't Code § 1126(c).
- 99 Cal. Gov't Code § 1099(b) (noting that this position is enforceable through Civil Procedure Code section 803). *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636, 107 P.2d 388 (1940). See also Cal. Gov't Code § 1126.
- 100 See Cal. Pub. Cont. Code § 100.
- 101 *Id.*
- 102 *Smith v. City of Riverside*, 34 Cal. App. 3d 529, 110 Cal. Rptr. 67 (4th Dist. 1973). See also Cal. Pub. Cont. Code § 1100.7.
- 103 Cal. Gov't Code §§ 54201-25.
- 104 Cal. Pub. Cont. Code § 20162.
- 105 Cal. Pub. Cont. Code § 20122.
- 106 Cal. Pub. Cont. Code § 20123.
- 107 Cal. Pub. Cont. Code § 20121.
- 108 Cal. Pub. Cont. Code § 20163.
- 109 Cal. Pub. Cont. Code § 20162.
- 110 See Cal. Pub. Cont. Code § 1103.
- 111 Cal. Pub. Cont. Code §§ 1102, 20168, 22050.
- 112 Cal. Gov't Code § 4526.
- 113 *City of Inglewood-Los Angeles County Civic Ctr. Auth. v. Superior Court*, 7 Cal. 3d 861, 103 Cal. Rptr. 689 (1972).
- 114 Cal. Gov't Code § 53060.
- 115 *Cal. School Employees Ass'n v. Sunnyvale Elementary Sch. Dist.*, 36 Cal. App. 3d 46, 60, 111 Cal. Rptr. 433, 442 (1st Dist. 1973).
- 116 Cal. Pub. Cont. Code § 22161(f).
- 117 Cal. Pub. Cont. Code § 22162.
- 118 Cal. Pub. Cont. Code § 22164.
- 119 *Kajima/Ray Wilson v. Los Angeles County Metro. Transp. Auth.*, 23 Cal. 4th 305, 315-16, 96 Cal. Rptr. 2d 747 (2000).
- 120 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).
- 121 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).
- 122 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).
- 123 See *Skilling v. U.S.*, 130 S.Ct. 2896, 2931(2010) (holding that in order to avoid unconstitutional vagueness, 18 USC §1346, defining "scheme or artifice to defraud," only criminalizes bribes and kick-back schemes).
- 124 18 U.S.C. §§ 1341 ("... shall be fined under this title or imprisoned not more than 20 years, or both."), 1343 ("shall be fined under this title or imprisoned not more than 20 years, or both.").
- 125 18 U.S.C. § 1951.
- 126 18 U.S.C. § 1951(a).
- 127 See Cal. Lab. Code § 1102.5(c) ("An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.").
- 128 Cal. Lab. Code § 1102.6.
- 129 See Cal. Lab. Code § 1106.
- 130 See Cal. Lab. Code § 1102.8 (requiring employers to post employees' rights and responsibilities under the whistle-blower laws, including the telephone number for the Attorney General's hotline).
- 131 See Cal. Lab. Code § 1102.7 (requiring the Attorney General to set up the hotline).
- 132 Cal. Lab. Code § 1103.
- 133 *Id.*
- 134 *Id.*
- 135 See, e.g., *Connick v. Myers*, 461 U.S. 138, 103 S.Ct. 1684 (1983); *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will County, Ill.*, 391 U.S. 563, 88 S.Ct. 1731 (1968); *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951(2006).
- 136 42 U.S.C. § 1983.
- 137 42 U.S.C. § 1988.



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## **Your Role as an Elected Official**

## How Well-Informed Public Officials Promote the Public Interest\*

Training, education and keeping abreast of developments essential for the public service are the oldest form of education in California. The first compulsory education of which there is a record was for the public service.

The seventh Governor of California, Diego de Borica, a man of wit and charm, took office in 1794. This was 50 years before the ability to read, write and update one's knowledge of changing events was considered necessary for the common man. Finding that only 14 of his 50 soldiers at the capital in Monterey had the ability to read and write, de Borica made available the three touchstones of keeping up to date (teachers, money and materials) and started California's first compulsory education program, confining it to those in public service.

Nearly another century passed before there was compulsory education in California for the general populace. Consequently, any discussion of the role of elected leaders in California in "keeping up" stems from venerable precedents.

Thirty years ago, the League of California Cities published *Municipal Post-entry Training Needs and Resources*, which fostered modern policies to make available time, money and materials for keeping abreast.

One could spend an entire career examining the endless diversities of mayors, council persons, other city officials and the ways in which leadership greatness occurs. No matter how long the list or how exhaustive the examples, one recurring characteristic of leaders is an unquenchable thirst to learn, to absorb, to put theory into practice, and to follow and understand the ebb and flow of events as they unfold.

Very often, one finds extremely able women and men in governmental leadership positions who are skilled analysts but who cannot move from analysis to action because they lack the best and most current information. Maybe this is what General Carl Spatz had in mind when he said of a fellow officer in World War II, "He thinks things through very carefully and then goes off half-cocked." What is often lacking to keep local government officials from going off "half-cocked" is an inability to relate the specific situation in their city to the general situation or emerging trends and experiences of other cities and other local government officials, whether elected or appointed.

There is nothing sadder or more depressing than to hear from a public official, "I don't have time to go to this training program, or that statewide meeting of a Cal Cities department." Or, "Our budget is too tight to spend money on trying to learn something new." Or, "We are not interested in what is going on in Sacramento, or within the various professions that make up local government, or how other cities similar to ours met and solved that problem."

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\* by Randy H. Hamilton, Institute of Governmental Affairs, University of California, Berkeley. Reprinted with permission from *Western City* magazine.

City officials are always quick to point out, and rightly so, the differences between the public and private sectors. One of the differences they frequently overlook is that when things are tough in the private sector the *last* thing that gets the budget ax is research, training and development. What are the *first* things that get cut when things are tough in the public sector? They are budgeted funds for training, continuing education and attendance at professional meetings to acquire the newest knowledge and ways of doing things. This approach to allocation of resources is one of the main differences between the public and the private sectors.

Local government leaders need a far-reaching “education” in the broadest sense: exposure to different points of view and current trends. City officials need the ability to openly look at issues and to adapt their thinking to clearly reflect the matters at hand, to seek the widest possible spectrum of orientation and options for policy formulation and implementation. It is often from the clash of old and new ideas that learning begins to take shape.

Cal Cities, through its many conferences, institutes, regional division activities, and the annual conference, provides an ideal vehicle for city officials, without enrolling in formal degree or training programs, to fulfill individual goals and improve public activities. Cal Cities does this by making “education” -- broadly defined -- become part of the everyday business of governance.

If history teaches us anything, it is that neither Plato’s philosopher-kings nor Jackson’s untutored citizenry can, in today’s world, safely manage a free society. There may have been a time in the past when cities could be run on the theory that any person could conduct the affairs of a municipality just as any person might poke a fire or rock a baby, but that won’t suffice today or tomorrow. Our urban areas are becoming too complex and central to the society in which we live for that simplistic approach to policy-setting, management and public endeavor.

An “educated” newly elected or appointed official has just begun his or her education upon election or appointment. He or she reads, discusses, assimilates knowledge all through the tenure in public life. It has become increasingly difficult for the well-educated to remain well-educated, however brilliant the individual may be. If he or she is in a moderately specialized professional field -- as most are -- it is a difficult job to keep up with advances in one’s own field, but doing so must not hinder or interfere with doing so in fulfillment of public responsibilities.

I recall an incident concerning a friend, an elected council person who was “too busy” to attend a specialized Cal Cities conference. Had he attended, he would have learned that the speech he delivered at a City Council meeting, which was widely quoted in the press, urged approval of a policy that was clearly illegal. All hands suffered indignity and embarrassment when the city attorney and city manager had to publicly refute the council member’s position because he was “too busy” to keep up with the kaleidoscope of affairs municipal.

The late Justice Felix Frankfurter put it succinctly:

“Without . . . highly trained, imaginative and courageously disinterested public officials the democratic aim of our society cannot be achieved. Such a body of public officials is indispensable, no matter what social and economic policies may express the popular will in the

executive and legislative branches of Government.”

Would that every public official in every city in California took as an essential task continuing education and training in the broad sense expressed here. Then, perhaps, they would achieve the wish best expressed in the words of John Masefield’s couplet:

There were three men, as  
Down the road came he;  
The man they saw, the man he was,  
The man he wanted to be.

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## Steering the Ship<sup>[1]</sup>

“When I ran for office, I was the captain of my ship, steaming through a successful election. Now that I’m a city council member, I feel like a novice on a tiny sailboat, tacking from point to point, trying to make headway.”

-- former Minneapolis city council member

Cooperation, coordination, collaboration – not unfamiliar concepts for most municipalities. But how can communities really practice these concepts? And what, in particular, is the role of elected and professional leaders in promoting them?

One popular strategy for reinventing community is reinventing how cities provided services to citizens – making them easier to use and cheaper to implement by reducing overlap and duplication. This strategy has worked effectively in cities of many sizes, and is often necessary to access complicated state and federal resources. A collaborative stance, however, can be an uneasy position for elected officials. After all, elected officials are accustomed to shaping their destinies, and city staff are accustomed to charting careful progress with procedures that emphasize stability and uniformity.

So what is collaboration? How is it different from the work most groups are used to doing? And how can city leaders promote and sustain effective collaborations? In this discussion. We’ll use a broadly accepted definition of collaboration from the *Collaboration Handbook: Creating, Sustaining and Enjoying the journey* by Karen Ray and Michael Winer: “Collaboration is a mutually beneficial and well-defined relationship entered into by two or more organizations to achieve results they are more likely to achieve together than alone.”

### A Metaphor for Collaborating

In the past, when we wanted to improve ourselves we created a task force or an office to make changes, to oversee planning, and to spend resources. We added programs, staff or facilities to ensure we met our needs. In essence, we built a bigger boat. It’s always been done that way. This way, we’re in control of the ship and we can clearly assign accountability to specific individuals. We can forecast the cost of building a bigger boat and predict any risk.

Unfortunately, we’ve learned that all that luxurious control carries a high price tag. Staff and programs cost money and our huge vessel grows difficult to navigate. It’s almost as if we’ve set up a wonderful target for all the rest of the flotilla to attack. For we are not in our boat alone. Many of our citizens and the organizations they belong to also care passionately about the services the city provides. Many people are shipping off to a destination called Reinventing Community in various crafts like canoes, dugouts, speedboats, tugs, barges, and anything else that can float.

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<sup>[1]</sup> This article is reprinted with permission from the June-July 1997 issue of *Minnesota Cities Magazine*, a publication of the League of Minnesota Cities. Written by Karen Ray, president of Karen Ray Associates.

Collaborating is like building a marina – making space for everyone’s vessel; collecting all that passionate interest and using it effectively. A marina handles many different ships or boats, and creates order so each can move the way it needs to. The role of leaders is to create an environment that promotes collaboration. Leaders are like managers of marinas, or of environments that encourage redesign of systems and bail our duplication of cost or service.

## **The Process of Collaboration**

Collaborations develop over time – just as marinas do – and are fueled with passion, power and politics. Partnerships usually start person-to-person. A city administrator has lunch with an agency director and they get excited about a new idea. During the first stage of collaboration, individuals imagine the results they want and excite others about that vision – often one person or small group at a time. This stage is characterized by many meetings and revisions of the initial vision statement to reflect everyone’s passions. Our marina makes space for all passionate sailors so the each can participate and contribute.

## **Passion: The Leader’s Role**

Recognize that other people’s passions will not go away. You can rely on them to show up at public meetings, for instance, in order to be heard. How can you round up all of that energy and resources and guide it to good results? Do you have the right people, able to make decisions for their agencies or groups, in the room working together?

Now admit to yourself and to others what you will get out of this change. What is your personal self-interest? We use words like “hidden agenda” or “turf” to refer to other people’s selfinterests, but self-interest is not inherently bad after all, it got you your job. Hiding self-interest or being evasive about it is what makes us targets of suspicion.

Gradually, the focus in a collaboration shifts from individuals to the organizations they represent. It’s great to be passionate about a dream and the desired results, but it’s going to take the organizations’ resources to make those results happen. It’s at this stage that wise partnerships collect everybody’s power and apply it to achieve results. Trying to reduce someone else’s power, ignoring conflicts, and avoiding difficult discussions and decisions indicates that true collaboration is not happening.

## **Power: The Leader’s Role**

At this point leadership may play its most vital role surfacing conflict and keeping the vision and desired results central to decision making. People naturally avoid the difficult discussions and dialogues that true change engenders. Someone may be perceived as a potential “loser” if systems are reformed. Your job as leader is to help the group face that prospect, and treat it professionally and bravely. Do you insist on resolving long-standing conflicts?



Specific action plans emerge as conflicts are resolved. Organizations make real headway when they start responding to the plans by changing individual policies and procedures. Once again, the marina metaphor illustrates the point: plenty of meetings with marina builders, officials and bureaucrats occur in the marina architect's office. But all the meetings in the world lead to nothing unless ground is broken and construction begins.

### **Politics: The Leader's Role**

Partnerships use politics to break ground and accomplish plans. As political will for change builds, a collaboration enters its maturity. Communities are reinvented as city leaders and community participants put new standard operating procedures in place. This takes time so leaders must keep the enthusiasm brewing. Do you openly ask organizations to change policies, and do you help groups assess whether or not the changes are working?

### **Real Change**

Charles Bruner earns us in his book *Thinking Collaboratively: Ten Questions and Answers to Help Policy Makers Improve Children's Services*, that efforts to repair fragmented systems often result in "pro forma responses to mandates" rather than in real changes. This is because collaboration requires courage to resolve conflict, and leadership to support the long-term effort required by true partnerships. You can reinvent your community if you remember your role as a leader: to ask yourself these questions so that you create and sustain an environment where the principles of collaboration are applied at all stages of work.

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## **Council Conduct with City Staff, the Public, and Each Other**

### **Council Conduct with One Another**

*“In life, courtesy and self-possession, and in the arts, style, are the sensible impressions of the free mind, for both arise out of a deliberate shaping of all things and from never being swept away, whatever the emotion, into confusion or dullness.”*

**--William Butler Yeats**

Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may “agree to disagree” on contentious issues. The City’s Code of Ethics & Values should be referred to for positive statements of ethical behavior.

#### **IN PUBLIC MEETINGS**

##### **Use formal titles.**

It is preferred that Council refer to one another formally during public meetings as Mayor, Vice Mayor or Council Member followed by the individual’s last name.

##### **Practice civility and decorum in discussions and debate.**

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. However, making personal, slanderous, threatening, abusive, or disparaging comments is not appropriate. No shouting or physical actions that could be construed as threatening will be permitted.

##### **Honor the role of the Chair in maintaining order.**

It is the responsibility of the Chair to keep the comments of all participants on track during public meetings. Council Members should honor efforts by the Chair to focus discussion on current agenda items. If there is disagreement about the agenda or the Chair’s actions, those objections should be voiced politely and with reason, following procedures outlined in Robert’s Rules of Order.

##### **Demonstrate effective problem solving approaches.**

Council Members have a public stage to show how individuals with disparate points of view can find common ground and understanding, negotiating solutions that benefit the community as a whole.

#### **IN PRIVATE ENCOUNTERS**

##### **Continue respectful behavior in private.**

The same level of respect and consideration of differing points of view, that is deemed appropriate for public discussions, should be maintained in private conversation.

**Be aware of the insecurity of written notes, voicemail messages, and e-mail.**

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to others? How would you feel if this voicemail message was played on a speakerphone in a full office? What would happen if this e-mail message was forwarded to others? Written notes, voicemail messages and e-mail should be treated as potentially “public” communication.

**Even private conversations can have a public presence.**

Elected officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may or may not know. Lunch table conversations can be eavesdropped upon, parking lot debates may be watched, and casual comments between individuals before and after public meetings noted.

**Council Conduct with City Staff**

*“Whenever there is a human being, there is an opportunity for kindness.”*

**--Seneca**

Governance of a City relies on the cooperative efforts of elected officials, who set policy, and the City Manager and staff, who implement and administer the Council’s policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

**Treat all staff as professionals.**

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

**Direct staff issues and assignments to the City Manager.**

Assignments for City staff and/or requests for additional background information should be directed only to the City Manager.

Requests for follow-up or directions to staff should only be made through the City Manager or the City Attorney when appropriate. Materials supplied to a Council Member in response to a request will be made available to all members of the Council so that all have equal access to information.

**Never publicly criticize an individual employee.**

Council should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee’s supervisor. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Comments about staff in the office of the City Attorney should be made directly to the City Attorney.

**Allow staff to handle administrative functions.**

Council Members must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

**Check with the City Manager on correspondence before taking action.**

Before sending correspondence, Council Members should check with the City Manager or Executive Assistant to the Mayor and City Council to see if an official City response has already been sent or is in progress.

**Limit requests for staff support.**

Routine secretarial support will be provided to all Council Members. All mail for Council Members is opened by the Executive Assistant to the Mayor and City Council, unless other arrangements are requested by a Council Member. Mail marked personal or confidential is not opened.

Requests for additional staff support – even in high priority or emergency situations – should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

**Do not solicit political support from staff.**

Council Members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace. City employees are prohibited from using City resources, City time or appearing in uniform in relation to political activities.

**Council Conduct with the Public**

*“If a man be gracious and courteous to strangers, it shows he is a citizen of the world, and that his heart is no island cut off from other lands, but a continent that joins to them.”*

**--Francis Bacon**

**IN PUBLIC MEETINGS**

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual Council Members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

**Be welcoming to speakers and treat them with care and gentleness.**

Most residents may be nervous speaking before the City Council since they do not do it very often. They may feel uncomfortable and emotional. Putting speakers at ease will allow them to express their viewpoints more effectively, make Council meetings run more efficiently, and help the democratic process be fulfilled.

**Be fair and equitable in allocating public hearing time to individual speakers.**

The Chair will determine and announce limits on speakers at the start of the public hearing process, per Council policy. Generally, each speaker will be allocated four minutes with applicants and appellants or their designated representatives allowed 10 minutes. If many speakers are anticipated, the Chair may ask for speaker cards to be filled out and may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.

No speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the Council requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the Chair reopens the public hearing for a limited and specific purpose.

**Give the appearance of active listening.**

It is disconcerting to speakers to have Council Members not look at them when they are speaking. It is fine to look down at the documents or to make notes, but reading for a long period of time, gazing around the room, or entering into prolonged dialogue with adjacent Council Members or staff gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as “smirking,” disbelief, anger or boredom.

**Ask for clarification, but avoid debate and argument with the public.**

Only the Chair – not individual Council Members – can interrupt a speaker during a presentation. However, a Council Member can ask the Chair for a point of order if the speaker is off the topic or exhibiting behavior or language the Council Member finds disturbing.

If speakers become flustered or defensive by Council questions, it is the responsibility of the Chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by Council Members to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Council Members’ personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

**Undertake no personal attacks of any kind, under any circumstance.**

Council Members should be aware that their body language and tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

**Follow parliamentary procedure in conducting public meetings.**

The City Attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to Roberts Rules or Order. Final rulings on parliamentary procedure are made by the Chair, subject to the appeal of the full Council.

IN UNOFFICIAL SETTINGS

**Make no promises on behalf of the Council.**

Council Members will frequently be asked to explain a Council action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information or appropriate action. It is inappropriate to overtly or implicitly promise Council action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.)

**Make no personal comments about other Council Members.**

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Council Members, their opinions and actions.

**Remember that Council Members are always on display.**

Council Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in their city. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Council Members, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

## **Council Conduct with Other Public Agencies**

**Be clear about representing the City or personal interests.**

If a Council Member appears before another governmental agency or organization to give a statement on an issue, the Council Member must clearly state if his or her statement reflects personal opinion or is the official stance of the City.

If the Council Member is representing the City, the Council Member must support and advocate the official City position on an issue, not a personal viewpoint.

If the council Member is representing another organization whose position is different from the City, the Council Member should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council Members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

**Correspondence should also be equally clear about representation.**

City letterhead may be used when the Council Member is representing the City and the City's official position. A copy of official correspondence should be given to the Executive Assistant to the Mayor and City Council to be filed in the Council Office as part of the permanent public record.

Correspondence of Council Members representing a personal point of view on a City issue, or a dissenting point of view from an official Council position, should make it clear that the views expressed represent only the individual Council Member.



## **Council Conduct with Boards, Commissions and Committees**

*“We rarely find that people have good sense unless they agree with us.”*

**--Francois, Duc de La Rochefoucauld**

The City has established several Boards, Commissions and Committees (collectively referred to as City Commissions) as a means of gathering more community input. Citizens who serve on City Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City’s leadership and should be treated with appreciation and respect.

### **If attending a City Commission meeting, express personal opinions only.**

Council Members may attend any City Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation – especially if it is advocating a certain position – could be viewed as unfairly affecting the process. Any public comments by a Council Member at a City Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council, unless the Council has taken a position on the topic. Council Members should not appear before a commission on behalf of an individual, business or developer.

### **Remember that City Commissions serve the community, not individual Council Members.**

The City Council appoints individuals to serve on City Commissions, and it is the responsibility of City Commissions to follow policy established by the Council. But City Commission members do not report to individual Council Members, nor should Council Members feel they have the power or right to threaten City Commission members with removal if they disagree about an issue. Appointment and re-appointment to a City Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A City Commission appointment should not be used as political “reward.” Concerns about an individual City Commission member should be discussed with the Mayor.

### **• Be respectful of diverse opinions.**

A primary role of City Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council Members may have a closer working relationship with some individuals serving on the City Commissions, but must be fair and respectful of all citizens serving on City Commissions.

### **Keep political support away from public forums.**

City Commission members may offer political support to a Council Members, but not in a public forum while conducting official duties. Conversely, Council Members may support board and commission members who are running for office, but not in an official forum in their capacity as a Council Member.

## Preparing for Successful Public Meetings: Checklist for Before, During, and After

These are general suggestions. Formal board, commission or council meetings will have additional and more technical preparation requirements.

### Before the Meeting

#### The Issue

- Develop a clear statement about the topic and how it might affect the public.
- Set clear expectations about the purpose of the meeting and intended outcomes.
- Create an agenda with estimated times, and whether an item is information, review or a decision.

#### Outreach

- Identify which types of community members you hope will attend.
- In addition to advisory boards and task forces, speak to leaders from a wide range of groups (such as school, business, faith-based, health and neighborhood groups).
- Send out an e-blast; issue a press release; post to blogs.
- Use social media to announce the meeting and invite people. Include directions, transit routes and suggestions about parking.
- Reach out to the community; talk to people one on one and to groups at *their* meetings.
- Translate outreach materials as needed and share with appropriate community groups.

#### Logistics

- If you have flexibility, choose a time of day that is convenient for those you are trying to include.
- Make sure the facility and equipment are suited to your intended purpose and audience.

- Determine if special accommodations are warranted (for example, food, childcare, translation services or devices).

### Information

- Educate oneself and staff about the topic ahead of time.
- Line up subject matter experts as needed; explain the need to translate technical information into plain language that everyone can understand.
- Make information available to the public before the meeting, in a variety of formats including online and via community outreach.
- Invite questions ahead of time.
- Determine application of open meeting laws and assure compliance.

### During the Meeting

#### Explaining the Process

- Be clear who is running the meeting.
- Define the goal of the meeting, key topics and what decisions will or will not be made.
- Introduce all public officials.
- Explain the meeting process, when it is the public's turn and time restrictions (and the reasons for the time restrictions).
- Clarify how comments will get recorded and used.

#### Information Sharing

- Have high quality visual aids and adequate handouts.
- Keep explanations as simple as possible and avoid acronyms and technical terms.

*Continued on next page*

## Managing the Discussion

- Set a friendly tone.
- Be attentive and use active listening skills.
- Explain what plan/process the agency is using to determine what is on topic and off topic.
- Capture off topic comments to be addressed at a different time.
- Be honest about what the agency can and cannot do; define parameters.
- Solicit comments from those not heard, using direct invitation, such as a “last call” or cards requesting written comments.

## Creating a Welcoming Environment

- Provide food (ideally multi-ethnic to match your community’s preferences).
- Offer name tags and sign-in sheets; collect emails for follow-up (keeping in mind that it is optional for attendees to provide their names and contact information).
- Express appreciation to all attendees.
- Provide an anonymous feedback form to all attendees to learn what worked well and what can be improved for next time.

## After the Meeting

- Prepare and post a meeting summary.
- Send out an “e-blast” about decisions, action items, next steps and any follow-up meetings; provide a specific contact person.
- Reach out to attendees who did not speak up during the meeting (they may care just as much but may be introverts).
- Follow up with those who might be disappointed with the decision; encourage them to stay involved.
- Keep asking for feedback and continue to provide information about the issue.
- Apply the evaluation to the next public process.

“Before the meeting, educate the public. During the meeting, educate the public. After the meeting, keep educating the public.”

- Advice shared by a County Supervisor at a  
CSAC Institute Training

### Resources Available through the Institute

The Institute’s Meeting Resource Center aims to help local officials and agency staff make the most of meeting time. [www.ca-ilg.org/meeting-resource-center](http://www.ca-ilg.org/meeting-resource-center)

### About the Institute for Local Government

This checklist is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial and easy-to-use resources for California communities.

ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute’s resources on local government 101 and public engagement, visit [www.ca-ilg.org/local-government-101](http://www.ca-ilg.org/local-government-101) and [www.ca-ilg.org/engagement](http://www.ca-ilg.org/engagement). To access this resource directly, go to [www.ca-ilg.org/ PublicMeetingPrepChecklist](http://www.ca-ilg.org/PublicMeetingPrepChecklist).

The Institute welcomes feedback and suggestions for improving this resource:

- *Email:* [publicengagement@ca-ilg.org](mailto:publicengagement@ca-ilg.org) Subject: *Preparing for Successful Public Meetings: Checklist for Before, During and After*
- *Mail:* 400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

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# Making Your Open Public Meetings More Effective



California law provides general rules which local agencies must follow when conducting official business. In addition to state law, many local agencies have their own rules of conduct and procedure. However, merely following the laws and rules will not always result in an effective meeting. Outlined below are the basics of California's open meeting laws as well as tips for both local officials and the public to help ensure a successful meeting.

## Basics of California's Open Meeting Laws

- Elected and most appointed local-agency bodies must conduct their business in open and public meetings.<sup>1</sup>
- The law allows for private discussion during closed sessions under very limited circumstances.<sup>2</sup>
- A "meeting" is any situation involving a majority of a public body in which agency business is transacted or discussed. In other words, a majority of the body cannot communicate privately about a matter of agency business no matter how the communication occurs, whether by telephone or e-mail, or at a local coffee shop.<sup>3</sup>
- The public must be informed of the time and place of each meeting and the issues to be addressed.<sup>4</sup>
- The agenda must be posted at least 72 hours in advance of a regular meeting and written in a way that informs people of what business will be discussed.<sup>5</sup> Special meetings require 24-hour notice to the members of the governing body and media outlets and must include a brief description of the business that will be discussed.<sup>6</sup>
- In general, public officials may only discuss and act on items included on the posted agenda for a meeting.
- The public has a right to address the governing body at any meeting.<sup>7</sup>
- Local agencies may adopt reasonable rules to ensure everyone has an opportunity to be heard in an orderly manner.<sup>8</sup> For example, some agencies impose a uniform time limit on each person providing public comments on an issue.
- Sign-in at meetings is voluntary. Members of the public cannot be required to register their name or satisfy any other condition for attendance. If an attendance list is used, it must clearly state that signing the list is voluntary.<sup>9</sup>

- Anonymous speech must be permitted.<sup>10</sup>
- When comments fall within the purview of the governing body, a chairperson cannot stop a speaker from expressing opinions and/or criticisms of the governing body.<sup>11</sup>
- If an individual or group willfully interrupts a meeting and order cannot be restored, the room may be cleared.<sup>12</sup> Members of the media must be allowed to remain and only matters on the agenda can be discussed.<sup>13</sup>
- Anyone attending a meeting may photograph or record it with an audio or video recorder unless the governing body makes a finding that the noise, illumination or obstruction of view will disrupt the meeting.<sup>14</sup>

## Effective Public Meetings: Best Practices

### Tips for Elected and Appointed Officials

- **Be Clear About the Process**
  - Be clear about who is running the meeting and explain the role of the presiding officer (chair of the meeting).
  - The chair can help ensure a more successful meeting by:
    - Explaining the meeting process and outlining local rules and procedures at the beginning of the meeting, including any limitations on public participation.
    - Assuring people that they will be allowed to share their views.
    - Reminding all participants (governing body and public) to be compassionate about the fear of public speaking; do not allow heckling or applause.
- **Be Prepared**
  - Educate yourself about agenda items before the meeting.
  - Make information available to the public before the meeting.
  - Reach out to the community; talk to community members one-on-one and to groups at their meetings.
  - Invite questions ahead of the meeting.

#### A Note on Civility

- First and foremost, everyone should treat others how they would like to be treated.
- Set a friendly tone.
- Demonstrate civility toward members of the governing body as well as the public.
- Embrace diverse points of view.
- Consider using titles – using titles and last name is a sign of respect.
- Separate the person from the problem – avoid personal attacks, name calling or questioning people’s motives. These actions undermine your effectiveness and your message.
- Avoid engaging in debates and interruptions.
- Be attentive and use active listening skills.
- Limit statements in discussions to those that move the conversation forward.
- Keep remarks brief, to the point and non-repetitive of comments others have made.

### Tips for Public Participants

- **Be Clear About the Process**
  - Understand open meeting laws, local rules and meeting procedures.
  - Understand the role of the presiding officer (chair of the meeting).
- **Be Prepared**
  - Educate yourself about agenda items before the meeting.
  - Review any informational material made available before the meeting.
  - Familiarize yourself with the members of the decision-making body so that you can address them at the meeting.

- Reach out to your local decision-makers and agency staff before the meeting and share your thoughts in advance.
- Submit letters of support or opposition, or any questions you may have to the decision-making body before the meeting.
- If planning on making comments during the public comment period, prepare your remarks in advance.

## About the Institute for Local Government

ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities, the California State Association of Counties and the California Special Districts Association. For more information and to access the Institute's resources on local government basics visit [www.ca-ilg.org/local-government-basics](http://www.ca-ilg.org/local-government-basics).

The Institute welcomes feedback on this resource:

- *Email:* [info@ca-ilg.org](mailto:info@ca-ilg.org) Subject: *Making Your Public Meetings More Effective*
- *Mail:* 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

## ENDNOTES

<sup>1</sup> See Cal. Gov't Code § 54952.2(a); Cal. Gov't Code § 54954.2(a).

<sup>2</sup> See Cal. Educ. Code § 72122.

<sup>3</sup> See Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.

<sup>4</sup> See Cal. Gov't Code §§ 54954.2, 54956, 54956.5.

<sup>5</sup> See Cal. Gov't Code § 54954.2.

<sup>6</sup> See Cal. Gov't Code § 54956.

<sup>7</sup> See Cal. Gov't Code § 54954.3.

<sup>8</sup> See Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

<sup>9</sup> See Cal. Gov't Code § 54953.3.

<sup>10</sup> See Cal. Gov't Code § 54953.3.

<sup>11</sup> See Cal. Gov't Code §§ 54954.3(c), 54957.9; *Perry Educational Association v. Perry Local Educators' Association*, 460 U.S. 37, 46 (1983).

<sup>12</sup> See Cal. Gov't Code § 54957.9.

<sup>13</sup> See Cal. Gov't Code § 54957.9.

<sup>14</sup> See Cal. Gov't Code § 54953.5(a).



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# Understanding Your City's Departments



# Understanding Your City's Departments

## Introduction

Elected officials interact with all city departments and are responsible for making decisions that affect each of these departments. While it may not be necessary to have a detailed understanding of the functions and roles of your city's departments, a basic understanding of these functions in order to make more informed decisions is helpful.

The purpose of this section is to provide information about each city department by describing their basic responsibilities, primary functions and relationship with the council. Each article in this section will provide an introduction to the department. For a more comprehensive guide, please consult the reference pages at the end of this section for further reading.

## The City Manager

Most California cities maintain the council-manager form of government, with a city council elected by the people and charged with the basic responsibility of governing the community. Generally, a city manager is appointed by the council to manage the city's administrative responsibilities and day-to-day operations. In becoming an elected official in a city, it should be helpful to review the roles of city officials and examine the nature of their relationship to the city manager.

### Primary Functions of the City Manager

The city manager has two distinct, if overlapping, roles:

- 1) To provide direct staff assistance to the council as a whole and to its individual members.
- 2) To manage the city organization in the delivery of public services.

The elected official normally works on two kinds of matters -- daily constituent needs or specific complaints, and the longer-range issues of public policy, such as what services should be provided by the city government, at what level those services should be provided, and what direction the community should take in its future development. In order to deal effectively with either type of problem, the elected official requires staff assistance.

In a real sense, the entire city organization serves as staff to the elected officials, and the city manager, together with other members of the management team, see to it that the necessary assistance is provided. Perhaps the most common problem experienced is the constituent service problem, i.e., when a citizen contacts a council member with a complaint about city service. The council member then asks the manager (or an assigned staff assistant in a larger city) to investigate, or resolve the matter, with or without a report back to the council member.

On another level, the council relies on the manager and its staff for assistance in policy formulation. City staff can provide information the council needs to make a decision, staff can provide a recommendation of the best approach to take on a policy matter, or staff can provide assistance to the council in sorting out specific issues and aid in developing policy alternatives.

Individual members of the council should not expect the city manager to implement their ideas unless a majority of the council gives such direction. The city manager's role is to carry out council policy as established on a given issue by a majority of its members. A council member who is in the minority on some issue should endeavor to change his/her colleague's position rather than expecting the city manager to marshal the organization's resources in support of a policy decision that differs from the direction set by the council majority.

Regardless of the issue area, the city manager as a generalist assists the council in working with staff to facilitate the council's decision-making role. If the council is concerned with a land-use planning issue, the manager works with the city's planning staff to provide information and/or alternatives for the council; if the council is concerned about the level of police service, the manager works with the city's police services staff to do the same, and so forth. The city manager is directly responsible for the quality of all staff assistance provided to the council.

In addition to his or her role in providing direct staff assistance to the city council, the city manager is responsible for executing council policies. As the chief executive officer of the city, the manager must see to it that the services and programs the council has decided upon are effectively delivered. In this role, the manager supervises the work of the city's management team to make certain that the systems and procedures employed in the delivery of services are the most effective possible in relation to program objectives, and to make equally sure that the people within the city organization are working together as a team.

It is extremely important that the manager be well-qualified technically; know how to deliver city services in an efficient manner; know when the procedures in use could be strengthened or improved upon; and to suggest techniques or approaches which can work to achieve the objectives set by the council. But it is of at least equal importance that the manager knows how to get the most out of the people in the city organization; how to assist them in working well together; and how to realize the best performance of which each is capable.

A word about the city manager as a professional is useful at this point. The professional city manager has one basic commodity to sell, aside from technical knowledge about city service delivery systems and the management of people in organizations: integrity. The good manager must have the ability and, on occasion, the guts to present what he or she feels is best for the community even when this view may not be popular. His or her ability to always be thorough and forthcoming in providing information and alternatives to the council is the essence of professionalism. In group processes particularly, trust is vital to effectiveness.

### **Relations Between the City Council and the City's Management Staff**

The determining factor in assessing any relationship between people is the quality of communication between them. The perceptions and expectations that each person has of the other and of their relationship form the basis of the relationship. The completeness of communication (the transmission of information) is dependent upon this foundation, which underlies all human relations in any organization. It is equally applicable to relations between members of the management team, members of the city council, and between the city council and appointed staff. Each participant in the city organization, elected or appointed, must work at appreciating the many sets of relationships which exist and which must be accommodated in the process of setting and effecting city policy.

In a well-functioning city government, the city council and the city staff will demonstrate a genuine respect for each other and each other's roles. This does not necessarily mean

that everyone will agree. Rather, there is agreement about how to disagree. Public statements expressing lack of trust or personalized attacks reduces everyone's image, and creates a climate of protecting one's self and defensiveness. Council member concerns (individual or as a council) about the performance or integrity of staff appointed by the city manager can be very helpful to the city manager, if offered privately. None of the above is to suggest that public expression about the city manager or staff performance is always out of place, but that the time and place should be subject to the standards the city council sets for itself and done in a manner which minimizes personal attacks and maximizes getting the job done.

The relationship between the mayor and city manager is slightly different because of the unique role of that position. The mayor is the chief elected official of the city, whether directly elected as mayor or elected by a vote of the council. In this role, the mayor is responsible to provide policy leadership to the council, and to represent the council in public meetings. But the mayor should also be able to represent the council to the city manager in the day-to-day carrying out of the city's business. The mayor should facilitate the relationship between the management staff and the council by being a source of advice and counsel to which the manager can rely. To fulfill this role effectively the mayor must be able to fairly represent the view of the whole council, and the council must respect the mayor's role as its representative. A good working relationship between the mayor and the city manager is therefore essential.

Two important factors to consider in council and manager relations are the responsibilities the council has towards the city manager:

- Providing direction to the city staff
- Evaluating the performance of the city manager

### **Providing Direction to the City Staff**

The city council's ability to govern and make progress is very closely related to the council's ability to provide direction to the city manager and staff. Only when individual council member desires are "elevated" to a policy or program supported by all or at least a majority of the city council can one's own agenda be realized.

Unfortunately, there are many forces at work making unity and a team approach difficult for a city council to achieve. This can be especially true in district cities in which individual council members view their district as a first priority. Consequently, many city councils have found it invaluable to occasionally come together in a facilitated team-building or goal setting workshop or to attend, as a group, similar sessions offered through Cal Cities. In any event, a city council-directed goals process resulting in a council-adopted goals statement can be very helpful in clarifying its priorities to the staff and community as a whole.

## **Evaluating the Performance of the City Manager**

Performance evaluations are communication devices. Without performance appraisals, something is lost in the communication process, and a loss in this area can ill be afforded by any of the participants in local government. Since the city manager has the greatest influence in carrying out council policies, one of the most important jobs a mayor or council member has is to provide clear direction and carefully monitor the manager's progress, giving praise or corrective measures as needed.

Performance appraisals are always a two-step process. First, the participants must discuss the expectations that exist against which performance will be measured. What are the standards, what are the principal values, and what are the objectives to be pursued? It is only after the council has determined with the city manager (or attorney, or clerk) the factors which will be assessed that the appointed official is in a position to really know what is most important to the council; and it is only then that the council is in a position to effectively evaluate performance, the second step in the process. An increasing number of city manager employment agreements make specific reference to a periodic evaluation of the city manager.

A good working relationship at the top of the city organization is clearly important. To realize this, the participants must begin with a good understanding of the roles and responsibilities of each other, and then must work at the job of communicating in order to keep it. Some cities have found it very helpful to hold or participate in workshops designed to develop more effective working relations among council members and between the council and staff.

When a functional understanding of each person's interests exists, and there is an atmosphere of trust and support, although not necessarily agreement, then conflict can be addressed in a mature way and reason can be the order of the day. Then locally elected leaders can more effectively serve the public interest and win the public's respect; this will make your difficult job a little easier and probably more fun.

## **The City Attorney**

The city attorney is a valuable resource to a mayor and city council. In order to facilitate effective communication between the city council and the city attorney, it is helpful to understand a city's options in obtaining legal services and what the city attorney's job entails.

This paper is designed to provide mayors and city council members with information to help facilitate a solid working relationship with their city attorney. The paper covers the primary functions of a city attorney, how a city may select a city attorney, the importance of communication, and a short discussion on the attorney-client relationship.

Effective communication between city officials and the city attorney is critical to the smooth operation of the city. Early and frequent communication about proposed city actions can save cities headaches and money in the long run.

### **Primary Functions of the City Attorney**

The city attorney has several functions, which can be categorized as follows and will be explained in further detail below:

- Serving as chief counsel to the city for both elected officials and staff
- Reviewing and drafting ordinances, resolutions, contracts, deeds, leases and other legal documents
- Representing the city in litigation as a defendant or a prosecutor.

### **Chief Counsel to the City/ Elected Officials and Staff**

As chief counsel, the city attorney typically attends all city council meetings to provide on-the-spot counsel and to have firsthand information on immediate and contemplated city actions. An important aspect of this job is to render opinions on specific legal issues. These opinions can either be formal (in writing) or informal (oral advice). The city attorney also may serve as the council's parliamentarian.

One of the primary functions of the city attorney is to provide legal advice on whether the city has the authority to engage in a given activity. Cities, of course, share sovereign power with the state and federal governments. There are policy areas in which the state and federal government have reserved authority exclusively to themselves, thereby "preempting" local action on an issue. There are other instances in which the state or federal law has imposed specific obligations on a city if it wants to take action. In either event, the city attorney's advice can prevent costly legal missteps.

In order to render an informed opinion on important legal questions, the city attorney must sometimes analyze several sets of statutes and hundreds of reported cases. The sheer volume of law affecting cities has increased greatly during the last decade.

Further complicating the city attorney's job is the fact that the law is not always clear in a given area. When this occurs, the city attorney must give his or her best judgment on the probable and possible legal consequences of a proposed course of action. The city attorney cannot, however, make the law clear when it is not and would disservice the city by creating a false sense of security in the face of real risk.

### **Reviewing and Drafting Legal Documents**

In addition to providing counsel to the city, the city attorney is also responsible for the drafting and/or review of important legal documents, such as ordinances or contracts.

### **Representing the City in Litigation**

In addition to advising the city on the legal implications of its actions, the city attorney in 10 cities prosecutes state law violations. Almost all city attorneys prosecute violations of city ordinances.

Even when a city has in-house legal staff, it may find it necessary to contract out some work. There will be times when the city's legal needs require the services of a specialist. Also, the city's legal requirements will have peaks and valleys; it may not make sense to hire full-time, long term staff to cover the "peaks." Finally litigation can be very consuming of both attorney and support staff time and may therefore be contracted out in all or part.

### **Hiring a City Attorney**

The voters elect a small number (eleven) of city attorneys in California. The remaining cities with appointed city attorneys obtain legal services in two basic ways. The city can hire one or more attorneys as full-time city staff (the "in-house" city attorney), or, the city may choose to hire a "contract" city attorney to provide legal services.

According to the League's records, about a fourth of California's cities have chosen to have full-time, in-house legal counsel. Numerous cities contract with attorneys in private practice who either represent several cities or represent other, non-municipal clients. Many smaller cities have chosen to receive legal services this way.

### **Communication Is a Two-Way Street**

Effective communication requires a joint effort on the part of the city attorney and city officials to make sure the city attorney is kept informed of the city's activities. This means that council members must sometimes take the initiative in communicating concerns to the city attorney; similarly, the city attorney must communicate concerns to the council as well. It is particularly helpful for a city attorney to receive a "heads up" if the council member knows in advance that a legal question may arise at a public meeting. By alerting the city attorney to the issue beforehand, the city attorney will be prepared to answer any questions that may arise during the meeting.



The city attorney is paid to give good and timely advice. If the city attorney is unable to give good and timely advice because of poor communications either to or from the attorney, neither the city nor the taxpayers are getting their money's worth. Worse yet, the city may have to spend more money on litigation and adverse judgments -- money which could be better spent on other public programs.

### **A Note About the Attorney-Client Relationship**

A client's communications with his or her attorney are protected by the attorney-client privilege, which protects the confidentiality of those communications. Allowances are made for this fact in the Brown Act, which authorizes the council to meet in closed (non-public) session to discuss pending litigation against the city.

One frequently asked question is precisely "who" is the city attorney's client. The answer determines to whom the attorney-client privilege applies. Although there is some debate on the issue, the basic answer is the city attorney's client is the city as a whole, acting through the city manager and city council. The city council therefore holds the attorney-client privilege, which means the city attorney's communications with staff members and individual members of the council cannot be kept confidential from the full city council.

From time to time a city official may wonder about the advice being given by the city attorney. It is tempting, of course, to seek a second or even third opinion. While such opinions have their place, it is best to include the city attorney in evaluating any such option.

The city attorney is the individual the city has hired (or the voters have hired) to advise the city on legal matters. The city attorney is most familiar with the laws bearing on the city's action, particularly local ordinances, internal procedures and any charter provisions. If the city is sued over a given action, it is the city attorney who will be responsible, in all likelihood, for defending the city in court.

In recognition of the perils associated with usurping the city attorney's role in advising a city on its legal matters, and on the limitations on an outsider's ability to give competent advice without access to the 'whole story', it has been long-standing Cal Cities policy to forbid its staff from giving city officials legal advice on city matters.

## City Clerks

Government Code Section 36501 sets forth the governing officers of the city, one of which is the City Clerk. The City Clerk is the local official for elections, local legislation, the Public Records Act, the Political Reform Act, the Maddy Act (public noticing of commission appointments), and the Brown Act. Before the City Council takes any action (and after they take action), the City Clerk, in conjunction with the City Attorney, ensures that actions are in compliance with all federal, state and local statutes and regulations. The City Clerk serves as a liaison between the public and the City Council, and the City Clerk's office is generally the first place residents call when seeking help from City Hall.

Considered one of the oldest government professions, the City Clerk is an officer in a municipal corporation performing a variety of complex professional and managerial duties including the execution of tasks prescribed by the Government and Election Codes. In both General Law and Charter Cities, the City Clerk may be directly elected by the voters or appointed by the City Council or City Manager. Depending on the organizational structure, the City Clerk's position may range from a division or department director, or may carry the title of Assistant City Manager.

Responsible for the overall policy development, planning, fiscal management, administration and operations of the City Clerk Department, the City Clerk's duties may include management of programs and services including elections, citywide records management, Fair Political Practices Commission mandated filings, preparation of City Council agendas, minutes, resolutions, and ordinances, recording actions of City Council meetings, the administrative aspects of contract execution (such as ensuring that bonds and insurance documents are submitted and valid), and handling public records research requests.

The scope of a City Clerk's responsibilities can vary significantly among municipalities. However, certain core responsibilities remain and can be categorized into legislative, elections, records management, or administrative functions.

### **Legislative responsibilities –**

Each time the City Council takes action it is a legislative act whether it be by ordinance, resolution or minute action, the City Clerk must ensure that the action taken complies with federal, state, and local laws.

These legislative responsibilities include:

- Ensure compliance with the Brown Act (open meeting law)
- Ensure compliance with parliamentary procedures
- Coordinate, prepare, and distribute council agendas, minutes, actions, and records of the proceedings
- Coordinate, prepare, and direct posting, mailing, and publication of legally-required public hearing notices/publications (including City Council, committee, special

- agency, and authority meetings)
- Certify and attest to actions taken – (i.e. confirming that the document is the true and correct copy approved and that those executing the document on behalf of the city have the proper authority to do so)
- Codify and maintain municipal code; manage regular updates
- Provide technical and administrative assistance to City Council, special agency and authority meetings

### **Election responsibilities**

- Coordinate and conduct municipal elections including special elections, ballot measures, initiatives, referendums and recalls
- Serve as liaison to the County Recorder and Registrar of Voters.
- Serve as City's official filing officer for local campaigns; ensure compliance with Political Reform Act
- Manage receipt and processing of petitions relating to initiatives, recalls, and referendums, associated measures, analyses, arguments, and rebuttals
- Coordinate voter outreach campaigns and conduct voter registration

### **Records Management responsibilities**

- Maintain records in compliance with Public Records Act
- Responds to requests for public records in compliance with the Public Records Act, in consultation with the City Attorney
- Administer comprehensive citywide records management program which may include document imaging
- Manage processing, indexing, and maintenance of official City documents and records (ordinances, resolutions, and legislative actions)
- Protect vital records
- Coordinate and facilitate research (internal and external)
- Records disaster management

### **Administrative responsibilities**

- Oversee official bid openings, contract and insurance administration
- Process liability claims, summonses, and subpoenas
- Coordinate recruitment and selection processes for city committee, commission, and board members; ensure compliance with Maddy Act
- Administer and maintain oaths of office (public officials and employees)
- Plan, direct, organize, and coordinate activities of a municipal department, division, or major program
- Develop and implement goals and objectives, policies and procedures both citywide and departmentally, especially for City Clerks who are also department heads
- Provide leadership and direction with new program (and program changes) development and implementation
- Prepare and administer department budget

- Manage and supervise administrative, professional, technical, and support staff

In summary, the City Clerk is a vital link in the successful operation of the municipal corporation. The legislative responsibility charged to the City Clerk is critical to the decision-making process of the local legislative body. As the local Elections Official, the City Clerk remains neutral to ensure the integrity of the democratic process. The City Clerk's statutory responsibilities ensure the City's business is conducted in the best interest of the citizenry it serves. While the core responsibilities endure, the City Clerk's role continues to evolve while remaining responsive to the changing needs of the citizenry, elected officials, and technology.

## **The Finance Department**

A city's finance department represents a unified, integrated financial center with responsibility for financial matters affecting all departments and activities of the city. Historically, this was not the case: rather the finance function was fragmented in several independent city directors, with responsibility for some activities retained by individual operating departments. The idea of centralizing the finance functions of auditor, treasurer, controller, purchasing agent, tax collector, etc., has won increasing favor and has allowed for more professionalism and accountability. You can, however, still find organizations that have various financial functions assigned to different departments.

Cities in California have broad authority to establish a finance department and assign appropriate functions. The financial duties assigned by the state statutes to the city clerk may be transferred to the director of finance at the discretion of the city council, and the duties of the city treasurer may be transferred from an elected treasurer to an appointed officer if approved by the electorate.

In recent years, many cities have expanded the role of the finance department to an administrative services function encompassing other general administrative functions. In those instances, often the position of accounting officer or controller exists for purposes of carrying out the duties found elsewhere under the direction of a finance director.

### **Primary Functions of the Finance Department**

The basic duties of the finance department can be summarized as follows:

- Preparation of the city budget and other financial planning documents
- Maintenance of all financial records in conformity with generally accepted accounting principles and in compliance with state and federal laws and preparation of the Comprehensive Annual Financial Report (CAFR)
- Providing financial information to the city council, city manager and other city officials on a timely and meaningful basis
- Revenue collection, tax collection and purchasing

### **Preparation of the City Budget and Other Documents**

The budget should be viewed as one of the principal documents by which city policies are carried out. In order for the budget to accurately reflect the desires and the priorities of the council and the community, there must be agreement -- prior to the development and adoption of a budget -- on what service, and on what levels the city wants to and/or should provide. Then, based on those adopted policies and priorities, the council can give staff the basic guidance necessary to prepare the budget for council consideration.

In most cities, the finance department prepares the city budget under the direction of the city manager. The budget document ties together financial information and financial decisions. Together, they're a financial expression of the services your local government provides based on established priorities. Preparing the budget in the same department that maintains the accounting records increases accountability and accuracy.

An historical document, the budget reflects services your government has provided for many years. As a planning document, it sets spending and service priorities for the coming year and in some cases two years. The budget is usually considered to be the city's single most important policy execution document. After it is adopted, it becomes law; however it is subject to amendment if conditions or priorities change. Changes in the budget may be executed by either the governing body or as designated by the governing body. Revenue and expenditure estimates in the budget are a yardstick against which actual revenues and expenditures are measured. Estimated beginning and ending fund balances, reflecting the results of the revenue and expenditure estimates are also an important element of the budget. The budget becomes the city's strategic plan for the future, both for operation and maintenance and capital improvements.

The finance director must be an integral participant in budget preparation and control. The depth of involvement and responsibilities will vary from city to city. At the very least, the finance director will be responsible for furnishing previous expenditure records, revenue projections, and fund balance estimates. It should further be the director's responsibility to constantly review budget procedures and make any needed improvements. The finance department should issue regular financial statements during the course of the budget year so city officials can monitor budget implementation and compliance. The finance director typically prepares a midyear report to the council regarding the status of city finances. The midyear report takes on increasing importance if the entity is operating on a multiyear budget program. It is also especially critical when the economy is not as strong as normal.

The finance director must constantly review and study current revenue policies and trends. The director must be alert to recognize the need for new revenue or the necessity to adjust revenue estimates to meet changing conditions and to report the findings and recommendations to the appropriate authorities for their action. The finance director is responsible for the preparation and interpretation of financial data for short and long term plans and programs. The director should be prepared, when necessary, to accept the responsibility for determining the most appropriate method of borrowing funds and must insure that debt schedules are met, that surplus funds are properly invested, that reserves are maintained at appropriate levels, and that the fiscal credit of the municipality is maintained at the highest possible level.

There is an emerging trend to link the budget to performance and to organizational goals and objectives. Accountability is becoming understandably more important as competition and demands for resources increase.

The Government Finance Officers Association (GFOA) of the United States and Canada grants a certificate of achievement for excellence in budgeting to those cities that prepare

a budget in accordance with certain standards. The California Society of Municipal Finance Officers also offers a certificate program for budget documents that meet a certain standard. These certificates are generally included in the front of the budget document.

### **Maintenance of all Financial Records**

The finance department is required to maintain certain financial records and to prepare financial reports. Although the statutory duties may vary in individual cases, there must be a complete set of accounting records for all functions and activities performed by the governmental unit, with responsibility for such records and accountability lodged with the finance director. These records must reflect compliance with legal requirements.

### **Providing Financial Information to the City Council, City Manager, and City Staff**

The city's comprehensive annual financial report (CAFR) is the best resource for making sure the revenues, expenditures, bonds, and grants you've authorized during the budget process were collected and spent the way they were intended. It can also provide a basis for future decisions. The CAFR serves as a public document that tracks the performance of individual funds. Seek the assistance of the finance director when reading the report to insure that you are getting the clearest picture of the financial condition for your city.

Although financial reports can vary from city to city, there is a standard format and most city financial reports should contain the following:

- Asset, Liability and Fund Balance Information.
- Information on the basic expenditure and revenue categories you've authorized by law; financial reports comparing actual revenues and expenditures against estimates adopted in the budget.
- Information on revenues and expenditures organized into several different funds. This is because government dollars are often earmarked for one specific use and cannot be used for another. Most of the "bulk" in the CAFR occurs because statements are included for every fund. But the type of information included for each fund is essentially the same.

Financial statements cannot tell you everything about your city's financial condition. Much of the information can only suggest additional questions. For example, you probably won't be able to tell from your annual report whether local pension funds are adequately funded. In addition, your financial report is not the best source for determining the real cost of city programs and services (i.e., some previous year's expenses which have been promised but not paid yet may be included in current year totals).



Financial reports can also be misleading. Depending on whether revenues and expenses are recorded when they are anticipated and owed or when they are actually received and paid, the financial position of your municipality or of particular funds may look better or worse than is actually the case. Transfers between funds can also be complicated. So be careful about jumping to conclusions too quickly.

The Governmental Accounting Standards Board sets standards for financial reporting. GASB's Pronouncement 34 will significantly change the reporting model over the next few years with goal of making the report clearer and more useful. The Government Finance Officers Association (GFOA) of the United States and Canada grants a certificate of achievement for excellence in financial reporting to those cities that prepare a CAFR in accordance with these standards. The California Society of Municipal Finance Officer (CSMFO) also offers a certificate program for excellence in financial reporting. These certificates for the preceding year are generally included in the front of the CAFR.

If you find anything in your local government's financial report that causes concern, ASK. You may have spotted a problem. And if the report only LOOKS like you have a problem, you will be that much surer that your municipality is in good financial condition.

The traditional financial audit is an examination of the governmental unit's accounting records and underlying financial systems and internal control. The objective is to verify that all financial transactions have been properly handled and recorded in compliance with legal restrictions and generally accepted accounting principles so that the statements produced from the records accurately represent the public finances with which you have been entrusted.

## **Revenue Collection and Purchasing**

The handling and accounting of cash and the investment of surplus funds is occasionally the responsibility of some officials other than the finance director. In many cities, however, the treasury function is included within the finance department. In other cities the city treasurer and city finance department are independent from each other. Regardless of whether the collection, custody and disbursement of municipal funds are the direct responsibility of the finance director or some other director, there should be no compromise in the centralization of responsibility and control.

The finance director should see that all city revenues are collected in a timely and orderly way. This function includes supervision of local tax collections, such as business license taxes; coordination with county, state and federal officers through whom local revenues flow; and the collection of fees for services and regulatory functions.

If enterprise activities such as water, wastewater, electricity, transit, etc., are the responsibility of the city, then the finance director must act as the chief financial officer for these activities as well. In addition to the responsibilities outlined above, billing, collections and rate setting may also be performed by the finance department.

## **Council and Finance Department Relations**

The shock of current reality and the forecasts of "hard times ahead" have pushed financial issues, and finance personnel, from the wings to the center of the stage along side the city council and the city manager. With finances, rather than programs and services, now a principal worry of municipal policy makers, there is renewed interest in the concept of finance departments, an interest which had diminished during the long years of economic expansion and relatively constantly growing revenues.

With restrictions on the supply of financial resources, cities are coming to grips with the need to assess and control the demand for services. In the past, "free" or under-priced governmental services have induced over consumption and hampered an assessment of real need or demand. The proper price incentives and disincentives can help reduce the need for government services or regulations.

To support proper pricing decisions and to move toward financial sustainability, city councils will need to know the actual costs of city programs and activities. This will require the introduction of more sophisticated accounting systems that can identify all the costs of a given program, including direct and indirect costs.

The heightened need for precision in financial decisions will create a demand for more accurate forecasts of revenues and expenditures. It is expected that finance departments will be required to have a significantly increased commitment to these activities.

Since Proposition 13 has limited the use of general obligation bonds to finance capital improvements, and since redevelopment financing and other capital financing tools have been jeopardized, considerable creative energy will be required of city councils and their finance staffs to provide for the construction of needed capital projects.

City councils and other public policy officials are becoming more aware of the unintended effects of their financial decisions. In the future, you and your colleagues on the council will work with the finance department and city manager to identify the inadvertent incentives and disincentives which your finance policies have on private decisions such as whether to rent or buy a home, where to live, where to work, where to locate a commercial or industrial plant, how to commute, how to invest, etc. You will ask the finance department to provide information that will help answer the question: Do our fiscal policies support community goals?

The demand for more timely financial information, additional information resources and improved financial management systems will necessitate the use of the latest available technology in data processing. Even most small cities now have computerized financial systems.

The recent focus through Statewide initiatives (Proposition 1A on the November 2004 ballot) on local government finance has heightened the awareness and knowledge of the public about local finance issues. City officials should expect citizens, investors and

other governments to demand more and better information concerning the city's financial condition in the future.

Due to the need to address the important issues above, the staffs of city finance departments can be expected to grow, probably in absolute numbers and certainly in professionalism. This is likely to be in contrast to other city departments that probably will not grow in an era of controlled demand and limited resources.

## The Fire Department<sup>1</sup>

In decades past, fire departments occupied themselves with attempting to save lives and protect property by utilizing their resources to suppress fires. During recent decades, the fire service began to understand the value of utilizing strategies to prevent fires before they occur.

Today, participants in the progressive and modern fire service have expanded their roles, mission, and resources to three additional areas:

- “All risk” hazard protection and mitigation
- Provision of emergency medical services
- Establishing community based fire protection strategies

The “all risk” strategy is particularly significant in California where our citizens live with the constant threat of earthquakes, floods, terrorist attacks, tornadoes, major hazardous materials releases, environmental disasters and nuclear accidents. Implementation of this strategy has necessitated that the fire service concentrate its efforts to institute readiness strategies for disaster preparedness.

Providing emergency medical services (EMS) is now the most significant way that today’s fire departments expend their time, energy, and resources. Two thirds of all responses in cities involve providing service for those in need of medical attention. Firefighters devote extensive training hours in the areas of advanced first-aid, emergency medical technician (EMT), use of automatic defibrillators (EMT-D), and paramedic training (EMT-P). Firefighters save more lives by providing prompt, thorough, and efficient medical service than they do by rescuing residents from building fires.

Providing community based fire protection will occupy the fire service in the coming decade. Studies indicate that when citizens were asked whom they trust in the government, more than 75 percent responded that they trust the fire department. This concept attempts to utilize the community’s high level of trust in the fire fighting profession, and attempts to make firefighters community ambassadors as a launch point for substantive community outreach programs. Some examples are using the fire department and fire stations to:

- To hold community events and community meetings
- To conduct health fairs and blood pressure screening
- To hold CPR, first aid, baby sitter safety classes
- As a safe haven for children who are victims of abuse and violent crimes
- To educate the community on topics such as smoke detectors, fire extinguishers, and home safety
- To hold neighborhood disaster preparedness programs to teach self-sufficiency to citizens in preparation for catastrophic events
  
- To assist elderly citizens with vision and hearing programs

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\* Written by Gerald A. Simon, Fire Chief, City of Santa Clara.

- To instruct the community on the dangers associated with security bars in their homes
- Collection sites for toys, food and supplies for community need programs
- For counseling, mentoring, and functioning as role models for the youth in the community

These are the strategies that fire departments will employ to enhance the service delivery into the next millennium and beyond.

## **Law and Authority**

State law is silent concerning the authority of charter cities to provide fire protection. However, Section 38600 of the Government Code provides that the legislative body of a city may provide for fire protection and prevention, and Section 38611 of the Government Code makes it mandatory that a city organized under general law shall establish a fire department. The specific local authorization under which a fire department functions is established by the charter of the city council itself. In addition to local laws and ordinances, fire department operations also are affected by numerous types of federal and state intergovernmental regulations and mandates. It is common for fire departments to enter into agreements, such as mutual and automatic aid, and joint powers agreements. These agreements assist individual fire departments to provide the highest possible level of service to the citizens. Fire departments are strengthened tremendously by knowing that these agreements with their neighboring jurisdictions enhance service levels on a routine basis, and allow for a significant influx of needed resources during abnormal or catastrophic events. Mutual aid training is a great way to strengthen a disaster preparedness program and to develop “good neighbor” habits across jurisdictional boundaries.

## **Diverse Roles and Functions of the Fire Department**

Many fire departments are organized into a structure which has practical application from an administrative and operational perspective. The modern fire service is highly structured with a well-defined chain of command. The use of the incident command system (ICS) and the advent of the standardized emergency management system (SEMS) have allowed fire departments to become proficient in structuring complicated tasks and managing incidents effectively.

Effective structuring has helped produce fire department organizations that are able to provide a number of diverse functions and roles. These include:

### **Fire Suppression**

#### **Reducing the hostile spread of fire**

Inspections of local businesses  
Emergency medical response  
Disaster preparedness (All-risk)  
Calls for general service to citizens  
Response to wildland/urban interface emergencies

### **Fire Prevention**

Public education  
Code enforcement  
Building plan review  
Fire cause determination  
Building safety inspections  
Home inspections  
Weed abatement

### **Fire Training**

Training to enhance emergency skills  
Safety training and awareness  
Injury prevention strategies  
Physical fitness training  
Technology implementation – computers and  
Computer-Aided-Dispatch systems  
Regional training activities  
Joint Fire Academies to train recruits

### **Administrative Support Services**

Human resources  
Budget analysis/preparation  
City Attorney liaison  
Clerical support services  
Governmental relations  
Duplicating and document preparation  
Facilities maintenance  
Apparatus maintenance

### **Hazardous Materials**

Training hazardous materials responders  
Public education and consultation  
Emergency Response Team (ERT) industrial training  
Environmental crimes and disasters  
Use, handling, storage and disposal of  
hazardous materials  
Air, water and underground protection.

### **Rescue Specialties**

Confined space rescue  
Urban search and rescue (USAR)  
High angle rescue  
Swift water rescue

### **Volunteer Firefighters**

Fire suppression services  
Emergency medical training  
Community service events

### **Emergency Medical Services**

Training emergency medical responders  
EMT, EMT-D, EMT-P training  
Community CPR training  
Baby sitter safety programs  
Continuing education training  
Mass casualty planning and training  
Ambulance transportation

### **Public Relations Unit**

Media relations  
School, church, community programs  
Public broadcasting on our channels  
Community training/public education  
Disaster preparedness

### **Communication –911**

Public Safety Answering Point (PSAP) calls to  
911  
Emergency medical dispatch  
Priority dispatching and call triage

These activities represent some of the roles, functions and activities for today's fire service. Of course the degree to which they exist depend upon the size of the agency and resources available to fund these services and activities.

## **Fire Department Policy Development Items and Programs**

The essence of the work that fire departments perform tends to be largely operational in nature and function. Since the operational nature is predominant, it is important that policy development occur at some level of the municipal structure. Policy development, in its most productive form, is a collaborative effort between the mayor and council members, the city manager and the fire chief. In that regard, there are a number of documents prepared by the fire chief and the city manager with which mayors and members of council may be involved. They include:

- Fire Department Mission Statement
- Operational Goals and Objectives Statements
- Standard Operating Procedures and Directives
- Department Budget
- Local Fire Prevention Codes Ordinances
- Mutual Aid Agreements
- Automatic Aid Agreements
- Fire Master Plan for Establishing or Maintaining Levels of Service
- Permit Streamlining Process
- Building Plan Applications
- Site Plan Applications
- Fire Sprinkler Applications
- Permits for Community Events
- Hazardous Materials Business Plans
- Hazardous Materials Law and Ordinances
- Weed Abatement Procedure
- Specifications for Fire Stations
- Bid Specifications for Apparatus and Equipment
- Memoranda of Understanding with Labor Groups
- Contracts processed through the agency attorney

As examples:

- The permit streamlining process is a collaborative effort between many different departments. In order to expedite the plan review and permits to serve our customers in private industry, the fire department must also interact with the planning, building, and electric departments and with the engineering division.
- To administer a non-point source program, the fire department may need to interact with the street department, the water department, a regional environmental agency, and the office of the city attorney.
- To implement efficient and effective disaster planning activities and administration of the Emergency Operations Center (EOC), fire departments must cooperate with the police department, public works, public information specialists, and all city department personnel involved in emergency operations strategies.

To optimize service delivery, it is crucial that an effective line of communication be developed between the mayor, city council, the city manager, and the fire chief.

### **Council and Fire Department Relations**

Like all other municipal departments, the fire department is not an isolated organization within a city structure. What other departments do within a community dramatically affects the capability of the fire department to accomplish its purposes. Accordingly, the



fire department should have input into the policy making process to assure that other municipal operations don't adversely affect the fire service, and conversely, that the fire service does not adversely affect other municipal operations.

While the broad policies guiding the department are established by the council, specific operating policies are established by city management and fire department administration for the day-to-day functioning of the department. In this regard, care must be taken to be sure of the compatibility of all these policies.

The fire department budget, which is the principal operating plan developed under general council policies, can provide elected officials with considerable information regarding the services provided.

There are a variety of factors that elected officials can consider in monitoring the efficiency and effectiveness of the fire department. Some indicators of performance might include:

- *Fire loss statistics*, which affect insurance rates paid by the community.
- *Response time statistics*, which create the floor (base level) of service as compared to the ceiling (maximum level) of service to be provided.
- *Fire prevention inspection*, which assist in monitoring the success of hazard reduction in the community.
- *Disaster plans*, also known as multi-hazard functional risk plans which demonstrates the community's ability to meet the challenge of catastrophic risk.
- *Training statistics*, which illustrate how much skill training is given, and in what areas this training is focused.
- *Educational assessments* can illustrate the importance of advanced education and college training in upgrading the professionalism of the department.
- *Hazardous materials inventories*, which can assist in determining threat and/or risk of a significant hazardous materials release or environmental incident.
- *Injury statistics*, which can indicate the effectiveness of physical fitness as an established cultural value in the department.
- *Citizen complaint reports*, which can be an indicator of customer service as a cultural organizational value and citizen satisfaction with service delivery.
- *Community service activity report*, which can assist in identifying how involved the department is in providing "community based fire protection".

## **Other Factors**

In order for elected officials to better understand the operations of their fire department, they must consider some of the factors and peculiarities that affect the ability of the department to deliver its service. Among these items are the various federal and state laws and agreements governing operations, the geographical area served by the department and its numerous characteristics, both natural and made by humans, the water distribution system serving the department, staffing levels, the degree of fire

prevention effort, the relationship between the fire department and other municipal departments, the relationship between the fire department and the community, the type and condition of equipment utilized by the department, and various safety and personnel factors bearing on the day-to-day operations of the department and the training and education of fire personnel.

In this age when all public services are coming under increasing scrutiny, elected officials must be alert to changes in public attitude, technology, new legal requirements, community needs and social trends in order to assure that municipal services are delivered effectively and efficiently. This is certainly true in the area of fire services.

Although the public may seem to favor funding public safety services (fire, police, and 911) while cutting back in other areas, fire departments will likely be faced with increasing fiscal pressures. This may come about because of demands for expanded services in the face of both decreasing and devaluing dollars; mandates by the federal or state government affecting fire services; pressures from labor groups; and new building or business presenting new or expanded hazards or service areas for fire departments.

Some items with which elected officials will be dealing in the future:

- Enactment of stricter fire prevention codes requiring the installation of automatic fire suppression equipment and fire detection devices
- Hazardous materials remediation plans to assure that there is less environmental impact caused by those who use, handle, store and dispose of hazardous materials
- Increased pressure from industry to respond to their need to perform services better, faster, cheaper
- Community demands to “re-invent” government to provide more and varied services but pay less taxes to cover the cost of the service

There are numerous arrangements fire department administration and elected officials may wish to consider in order to improve department service and efficiency. Among these items are:

- Review of joint power agreements, mutual aid agreements, and automatic aid agreements to assure that they are of maximum benefit to all concerned
- Review of emergency medical services to be sure they are being effectively provided by qualified personnel and that their costs are being adequately covered
- Ways to provide value added service to the community, such as “community based fire protection”
- Implementation of a streamlining process to review all building plans to improve the efficiency of the process for our industrial customers
- Review of the “all-risk” multi-hazard functional plan to assure disaster readiness
- Drill community-wide to practice and exercise disaster readiness
- Public education programs; with an emphasis on youth and the elderly
- Customer service programs for internal and external customers

- Review of response times to all areas served
- Review of department mission, goals, operational plans
- Adoption of a fire master plan to provide optimum prevention, suppression capabilities
- Review of state and federal legislation in the field of hazardous materials to assure local compliance and minimization of environmental risk
- Use of civilians in place of sworn personnel
- Consolidation of related services being provided

A review of these elements with the city manager or the city administrator, and the fire chief or fire administrator on a regular basis will be of considerable assistance to you in assessing the value they hold in the community. This knowledge can be particularly important during periods of uncertain revenue streams, competition for shrinking federal and state dollars, recession, inflation, or unexpected downturns in local economies.

Many cities fund fire, police, and 911 services at high levels. During a period of financial hardship and economic downturn what would you, as a council, do to the budgets of each department throughout the city? Would fire, police, and 911 services take their fair share of budget cuts? The answer may lie in whether or not the fire department provides “value added services” to the community such as all risk mitigation, and emergency and community based fire protection—services that extend far beyond the traditional paradigm of saving life and property.

## The Planning and Community Development Department<sup>2</sup>

A City's Planning or Community Development Department is typically responsible for the planning and building inspection functions. Many cities have reorganized to combine several functions under the title of Community Development. In most Cities this combination is simply Planning and Building, while in other cities it can encompass Planning, Building, Code Enforcement, Economic Development (Redevelopment) and even Public Works and/or Engineering are sometimes placed under the mantra of Community Development. The level or complexity of the combination depends largely on the size of the City and its staff work load. Again, the most common combination of functions is Planning and Building. These two city services are very interrelated.

The principal authority to carry out planning and building functions is based in an assortment of federal, state and local laws. Police power is the legal basis for all land use regulation. Various sections of the state Government Code contain most of the enabling authority to review and condition development including subdivisions of land.

The principal function of the Planning Department or Division is the administration of the General Plan review development or use applications.

- General Plan preparation and update
- Zoning Map and Ordinance preparation and update
- Enforce and implement the California Environmental Quality Act (CEQA)
- Conduct Planning related code enforcement
- Process development applications
- Provide public information
- Act as the staff liaison to both the Planning Commission and City Council

The primary functions of the Building Department or Division are issuance of building permits and conducting construction inspections.

- Issuance of Building permits and plan checks
- Performing building inspections and occupancy permits
- Conduct building related code enforcement
- Abating dangerous buildings
- Providing public information
- Act as staff liaison to the Board of Appeals and City Council

A variety of public agencies, as well as, homeowners and developers, regularly request information about land use, zoning, construction requirements, building permits, demographics and design and development standards. Dissemination of information is a central aspect of the department and a substantial percentage of time is devoted to responding to public information requests.

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<sup>2</sup> Revised by Thomas Sullivan, AICP, Community Development Director, Saratoga

## **The General Plan**

The General Plan is the most important planning document of the City. All other planning documents must be consistent with the General Plan. It is the document that provides the information about existing conditions and future desires. The General Plan consists of seven mandated elements: Land Use, Transportation, Housing, Open Space, Conservation Safety and Noise. There can also be any number of optional elements, for example: Community Design, Parks and Recreation, growth Management or Agriculture. The individual elements that make up the General Plan must be consistent with each other. Some Cities write the General Plan as a single document with chapters and other cities write their General Plans one element at a time. The Governor's Office of Planning and Research (OPR) provides guidelines for the preparation of all mandated elements except Housing. The State Department of Housing and Community Development (HCD) publishes those guidelines and reviews and certify the draft Housing Elements.

## **Zoning**

Zoning is the most common implementation ordinance of the General Plan. The Zoning Ordinance is a set of rules that carry out the intent of the General Plan. It basically is the division of the city into different land use classifications and the application of different regulations in each. Each of the zoning classifications must be consistent with the General Plan. The Zoning Ordinance deals with issues from density, floor area ratios (FAR), lot size, length and width to the length of RV's you can or cannot park at your home. The regulations cannot be ambiguous. The public often thinks that zoning is land use planning, when it is only a small portion of what makes up land use planning.

## **Specific Plans**

After a City has a General Plan adopted, the City Council can direct that a series of Specific Plans be prepared to provide for the systematic implementation of the General Plan. The Government Code provides some very detailed guidance about Specific Plans. While Cities can and do prepare these plans, often Cities require developers to prepare them. As the name infers, these plans are very specific. They provide design guidance for infrastructure and ultimate land use. They can even provide detailed architectural treatments.

## **Design Guidelines**

Not all Cities have design guidelines. Some Cities have several designated areas where differing design requirements are set forth. Design guidelines are used to protect areas that have historical architectural themes. They are used to ensure developments follow a desired architectural design theme. Occasionally, Cities offer incentives to obtain the desired architectural look. Design guidelines are used to either protect existing quality design or to help create the quality desired.

## **Subdivisions**

The primary purpose of the Subdivision Map Act is to encourage orderly community development, to ensure that areas within the development that are dedicated to the public will be properly improved by the subdivider, and to protect the public from fraud and exploitation. The Subdivision Map Act, working in conjunction with the City's Zoning Ordinance, guides and controls to a large part the development of the City. A minor subdivision or parcel map is a map that divides a single parcel into four or fewer lots. A major subdivision is a map that divides a parcel into five or more lots.

## **California Environmental Quality Act (CEQA)**

The California Environmental Quality Act (CEQA) requires that both private and public projects be analyzed for their potential impacts to the environment. An Environmental Impact Report is an informational document intended to assist City officials in making decisions regarding a proposed project. Following the precise process laid out in the CEQA Guidelines is very important. While the EIR may be the heart of CEQA, most reviews end in the adoption of a Negative Declaration of Environmental Impact. In other words, the proposed project does not have any environmental impacts that are not known and cannot be mitigated through project redesign.

## **Code Enforcement**

This is a necessary function for the Planning and Building Departments. Cities are authorized to prosecute violations in order to enforce building and/or zoning codes. Most cities prefer compliance to code requirements to the prosecution of property owners. In most cases, a discussion of the issues usually leads to compliance.

## **The Public Hearing Process**

The Government Code sets out particular requirements to be followed in order to conduct a public hearing. It also provides guidance on what types of activities or applications require formal public hearing. Typically, if a public hearing is to be conducted, proper notice must be given. The public hearing notice must be given in at least two forms; advertised in a newspaper of general circulation and posting of the project site and/or a mailing of the public hearing notice to all property owners of record within 300 feet of the project site. Some cities also have three regular locations where postings are made.

Public hearings must be conducted to consider adopting or amending general plans, zoning ordinances, to consider granting use permits and for tentative tract map review.

## **The role of the Community Development Department**

The Community Development Staff guides and advises the City Council, Planning Commission and other City Departments with regard to the physical development of the City. The Planning Staff provides the labor and expertise to maintain the City's General Plan, Zoning Map and Ordinance. The staff also provides for the day-to-day

implementation of the City's land use policies.

The Community Development Staff provides the liaison with the business community, simplifying permitting, working to streamline the development process and providing communications between the real estate profession, developers, merchants, property owners and residents.



## **The Police Department<sup>3</sup>**

The police department has the primary responsibility of providing for the maintenance of social order within carefully prescribed ethical, legal, and constitutional restrictions. Its objective is the prevention of crime, detection and investigation of criminal conduct, and the apprehension of violators.

As a general matter, in the city council-city manager form of government, the chief of police is appointed and supervised by the city manager. This is used to establish a single executive officer to implement and administer the city council's policies. This varies, however, and some city councils appoint all department heads, including the chief of police. Under this form of government, the chief of police reports directly to the city council, however, many of the routine day-to-day police department issues are coordinated by the city administrator. In this way, more routine matters are handled by an administrator and the city council has a more direct relationship with the chief of police.

In a charter city the relationship of the police department to the council is determined by the charter.

### **Primary Functions of the Police Department**

The police department's responsibilities can be grouped under the following general categories:

- The prevention of crime
- Apprehension of offenders and recovery of property
- Performing miscellaneous services

### **The Prevention of Crime**

Crime prevention is a top priority for all city officials, and this task makes up a good portion of what city police departments do. In most instances, crime prevention comes in the form of patrol cars, but increasingly, police departments are utilizing prevention and outreach programs to target specific groups, such as youth.

For example, a recently emerging trend has been the establishment of counseling units within municipal police agencies designed to handle juvenile offenders. The rationale behind funding such units is to reduce recidivism at an early age, and thus reduce the future need for expensive police and criminal justice services. Other programs are aimed at educating youth about gang and drug activity to deter such behavior.

Emerging as a philosophy of policing are the concepts of Community Oriented Policing (COP) and Problem Oriented Policing (POP). Community Oriented Policing is a

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<sup>3</sup> Revised by Richard M. Tefank, Chief of Police, Buena Park.

philosophy of a police department being accessible to the public and working together in a partnership to identify and implement crime prevention strategies. Problem Oriented Policing is the philosophy of utilizing the community to identify problems and then working in conjunction with the police department to develop strategies to eliminate or solve the issue confronting the community and quality of life.

Crime prevention is one of the more visible aspects of what police departments do. However, the success of such programs should not be the only indicator of department performance. Public perception and citizen satisfaction with other police services should also be considered.

### **Apprehension of Offenders and Recovery of Property**

An essential component of the duties of a police department is the apprehension of offenders and recovery of property. Included in these functions are responses to calls, the investigation of crimes, and assistance to victims and witnesses and filing criminal cases to a prosecutorial agency. These tasks can be an indicator of the police department's performance, response time to calls, number of cases cleared by arrests, and number of criminal cases filed. These components can also be used to evaluate performance.

### **Performing Miscellaneous Services**

Some additional, but typical police responsibilities include parking control, animal control, applicant fingerprinting, commercial and residential security inspections, delivery of city mail to council and commissions, public speaking programs, and school crossing guard responsibilities. In some cities public safety departments have been formed combining police and fire services in an effort to increase personnel utilization. Police departments are often called upon, in conjunction with other departments, to enforce such things as code violations. In addition, police departments prepare various reports and other materials which describe their functions and inform elected officials of their actions.

The police department has the responsibility of preparing a variety of documents. The most significant document, and by far the most important respect to a city council, that a police agency prepares is its own local budget. The budget contains the department's priorities for the coming year, and the division and allocation of resources to accomplish those objectives. Through council action the budget becomes the primary policy statement from the council to the agency.

California requires the submission of monthly reports tallying the reported significant crimes and successful clearances, amount of loss and recovered property by category, and a register of all arrestees by name, offense, and ultimate disposition of each individual by the reporting agency. There are other reports called for throughout the year relating to narcotics seized, length of duration of juvenile arrestees in local jails, and other miscellaneous reports for the California Department of Justice.

A police activity report to the council should be considered another significant document. Since there is no mandate for such a report, local variations occur as to form, content and frequency of issuance. Some departments may never issue such reports, or issue them only in response to a specific council request.

Most departments, however, issue reports on a monthly, quarterly or yearly basis. They may vary in form from informal written briefings to complex statistical analysis replete with minute charts and graphs pertaining to every function of the agency. The point that should be emphasized, however, is that this report should be understandable by, and a benefit to, the council, the community, and the administration of the department. If it is too complex or too detailed, they become nice fillers on bookshelves, but are of little benefit to the council for prioritizing the expenditure of department time and resources.

### **Council and Police Department Relations**

A municipal police agency is only part of the overall service program of a city and should complement, support, and assist in the service delivery of the other city departments. It is not an independent, isolated, essential service with no interplay with the other city departments.

In the planning process, it has expertise in social impacts, environmental security, and traffic patterns and circulation. In its relationship to public works and engineering, it will have input on traffic engineering, signing and marking, and can assist in the causative factors of local traffic accidents. Officers on patrol will be able to report road deterioration, traffic obstructions, and general hazards with resultant liability exposure to the municipality. In the development of parks, the police department can assist in plan development with an eye towards eliminating vandalism, areas prone for criminal behavior, and instilling a sense of security in the park. In short, a police agency is an integral part of city government -- not apart from it. Representatives from the police department should be involved in all aspects of the planning process.

The internal policies and procedures of the department are determined by the police chief and need to be consistent with the law and policies of the city manager or city administrator and the council. Since the police function is primarily concerned with a broad range of order maintenance activities and with the provision of services to the community, these matters are clearly local concerns requiring responsiveness to the public and accountability to community priorities. Coordination of services, development of priorities, and maintenance of a balance between the services offered and the financial resources of the community require that the agencies delivering the services be responsible to the public. The determination of what services a police agency will provide, what priorities will exist, and what police responses will be sanctioned are proper decisions for the city council. A police department exists within a political arena, and a city council can be asked to answer to the electorate based on the actions of the police department. It is therefore, important that a police department understand its connection and relationship within this political arena.

## Budget Issues

The police budget will contain the proposed goals and objectives of the agency for the coming fiscal year. Depending on the local budget format, each police budget will generally show the allocation of resources distributed among three major divisions: administration, patrol, and investigative services. The budget accounts will reflect requested expenditures necessary to accomplish the goals and objectives of the department.

With the tremendous amount of discretion entrusted to police, oftentimes the most cost-effective expenditure of public funds is allocated within the training account. Expenditure in technical courses, firearms, self-defense, and crisis intervention, not to mention supervision and management, contribute to greater public acceptance of the police and lessen the exposure of the municipality to civil liability. The police budget will also show the percentage of general funds allocated to public safety in comparison to the total city budget. Local jurisdictions will vary based on community need and public demand as to the percentage given to police services through the allocation of general fund revenues.

When allocating resources, evaluation of police productivity is too often measured in terms of arrests, case closure, and property recovery. These measurements are as suspect as the criteria on which they are based, namely uniform crime reports. Although these numbers should not be overlooked, more important criteria for evaluation can very well be community satisfaction which is the community perception as to the quality of delivered police services. Questionnaires and surveys can be designed and input solicited on a random basis if desired by a city council.

The elected official may be best able to evaluate the effectiveness of the police department by soliciting input from his/her respective constituency. The perception of the police by minority communities, by the business community, by the residents, and by other individuals involved in the criminal justice system is subjective at best, but in the long run might form the better basis for evaluation. For instance, just the presence of the "patrol" division on the streets may be perceived differently by different segments of the community; for some it may suggest security, and others may view it as hostile. In contrast, different statistical measurements may suggest varying degrees of "productivity" but these can be counter to the community's perception.

The department's ability to achieve its goals and objectives as stated in the budget, stability of its personnel, time lag in responding to calls for service, and effective written disseminated policies and procedures are additional objective criteria which can be used in forming an accurate evaluation of the agency. No evaluation should be based on one or two selective areas, but an accurate analysis of several critical areas will lend to an accurate overall evaluation of the agency.

One peculiarity typical of all police agencies which a city council must keep in mind is the need for higher total staffing -- in contrast to the number of persons on duty at any given time -- caused by operating on a seven-day week, twenty-four hour basis.

Typically, police departments must staff twenty-one shifts each week. Each officer works five shifts, and therefore it requires 4.2 officers to field one patrol car on a weekly basis. When vacation time, compensatory time off, sick leave, mandatory training, and court time are computed, the 4.2 figure approaches 5.2 officers to maintain one patrol vehicle in the field on a weekly basis. This formula applies to the five-day work week. Alternative work schedules include the “four-ten” plan, a work week consisting of four ten hour work days, and the “three-twelve” plan, a work week consisting of three twelve-hour shifts.

Overtime costs are often of great concern to a city council. Overtime on a day-to-day basis is unscheduled and although management exercises what controls it can, an officer cannot be relieved in the middle of a major criminal investigation or a serious traffic accident. Two-thirds of the patrol force generally work swing and midnight shifts, and are also required for court appearances during the day, which leads to increase overtime costs.

Limited resources along with rising insurance premiums, retirement, and employee benefits are creating fiscal dilemmas which the elected official must deal with while preserving the community's perception of proper security. Increased civil litigation arising out of police action is broadening the municipality's exposure to civil liability. Tax reducing initiatives are lowering the general fund revenues and it is primarily the general fund from which every department derives its funding source.

Budget constraints, however, provide an opportunity to improve service and efficiency in the future. Consolidation or centralization of records, warrants, and dispatching, together with the formation of multi-jurisdictional investigative units will become more commonplace. The actual consolidation of municipal police departments while still preserving local control should be considered and experimented with. The “civilianization” of support personnel and the increased use of civilians in performing routine calls for service will free up more sworn officers for criminal apprehensions.

The function and purpose of investigative units should be re-evaluated and critical decisions made in regard to their caseload, accountability, and solvability of cases assigned with the view that patrol can share more responsibility for criminal investigation. A reserve force can also be utilized, however, recent training requirements, and other state laws have discouraged the use of reserve officers.

## **Labor Issues**

An issue facing local municipalities today is the actions of the rank and file police associations or unions. During difficult labor negotiations there may be a “job action,” which may include work slow-downs, the “Blue Flu,” or an inordinate decrease in traffic enforcement. Votes of no confidence in the police chief are common, and coupled with the police “job action,” may cause community unrest and consume local officials' time to the detriment of all municipal services.

## **Public Awareness**

An active public education program soliciting community support in crime prevention, instilling public awareness of the limitations of police authority, and re-evaluating or redirecting the public's expectation of having a police officer responding to every call for service should be attempted and supported.

Some cities are involving their residents more closely with the police department, either through a community police academy or a volunteer program. Besides helping to stretch the resources of a police department, these programs provide the public with a greater awareness of the role and responsibility of the police department.

## **The Public Works Department**

The purpose of the public works function is to be the stewards of a city's infrastructure. Municipal infrastructure traditionally includes streets and highways, median island landscaping, flood control and storm water quality, public buildings, water supply, sewage treatment, street lights, transportation and traffic control, solid waste management and recycling, parks, open space, municipal utilities, street trees, airports and cemeteries. For all of these municipal services, the public works function is responsible for design, construction, operation and maintenance of municipal facilities.

Every city in the United States organizes their public works functions in different ways. The traditional approach is to have a Public Works Department that is responsible for all these services. Many cities have developed with special districts that handle some of the public works functions and thus these functions would not be under the purview of the City Council. Also, many cities assign various public works functions to other City departments.

A new council member is encouraged to review the City's table of organization to see what functions each of the City departments is responsible for. It can be embarrassing for a council member to ask a department head about a municipal service when that function is handled by another department, especially during a City Council meeting.

In many ways one can look at public works as providing the basic foundation on which cities and their subsequent functions are built. Public works is rarely noticed until something goes wrong or until major construction is underway. Excellent public works in a community can have a significant impact on property values and the quality of life that citizens enjoy.

## **The Development of a Capital Improvements Plan (CIP)**

One of the most vital documents to implement a cities general plan is the capital improvement program (CIP). Most cities develop long-range (generally five years) capital improvement programs, which are updated annually. This document reflects the plans to construct certain public facilities in accordance with the goals and objectives of the city. The CIP should describe proposed facilities adequately so citizens understand what facilities are planned, what they will cost, and where the money will come from to finance them. .



## **Funding Sources**

The most reliable sources of funds for public works come from gas tax revenues and local sales tax initiatives for transportation. These sources generally distribute funds based on formulas such as number of lane miles, number of licensed vehicles, or population. Other reliable sources are local enterprises, (such as water, sewer or refuse, etc.) or the local agency's general fund.

Policies guiding the construction, operation and maintenance of many public works facilities are frequently developed at the state and federal level and as such, weigh heavily on the policy direction of local agencies. Federal grant funds administered by the Federal Highway Administration or the Environmental Protection Agency for example are generally loaded with regulations governing their use. As a result, use of such funds can require a great deal of sophistication and time to administer. This, of course, results in increased administrative costs and delays, and as a consequence many smaller organizations with limited staff resources are unable to utilize these types of funds.

To a large extent, public works budgeting is controlled by the availability of state and federal funds. Categories and levels of funding, particularly for federal grants, fluctuate widely from year to year. For example, the decision to cut federal taxes could likely cause significant public works fund reductions necessitating changes in levels of service or increased use of local general funds.

State and local bond measures also fund public works budgets and are a frequent revenue source for major projects. When a public works facility benefits only a small portion of the community it is often financed by the developers of the property by "benefit assessments" levied against the owners of property in the neighborhood or by service charges and fees. These devices do not involve the use of general tax funds. These funding sources complicate public works budgeting and reduce the city's flexibility to prioritize its expenditures and to plan for the future. These factors must be considered in selecting and evaluating public works programs.

## **Performance Feedback and Measurement**

One means of measuring any service is by evaluating citizen feedback. If the feedback is favorable, it is a good indication that the level of service is commensurate with the expectations of the community. However, a seemingly popular service may also be an extremely expensive service. If the public is aware of the expense involved and is willing to keep the level of service, this confidence is then reflected in the annual budget allocations.

It is extremely helpful if performance levels can be measured in terms of efficiency and quality. Departments must establish means to measure how well they are performing and meeting the mission, goals and objectives of the city council.

Continuous improvement evaluations of all operations are a common expectation within local communities. Comparisons with how services are provided elsewhere and in the public sector are useful tools. Sometimes contracting out to the private sector is the most successful way to provide a particular service, and sometimes we may simply need to get out of certain businesses or services that stray too far from our core mission or are simply unaffordable.

The most common measurement used by most public works departments is asset management, an assessment of the condition of the cities infrastructure. This assessment inventories the condition of cities capitol assets. The public works department can then determines what deferred maintenance may exist, calculates how much should be spent annually to eliminate it within specified periods of time as well as what should be spent on preventative maintenance to maximize the life expectancy of these assets. Eliminating deferred maintenance is the major public works issue at all levels of government. It is terribly important that policy makers understand what they should be spending to maintain and preserve what they have before they decide to spend available funds on new projects or services.

## **The Recreation, Parks and Community Services Department**

Community Services is not a new municipal function. Community services refer to parks, recreation, libraries, arts and culture, museums and theaters, senior's leisure and human services. Village greens were found in most every New England town from early in our country's history. Central Park in New York City provided the first large scale city park in the United States when it was acquired in 1856 at a cost of \$5,069,693 -- and not without some large scale political disagreement! Neighborhood park development began to become commonplace in American cities during the first decade of the twentieth century, and the birth of the American recreation movement occurred with the dumping of large heaps of sand in the yards of a chapel and a nursery in Boston in 1885.

In California, community services activities are authorized in state statutes differently for charter and general law cities. Charter cities are permitted to act subject to limitations in their charters unless overruled by state law on matters of statewide concern; general law cities are given permission by a wide variety of code statements to conduct activities such as parks, arts, recreation, etc.

### **Primary Functions of the Community Services Department**

Municipal or local community services are offered in several forms in California. Although most cities provide community services through regular city departments, some communities are served by counties, some by special park and/or recreation districts, some by community service districts (CSDs) and some by combinations of the above.

In recent years, many difference organizational patterns have been developed to meet local conditions and local needs. The organizational title "parks and recreation" generally implies single department responsibility for both park maintenance and recreation programming. Some cities have chosen to separate the two functions, typically placing park maintenance responsibility with the public works department.

Cities vary widely in the arrangement of departments. Often, these activities are placed under the administration umbrella "community services," though each area generally retains its own identity. The common administrative denominator can assist in creating an atmosphere conducive to cooperation and shared resources, or they may be separate departments.

Community services departments have traditionally been asked to provide services which do not seem to fit neatly into other departments or disciplines. Often these changes in roles have been difficult to assimilate within the departments as well as within the city, but the departments have learned to become tremendously adaptive. It would seem logical to assume that changes in local government funding as well as in grant and other assistance programs will continue to mandate changes in organizational structure within the cities. However, the city government's commitment to community services department will continue to be recognized as a barometer of the "quality of life" in that community.

Several significant city documents are prepared by the community services departments, including department budgets, the recreation and arts elements to the general plan, park standards and plans, and community services program information material. Community services department staff members and commissions are also regularly called upon for input into general plans, zoning and redevelopment matters.

Often elected officials and city managers overlook the positive importance of the many public relations materials published by community services departments. This multitude of regular and special publications annually provides most of the written contact between many citizens and their city government that is not of the utility bill or statistical report variety. As shrinking financial resources demand better utilization of resources the community services publications to residents can also provide information of other important city activities and programs.

### **Council and Community Services Department Relations**

Since community services departments have such varied responsibilities, each elected official must consider carefully the interrelation of department activities with other services provided by the city. Any discussion of police programs must necessarily consider youth recreation and arts activities. Considerations of community appearance and real estate property values must note the impact of street tree programs, public building maintenance and park design and maintenance.

Reviews of sales, amusement, or hotel/motel tax revenues naturally relate to community theaters, zoos, special community events, athletic contests, etc. No analysis of local employment should exclude the millions of dollars earned annually (much of it by young people) from work in local California community services departments -- additionally, much of the earnings are probably spent within the community. The economic impact of a downtown theater, for example, may have a multiplier effect of three times and sometimes much more. That intangible called "community spirit" is often highly influenced by community services departments' support of the multitude of community volunteer organizations and community special events found in every city.

### **Department Policies**

City councils should insure that department policies are being set and implemented in a manner consistent with the desires of their community. Many cities use advisory commissions (parks and recreation, libraries, senior citizens, arts, human services, street trees, youth, etc.) to review and comment on important policy decisions prior to city council action.

- Does the city council wish to get involved in all fee setting or special interest group subsidy requests?
- Should the city follow the "co-sponsorship" plan which suggests not starting a city program if a local group can be stimulated to fill the need?

- Policy issue determination involving citizen participation invariably provides more satisfactory and comprehensive solutions to everyone involved.

City council members should insure that a clear understanding exists by all parties regarding which type of policy decisions should be made by the city council, the advisory commissions, the city manager's office, or the department.

Unfortunately, community services are not always easily quantified as are fires, burglaries, investments earned, building permits issued or miles of streets repaired. Some communities do invest time and money into community services planning, user surveys, and performance standard strategy. However, most community services departments do not have the resources to be thorough in evaluating their services nor in making elected officials and the public aware of their contributions.

Elected officials should set priorities for park maintenance and then provide the resources to ensure modern managerial and performance standards are used to measure results. Elected officials should demand that advisory commissions not be "rubber-stamped" and devote time and energy to reviewing programs, program quality and citizen concerns. Elected officials should ask whether or not demonstration and innovation are the exception or the rule in the community services department; and whether or not their city's parks and programs serve the needs of the users of the services offered.

There are numerous traits of successful community services departments which bear upon its ability to serve the public. Some include:

- **Innovation.** Are the community services departments flexible and open to change? Ten years ago, who envisioned roller blading or midnight basketball, senior day care, a technologically advanced library or public arts throughout the city? More important, who is thinking about the possible impacts of these items on the community services experience: an aging society, the homeless, child day care, surplus schools, the drug culture, gangs, strategic planning, growth management, an international recession, a sustained energy crisis, drastically reduced federal spending and year-round schooling?
- **Part-Time Help.** Community services departments are probably unique in the large number of part-time employees they hire. As mentioned above, most cities are probably a major employer of youth in their community. While this may give the personnel and finance department problems, it also gives the city a live and direct connection to its citizenry, in addition to being a tremendous augmentation to community services permanent staff. For many city residents the park maintenance helper, librarian or lifeguard may be the only living and breathing city representative they speak to throughout the year. Evaluation and training of these employees is the key to an effective service delivery of community services.
- **Volunteers.** Community services departments must utilize volunteers and special interest groups in ways that distress risk managers and other city officials but tap a great community resource. In 1987, volunteerism was determined to have grown in

cities by almost 50 percent over the previous five years, while full-time staff had grown only 10.3 percent during the same period. Such an approach gives city government another direct method of ensuring community involvement.

- **Sponsorships and Fundraising.** As general fund budgets become less available to community services departments, these agencies have become more dependent on funding through corporate and private sponsorships, grants and fundraising efforts. Increased staff time is being devoted to maximizing these resources, and it is not uncommon that special events, regular programs, brochures and publications, etc., include references to a sponsor.

The time for traditional responses to public service demands in this time of untraditional funding has ended. Elected officials are asking questions about some of the following concepts and practices:

- “Contracting-out” for services
- New capital outlays for equipment facility or redesign that will increase productivity and service levels while reducing energy consumption
- Voter-approved park maintenance fees
- Nonprofit foundations to augment programs (For example, Friends of the Libraries, Arts, Parks); paid advertisements in local publications
- More effective use of volunteers and community groups
- Partnerships and collaborations
- Higher fees and charges
- Scholarship programs for the poor and the handicapped who may be hurt the most by the higher fees and charges
- Use of parks and recreation departments to generate ancillary revenues that benefit department revenues while providing useful services to the community
- Enterprise funds in recreation to parallel water and sewer enterprise fund operations
- Conversion of parks and grounds areas to low-maintenance landscaping
- Department, division and program reorganization to reduce middle management
- Design of new parks that can be easily maintained
- Systems that facilitate professional management
- Involvement of community or neighborhood groups or the private sector in maintenance operations

Community services has proven itself to be one of life's necessities in a highly urban society with rapidly growing cities, quality of life issues becoming an important way to reach the public and create a sense of community. The public will continue to expect public officials to provide for quality services in the cultural arts, human services, leisure

services, library services and in park development and maintenance in spite of reduced resources to do so.

## The Library Department<sup>4</sup>

Library functions usually fall under the Recreation, Parks, and Community Services Department. It is listed separately here for greater visibility. The purpose of the public library is to provide informational, educational, and recreational materials in a variety of formats to meet the needs of the community. These needs are as varied as the persons who use the library—young and old, poor and affluent, from the most practical needs to the most technical, from recreational to life influencing. Since the first "community library" was opened in Philadelphia in 1731, the public library has been the one source of information and assistance available to all citizens.

### Primary Functions of the Library Department

In general, the library's functions can be placed into three broad categories:

- The source for information and materials of all kinds for residents—traditionally the public library has been regarded as a preserver of culture and democracy, a repository of information in many formats, and an extension of the formal educational system. These basic responsibilities are but part of the modern dynamic library program.
- The provision of public services—including the more traditional interlibrary loan and children's programs, as well as such more innovative services as literacy tutoring, computer and Internet access, and materials for those with special needs.
- The provision of information to City administration and management.

### The Source for Information and Materials of All Kinds

In addition to books on almost every subject, the library's collections may include newspapers and magazines, audio and video cassettes, compact discs and DVDs, computer software, microforms, pamphlets, maps, pictures, toys, games, films, tools, and equipment for loan and for use on-site. An increasing number of information sources are available to the public at the library on computer databases and through the Internet.

Many local libraries collect and preserve historical documents, papers, photographs, and other memorabilia which are the only research resource for local historians. The public library is sometimes called upon to gather information or to obtain documents needed by other city departments. And the library, along with the city clerk's office, may act as the collector and retainer of city and regional governmental documents. In some communities, the public library is a source of cable television programming, and the library may house the cable TV studio. And in every library, the staff gives tours of the library and gives instruction on how to use the many resources available to customers of all ages.

The public library also serves the information needs of elected officials and city management. Do not hesitate to call upon them for books, magazine articles, management videos, and other resources needed to administer city government.

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<sup>4</sup> Revised by Laura Mitchell, City Librarian, Escondido.



## **The Provision of Public Service**

The public library is often called upon to provide information and materials that are not available within its facilities. To meet the more specialized needs of residents, the public library can borrow books and other materials through the interlibrary loan program from other libraries, including colleges, universities, hospitals, and private corporations. Most public libraries now belong to the new "Library of California", a consortium of libraries of all types with the purpose of facilitating the sharing of print and electronic resources throughout the state.

Many libraries offer programs for people of all ages, including classes on how to use the Internet. For young people, the library may give pre-school story hours, after-school entertainment, and motivational reading programs for elementary age children, and special interest clubs for preteens and teens. For adults, the library may offer great book discussion groups, travelogues, music programs, inoculation clinics, lectures, and assistance at income tax time. Community groups may meet at the library on a regular basis.

More than 100 public libraries are participating in the California Literacy Campaign, a grant program established by the California State Library in 1984. Local libraries match volunteer tutors with adults who have poor reading skills. These residents are then taught to improve their reading levels so that they can function better in their daily lives. In fiscal year 2000-01, more than 25,000 learners and 13,500 tutors participated in the campaign.

## **Contemporary Library Issues**

Some current library issues include growing numbers of "latchkey children", the declining condition of school libraries in many California communities, increasing numbers of homeless and mentally disturbed users, library facilities which are deteriorating or just becoming too small for the increasing use, the need to provide expensive computer equipment, and the need to resist individual and/or group attempts to limit access to library materials.

## **City Council and Library Relationship/Structure**

In California, library services may be delivered to a city by one of several methods:

- The city may establish its own library.
- The city may contract with the county library for library services, or the two bodies may form a joint city-county library.
- The city may be included in a special library district.
- The city may be included in a unified school district library district or a union high school district library district.
- The city may contract with a commercial firm to operate the library.

The method of service delivery also determines the nature of the library's governing body. The library may be governed by the city council or the board of supervisors, or by an elected or appointed board of library trustees. Regardless of the method of service delivery, the local public library is an integral part of the community and is responsive to community needs.

### **The City Council and Library Department—Relations and Expectations**

Assessment of Services. The public library is generally perceived as a public good that is worth supporting, even by those who rarely use it. Hard times for library budgets have sometimes motivated a neighborhood or community to mobilize in support of their library. And the governing body's commitment to providing quality library service is certainly one measure of the "quality of life" in the community.

Like other "human services," the quality of library services is not easily measured or evaluated. The state requires public libraries to keep statistics on their activities, and these can help in the evaluation of the library, especially circulation trends and the increase or decrease in the number of registered borrowers. However, statistics do not give the total picture.

The opinions of library users and community members are very helpful in evaluating the library. If the staff is friendly, well trained, and helpful to all clients and the library atmosphere is inviting, people will enjoy using its services. If the library management and the governing body receive few complaints, and users praise the library, it is fairly safe to assume that the library is doing a good job. Elected officials who do not use the library and rarely visit it are missing their best opportunities for observing staff performance and evaluating library use.

Questions that may be asked in the evaluation process include:

- Is the library used by all segments of the community?
- Is the staff well trained and knowledgeable about resources and collections?
- Can user questions be answered quickly and thoroughly, or can sources for answers be identified for the user?
- Does the library demonstrate that it is a part of the community by displaying items of local interest, by collecting local history, and by encouraging staff members to become involved in local organizations?

Automation and Capital Needs. In some communities, local officials have been reluctant to commit the large initial capital outlay that is required to automate the library, and to maintain and upgrade its computer system in a timely manner, although they have automated many other routine functions in other departments. Experience has shown that the automation of library routines relieves staff of record keeping and enables them to expand services to meet the ever-increasing expectations and demands of the public. Automation also enables staff to perform other tasks that may not be getting done.

One of these tasks is that of fulfilling the responsibility to account for the library's collections. Taking inventory of thousands or millions of items by hand is an almost

impossible task with existing staff. With a database, the library has an efficient means of tracking and accounting for most of its inventory. This in turn enables the staff to know which items are so much in demand that more copies are needed, or which important items are missing and need replacement. And this is much better service to the public.

Facility Needs. Another very effective way of improving service is to build new libraries that are energy efficient, handicap accessible, easily maintained, and prepared for the installation of the newest computer technology. Too many public libraries are housed in antiquated facilities that lack handicapped access, fire suppression systems, adequate seating, decent restrooms, and staff work space. Some public libraries are so badly out of compliance with fire, building, and electrical codes that they would be closed if they were operating in the private sector.

The safety and security of the public, the staff, and the city's enormous investment in its library collections are at constant risk in such buildings. Unfortunately the mitigation of these problems requires a large capital outlay that local officials hesitate to commit as long as they can "get by" with the current situation. It is sometimes the case that the library staff provides efficient, quality library service *in spite* of all these handicaps; the improvement in service would be even more dramatic were such an excellent staff moved into an improved facility.

## **Contemporary Library Issues**

All city services face a never-ending demand for more and better services, and the library is no exception.

- Growing communities with young families make many demands upon the local schools and the public library.
- More and more residents have personal computers at home, and they expect to be able to access library resources from home.
- Library users also expect to find the same up-to-date equipment and resources at the library that they have at home.
- Communities with more elderly persons on fixed incomes are experiencing more demand for services specifically for the senior citizen, and this is one of the groups often targeted by public libraries for special service programs, such as large print books, talking books, and information and referral services.
- New businesses and industries bring in more people to use city services and new demands on the library's business collections.

Of major concern to library staff members is the increasing number of "***latchkey children***" frequenting the library. Many working parents, unable or unwilling to provide after-school care, instruct their children to go to the library after school and to remain there until they are picked up hours later. They assume that their children will be safe and supervised at the library, not realizing that because it is a public facility, it is open to all elements of society, and the busy staff cannot take responsibility for watching the youngsters.

Bored, restless children sometimes behave inappropriately, demanding constant attention from the staff, who are then unable to help other library users. The American Library Association has prepared guidelines for libraries dealing with this nationwide problem, and libraries are working with their local police and other agencies to establish methods for handling problem and neglected youngsters.

Another youth-related concern of public librarians is the continuing **decline of school libraries**, especially in elementary schools. The lack of funding for school libraries throughout the state has resulted in outdated collections and poor staffing; often a school library is run by an untrained aide or a parent volunteer. This has created an enormous demand on public libraries for materials that support homework assignments, and for homework assistance after school hours. Public librarians try to balance the needs of local children against the needs of the rest of the community but find it increasingly difficult.

Another significant problem is that the public library, because it is a public facility, has become "home" to an ever-growing number of the **homeless, mentally disturbed, and transient** members of the population. These people find the library a comfortable and non-threatening place to spend the day, but their appearance and behaviors are sometimes upsetting and intimidating to other library users. Unless they commit a misdemeanor, such as disturbing the peace, there is no legal ground for ejecting them from the library.

Like unattended children, the homeless and transient people frequenting the public library are more than a library problem; they are a community problem. Solutions may be found in the provision of more day care programs and facilities for both groups. Libraries cannot solve these problems, but they can contribute to community-wide efforts to do so.

There is and will always be a demand for basic library service, for no other institution provides the materials and services that are the responsibility of the public library. It has been said that the continuance of our democratic way of life depends in part on the public library's continuing ability to provide materials on all topics and from all points of view without interference or censorship by any particular group, sect, or creed. Groups that seek to limit or prescribe the services of the public library seek to interfere with our citizens' most basic rights. Library management needs the support of its governing bodies in resisting such interference.

## **The Human Resources Department**

A city's human resources department has responsibility for personnel matters affecting all city departments. Human resources serves as an internal consultant helping other city departments recruit and retain the best possible workforce, training and motivating employees once they are hired, ensuring a fair and equitable system of personnel management and resolving employee relations problems.

Human Resources professionals have four major roles within their cities, the traditional role of providing technical expertise, and three emerging roles: "business partner", working with management to devise effective solutions to an organizational or performance problem; "change agent", helping others understand the need for change, planning and training for change; and, "leader", influencing others, and balancing concerns for employees with organizational requirements and goals.

Cities in California vary as to how their human resources functions are organized. Many cities have changed the name of this function from "Personnel Department" to "Human Resources Department." Medium- to large-size cities are likely to have a full-service Human Resources Department with the responsibilities of the director ranging from recruitment and selection to risk management. Smaller cities may have a personnel officer or personnel manager reporting to a department head or to the city manager. In other cities, the assistant city manager may be designated to handle human resources responsibilities.

Many cities include risk management functions (workers' compensation, liability, insurance and safety) as part of the Human Resources Department.

### **Primary Functions of the Human Resources Department**

- Labor and employee relations, including negotiating the city's labor contracts and resolving employee grievances
- Recruitment and selection for vacancies and promotional opportunities in city departments, and compliance with non-discrimination law
- Classification and compensation to ensure that employee job descriptions and pay are consistent with the actual duties being performed
- Employee recognition programs
- Training and development so that employees grow professionally and provide improved services to citizens
- Administration of retirement, health, dental, and other employee benefits
- Risk management, involving workers' compensation, liability, insurance and safety
- Maintaining personnel records

### **The Human Resources Department and the City Council**

Elected city council members set public service policy for the city. In that capacity, elected officials can assist in effective management by getting to know how their decisions affect the city's largest resource: its employees. The human resource department functions and responsibilities are key to successful organizational effectiveness. Moreover, elected officials can expect to be kept apprised of ever-changing employee relations law, and the costs and values of the city's workforce.

Following is a summary of the key organizational responsibilities of the human resources department.

## **Labor and Employee Relations**

### ***Employer-Employee Relations Resolutions***

Every city should have a resolution or ordinance that provides procedures for administering employer-employee relations between city management and the city's employee organizations and for resolving disputes regarding wages, hours and other terms and conditions of employment. This document is often described as the Employer-Employee Relations Resolution (EERR) or Employee Relations Ordinance (ERO).

The EERR or ERO defines the process for recognizing employee organizations (or "bargaining units") as prescribed by Government Code Section 3500 et seq, the "Meyers-Milias-Brown Act" or MMBA, originally adopted in 1969. In 2001, MMBA was modified to include resolution of disputes regarding unit determination through the Public Employment Relations Board (PERB). The number of bargaining units depends in part upon the services and functions provided by the city. In a full-service city with its own police and fire departments, a city is likely to have bargaining units representing the following employee groups:

- Police safety employees
- Fire safety employees
- General unit employees (rank and file employees, such as clerical and maintenance)
- Management unit employees (may have separate groups for police management, fire management and general management). This is very different from the private sector.

The EERR or ERO outlines a process for meeting and conferring in good faith under MMBA in order to reach agreement on a labor contract, or Memorandum of Understanding (or Agreement) (MOU or MOA). The city's "municipal employee relations officer" is designated in the EERR or ERO. This individual is typically the director of human resources or employee relations manager.

The city may utilize the director of human resources or a consultant as its chief negotiator.

### ***Providing Labor Relations Information to the City Council, Manager and Other City Officials***

The municipal employee relations officer requests guidance and provides labor relations information through the city manager to the city council. Such contacts, normally during closed session, include:

- Discussion of parameters for negotiating with specific employee groups
- Data on employee groups (wage and benefit data and comparisons with similar positions in other public agencies)
- Proposals made to the city's bargaining team by employee groups along with the cost of implementing the proposals
- Proposals made by the city's bargaining team, along with cost data

The city council approves final labor contracts, or MOU/MOA's, in open session.

In the event the management and labor representatives are unable to reach agreement on an MOU/MOA, the city's resolution provides for impasse procedures that may include a hearing by the council, mediation, fact-finding or arbitration. Under current State law, impasse with public safety employee units may result in mandatory binding arbitration, during which a neutral arbitrator ultimately determines how the impasse is resolved.

### **Recruitment and Selection**

*Recruitment:* The Human Resources Department works with the hiring department through all phases of the recruitment and selection process, from advertising a vacancy to final appointment of an employee. A goal is to target a pool of well-qualified applicants so staff may advertise with professional associations and newsletters, in addition to media sources. Many cities use the Internet to advertise for city job openings.

*Selection:* Staff evaluate job applications according to established qualifications for education, training and experience. They also test applicants via written exams, performance tests and oral interviews. Interview panels may consist of representatives in the field from other agencies, in addition to managers from the hiring department.

Human resources staff are responsible for compliance with state and federal non-discrimination laws in the hiring process, including Equal Employment Opportunity (EEO), the American's with Disabilities Act (ADA), and similar California statutes. Human resources staff may assist hiring departments with background checks on top candidates, and coordinate pre-employment medical exams and fingerprinting of new hires. Other responsibilities include new employee orientation, so that new hires learn about the city, its services, and its overall values and mission, as those factors relate to the employee's specific assignments.

## **Classification and Compensation**

*Compensation Surveys:* Comparing salaries and benefits with other public agencies for similar positions is an ongoing function of human resources staff. The data is used in collective bargaining with labor groups and for city departments in the process of establishing new or revised positions. Some cities compare their pay to the private sector as well. The factors involved in comparison, and the selection of comparison employers, are matters of policy (determined by City Council) and collective bargaining (determined with employee organizations).

*Pay and Classification Studies:* As functions of city departments change in response to public needs, human resources staff analyze job duties and recommend changes in current jobs or creation of new positions. Compensation changes may be recommended commensurate with changes in job duties. Pay or classification studies may be conducted for an entire city department, a division of a department, a specific bargaining unit or a job family (for example, clerical positions).

## **Employee Recognition Programs**

Many cities have introduced employee recognition programs with support from Human Resources Department staff. Components of employee recognition programs may include:

- Employee commendations
- Service year awards
- New employee ceremony for employees and families

*Employee commendation programs* may involve nominations by co-workers or supervisors for exceptional performance by individuals or teams of employees. The city council may recognize employees publicly at council meetings as a way to inform the community of outstanding city employees.

*Service awards* are presented to employees who have worked for the city for a certain number of years, e.g., at five-year intervals.

*New employee ceremonies* may be held regularly (monthly or quarterly) to provide a welcome by council members, the city manager or department heads to newly hired city employees and their families.



## **Training and Development**

Through its training function, Human Resources has an important role in helping employees provide quality services to the public, and in developing the successors for future promotional positions within the city. Staff may conduct a needs assessment survey citywide or for one department or division. Training may be handled internally by city staff or may be contracted externally to another firm. While training costs money it is an investment in reducing the city's liability, increasing employee productivity and improving services. Typical training programs may include:

*Supervisory Training Programs:* When new supervisors are hired into the city from another agency or a non-supervisory employee is promoted to a supervisor, it is important to train supervisors in procedures such as grievance handling and disciplinary procedures.

*Professional Development Training:* New federal or state regulations affecting programs operated by city staff require regular, ongoing training so that staff remain in compliance with appropriate regulations, as well as providing knowledge and skills that will be important for the employee as he/she seeks career growth within the city.

*Skills Training:* As new technology is introduced citywide, or job skills change, staff must be trained in efficiently applying the technology and skills to their jobs. In recent years, there has been considerable emphasis on "customer service" training.

## **Risk Management**

### *Administration of Employee Benefits*

Cities provide a wide range of benefits to their employees including health, dental, vision, short- or long-term disability, and life insurance, employee assistance programs, deferred compensation programs, and retirement. Many of these benefits are subject to complex federal and state regulations. Cities should have staff who are knowledgeable in the benefits area to administer these programs and assist employees. Most cities also utilize the services of an insurance broker to assist with negotiating contracts, making plan changes, and resolving insurance problems.

A city's contribution toward the costs of these benefits and the scope of the plans is generally subject to negotiation with the employee bargaining units. These negotiations can at times become quite contentious due to the significant costs of these programs and the frequency and severity of cost increases.

Many cities contract with the California Public Employees' Retirement System (CalPERS) to provide a retirement plan. CalPERS also offers medical insurance and other benefit plans.

## **Workers' Compensation Administration**

Employees who become ill or are injured in the course and scope of their jobs are entitled to workers' compensation benefits. The California Labor Code explicitly defines these benefits. Staff must be well educated on the provisions of the Labor Code, must be able to communicate effectively with supervisors and employees about the responsibilities of the city and the rights of the employees, and must have a general understanding of medical and legal terminology.

Workers' Compensation functions may be organized differently from city to city. Cities may self-administer claims by hiring staff to process claims. However, many cities choose to contract with a third-party administrator for this function. Risk Management staff responsibilities, outside of claims administration, include analyzing claims frequency and severity, predicting future losses, developing loss control programs, working with departments to create appropriate workplace safety policies, and working with departments and employees to effectively return injured employees to work.

### **Liabilities Claims Administration**

As provided by the California Government Code, persons wishing to recover money from cities for damages or injuries must file a claim against the city. Frequently such claims arise from minor property damage incidents, trip-and-fall accidents, vehicle accidents, allegations of police misconduct or civil rights violations, or contract disputes. As with workers' compensation administration, cities may self-administer these claims or may choose to contract with a third-party administrator. Liability staff generally works in conjunction with the city attorney. Staff responsibilities, outside of claims administration, include consulting with departments, analyzing loss patterns, and predicting future losses. In addition, liability staff is usually called upon to review contracts into which cities enter to ensure that the language appropriately addresses liability and insurance concerns.

The Government Code allows city councils to delegate their authority to deny or settle claims to city staff. Typically, city councils will delegate such authority up to a certain dollar amount. Settlements above the delegated amount are decided during closed sessions, after presentations and recommendations by the city attorney or other staff.

### **Insurance**

Cities purchase commercial insurance to cover many exposures including general liability, workers' compensation, property, automobile, earthquake, flood, and various employee benefit insurances. These coverages may be purchased directly from carriers or through Joint Powers Authorities (JPAs). JPAs typically offer increased negotiating power and lower premiums than standalone programs. They may offer other incentives as well, such as risk management support, dividends for loss reduction, etc.

Frequently, cities will choose to retain a certain portion of their losses for many of the above-mentioned exposures. The dollar amount for which no insurance is purchased is known as the self-insured retention. Cities must set aside funds to pay for these retained losses and must recognize the liabilities as prescribed by the Governmental Accounting

Standards Board (GASB). Insurance purchased for losses above the retention is known as excess insurance.

JPAs may similarly choose to retain a certain portion of losses. Member cities will then pool resources to cover the retained losses. City councils are generally required to appoint a council member or staff person to serve on the JPA board of directors. The JPA board is responsible for making decisions about general administration, claims administration, insurance programs, and investments.



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# Torch Program

# Mayors and Council Members

## DFC; F5A

*Earn Recognition for Your Service and Continued Education*

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The League of California Cities Mayors and Council Members Department honors the hard work and dedication of its peers through the Mayors and Council Members Torch Program.

Each year, elected officials from throughout California earn recognition as they progress upward through three sequential levels of achievement:

- Level I – Leadership;
- Level II – Advanced Leadership; and
- Level III – Leadership in Action.

### **WHAT IS THE DFC; F5A?**

The Torch Program is an educational program for mayors & council members who are seeking continuing education to enhance their own knowledge and skills in order to better serve the public. The Torch Program is voluntary and achievements are self-reportable.

### **BE RECOGNIZED FOR YOUR ACHIEVEMENTS**

Mayors and Council Members who reach *Advanced Leadership* and *Leadership in Action* levels of the Leadership Academy are honored at the Cal Cities Annual Conference with a certificate and torch lapel pin. Cal Cities can also arrange for recognition at your own city council meeting and/or via a news release.


If you are interested in learning more about this program, or would like to receive an application and a full list of graduation requirements, please contact [AY@calcities.org](mailto:AY@calcities.org)





# Mayors and Council Members Torch Program

Earn Recognition for Your Service and Continued Education

Applicant Information	
Name:	Date:
Title:	City:
League Regional Division:	Phone:
Email Address:	

Check All That Apply	Level I: Leadership 	
	1. Attendance and completion of the New Mayors and Council Members Academy in January; <b>OR</b>	Year(s):
	2. At least three (3) years as an elected official <b>AND</b> has attended at least one (1) League conference <b>AND</b> one (1) League Regional Division meeting.	Elected Years: (i.e. 2012-2016) Conference Name and Year: Attended Regional Division Meeting: Yes

Must Check All	Level II: Advanced Leadership 	
	1. Completion of the MCMLA Leadership Level I.	
	2. Completing of at least three (3) years as an elected city official.	Elected Years: (i.e. 2012-2016)
	3. Completion of one of the following: <ul style="list-style-type: none"> <li>League of California Cities Mayors and Council Members Advanced Leadership Workshop;</li> <li>National League of Cities Workshop;</li> <li>University-level program that is relevant to local government; or</li> <li>Participation in at least five League hosted webinars.</li> </ul>	List your qualification(s):
	4. Attendance and completion of three additional League conferences. Duplication of conferences is acceptable because content changes from year to year.	Conference Name and Year:
	5. Participation in at least two (2) Leadership Activities, one (1) of which <b>MUST</b> be a League activity.	Please see list of Leadership Activities on next page to select your qualifications and complete the application.

Must Check All	Level III: Leadership in Action 	
	1. Completion of the MCMLA Advanced Leadership Level II.	
	2. Completion of at least five (5) years as an elected city official.	Elected Years: (i.e. 2012-2016)
	3. Attendance and completion of two more League conferences. Duplication of conferences is acceptable because content changes from year to year.	Conference Name and Year:
	4. Participation in five (5) Leadership Activities, two (2) of which <b>MUST</b> be League activities.	Please see list of Leadership Activities on next page to select your qualifications and complete the application.

\*Please e-mail completed application to Meghan McKelvey, mmckelvey@cacities.org.

## LEADERSHIP ACTIVITIES

The following Leadership Activities must be completed while in office or within five (5) years prior to becoming an elected city official in order to qualify as a graduation requirement.

Check All That Apply	<b>League Activities</b>	
	Active League Policy Committee member for at least two years	Committee(s): Years:
	Having served as a moderator, facilitator, or speaker at a League conference	Conference(s): Year(s):
	Served as a member of the League's Board of Directors	Year(s):
	Served as a League Department executive officer	Department: Year(s): Office held:
	Served as a League Regional Division executive officer	Division: Year(s): Office held:
	Chair or vice-chair for a League Policy Committee	Committee: Year(s):
	Served as officer for a League Diversity Caucus	Caucus: Year(s): Office held:
	Member of a League task force or ad hoc committee	Name of task force/ad hoc committee:
	Participated in the California Civic Leadership Institute® (CCLI)	Year(s):

Check All That Apply	<b>Community Activities</b>	
	Service on a COG, LAFCO board, CalCOG or its subgroups	Describe your involvement:
	Member of a public sector association as an officer or on the board of directors	Association: Office held:
	Service as an officer of a local or statewide not-for-profit organization or professional organization	Organization: Office held:
	Instructor in relevant educational programs for city officials	Describe your experience:
	Member of a county, regional, state, or national commission, agency, or board.	Describe your involvement:

\*Please e-mail completed application to Meghan McKelvey, [mmckelvey@cacities.org](mailto:mmckelvey@cacities.org).



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# Acronyms in Local Government



## Acronyms in Local Government

501 (c) (3) – Charitable organization/foundations (federal)	CAO – Chief Administrative Officer or Citizens Assistance Officer
A-95 – Grant review clearinghouse	CAPIO – CA Association of Public Information Officers
AB – Assembly Bill	CAPPO – CA Association of Public Purchasing Officers
ABX1 4 – i.e. Assembly Extraordinary Session 1, Bill 4	CATV – Cable access television
ACA – Assembly Constitutional Amendment	CBD – Central Business District
ACR – Assembly Concurrent Resolution	CBMA – City Ballot Measure Academy
ACWA – Assn of California Water Agencies	CBO – Community based organization
ADA – Americans with Disabilities Act (1990)	CC&R – Covenants, Conditions & Restrictions
ADU – Accessory Dwelling Unit	CCAC – City Clerks Association of CA
AFSCME – American Federal, State, County, and Municipal Employees	CCLI – CA Civic Leadership Institute
AG – Attorney General	CCMF – CA City Management Foundation
AIA – American Institute of Architects	CCMP – CA Coastal Management Program
AICP – American Institute of Certified Planners	CCR – CA Code of Regulations
AJR – Assembly Joint Resolution	CCS Partnership – Cities, Counties & Schools Partnership
APA – American Planning Association	CD – Certificate of Deposit
APN – Assessor’s Parcel Number	CDBG – Community Development Block Grant
APWA – American Public Works Association	CDF – CA Dept. of Forestry & Fire Protection
AQMD – Air Quality Management District	CEPO – Continuing Education for Public Officials
ARB – Air Resources Board	CEQA – CA Environmental Quality Act
ARMA – Assn of Records Managers & Administrators	CFD – Community Facilities District
ASCE – American Society of Civil Engineers	CHFA – CA Housing Finance Agency
ASPA – American Society for Public Administration	CIP – Capital Improvement Program
BAN - Bond Anticipation Notes	CITIPAC – League of CA Cities Political Action Committee (PAC)
BID – Business Improvement District	CIWMB – CA Integrated Waste Management Board
BOCA – Bldg Officials & Code Administrators	CLCA – CA Land Conservation Act (Williamson Act)
BLM – Bureau of Land Management	CLETS – CA Law Enforcement Telecommunication Systems
BMR – Below-Market Rate Dwelling Unit	CMP – Congestion Management Plan
BOE – Board of Equalization	CMTA – CA Municipal Treasurers Assn
BRAC - Base Realignment and Closure	CNEL – Community Noise Equivalent Level
CAD – Computer Aided Design	COBRA – Consolidated Omnibus Budget Reconciliation Act
CAFR – Comprehensive Annual Financial Report	COG – Council of Government
CALAFCO – CA Local Agency Formation Commission	COLA – Cost of living adjustment
CALBO – CA Building Officials	COP - Certificates of Participation
CALCOG – CA Association of Councils of Governments	COPS – Citizens Options for Public Safety
CALED – CA Association for Local Economic Development	COSM – Commission on State Mandates
CalEPA – CA Environmental Protection Agency	CPI – Consumer Price Index
CALFED – CA Bay Delta Authority	CRA – Community Redevelopment Agency
CAL-ICMA – CA Chapter of ICMA	CSAC – CA State Association of Counties
CALPELRA – CA Public Employer Labor Relations Association	CSBA – CA School Boards Assn
CALPERS – CA Personnel Retirement System	CSD – Community Service District
CALTRANS – CA Dept. of Transportation	CSDA – CA Special Districts Assn.

CSMFO – CA Society of Municipal Finance Officers	HHS – Dept. of Health & Human Services (federal)
CTA – CA Teachers Association	HOV – High-Occupancy Vehicle
CUP – Conditional Use Permit	HUD – Dept. of Housing & Urban Development (federal)
CVC – CA Vehicle Code	ICA – Independent Cities Association
DHS – Dept. of Homeland Security	IDB – Industrial Development Bond
DOE – Dept. of Energy (federal)	IIMC – Int'l Institute of Municipal Clerks
DOT – Dept. of Transportation (federal)	ILG – Institute for Local Government
DTSC – Dept. of Toxic Substances Control	ICMA – Int'l City/County Management Assn
DWR – Dept. of Water Resources	IMLA – Int'l Municipal Lawyers Association
E.C. – Elections Code	INET – Institutional or fiber network
EEOC – Equal Employment Opportunity Commission (federal)	INS – Immigration & Naturalization Service
EIR – Environmental Impact Report (California)	IPO – Initial Public Offering
EJ – Environmental Justice	ISTEA – Intermodal Surface Transportation Efficiency Act of 1991
EMF – Electromagnetic Field	ISO – Insurance Service Office
EPA – Environmental Protection Agency	JPA – Joint Powers Authority
ERAF – Education Revenue Augmentation Fund	LAO – Legislative Analyst Office
ERP – Emergency Response Plan	LCC – League of California Cities
ERS – Employee Relations Seminar (LCC meeting)	LCP – Local Coastal Program
ESA – Endangered Species Act	LHA – Local Housing Authority
ESHA – Environmentally Sensitive Habitat Area	LOS – Level of Service
FAA – Federal Aviation Administration	LRT – Light-duty Rail Transit
FAR – Floor area ratio	MBE – Minority Business Enterprise
FCC – Federal Communications Commission	MF – Multifamily
FEMA – Federal Emergency Management Agency	MH – Manufactured Housing
FERC – Federal Energy Regulatory Commission	MISAC - Municipal Information Systems Association of California
FHA – Federal Housing Administration	MMANC – Municipal Management Assistants of Northern California
FHWA – Federal Highway Administration	MMASC – Municipal Management Assistants of Southern California
FIA – Fiscal Impact Analysis	MMB – Meyers Miliars Brown
FIRM – Flood Insurance Rate Map	MOU – Memorandum of Understanding
FLSA – Fair Labor Standards Act	MPD – Master Planned Community
FmHA – Farmers Home Administration	MPO – Metropolitan planning organization
FPPC – Fair Political Practices Commission	MXD – Mixed Use Development
FTB – Franchise Tax Board	NAHRO – Nat'l Association of Housing & Redevelopment Officials
FTE – Full-time Equivalent Position	Neg Dec – Negative Declaration
FY – Fiscal year	NEPA – Nat'l Environmental Policy Act
GAN – Grant Anticipation Notes	NFIP – Nat'l Flood Insurance Program
GASB – Governmental Accounting Standards Board	NHL – National Historic Landmark
G.C. - Government Code	NHPA – Nat'l Historic Preservation Act
GIS – Geographic Information Systems	NIMBY – “Not in my backyard”
GLA – Gross Leasable Floor Area	NLC – Nat'l League of Cities
GO – General Obligations	NOA – Notice of Availability
GP – General Plan	NOC – Notice of Completion (CEQA)
GPS – Global Positioning System	NOD – Notice of Determination (CEQA)
HCD – Dept. of Housing & Community Development (state)	NPDES – Nat'l Pollution Discharge Elimination System
HCED – Housing, community & economic development (LCC policy committee)	NPRM – Notice of Proposed Rulemaking
HCP – Habitat Conservation Plan	OMB – Office of Mgmt & Budget (federal)
	OPEB – Obligations for Post Employment Benefits

OPER – Other Post Employment Retirement Benefits  
OPM – Office of Personnel Management  
OPR – Governor’s Office of Planning & Research (California)  
PAC – Political Action Committee  
PC – Planning Commission  
PDA – Hand held device  
PEG – Public education & government  
PIC – Private Industry Council  
PIO – Public Information Officer  
POST – Commission on Peace Officers Standards & Training  
PSAP – Public Safety Answering Points (i.e. local dispatch centers)  
PTAP – Property Tax Administration Program  
PUD – Planned unit development  
PWOI – Public Works Officers Institute (LCC meeting)  
QOL – Quality of Life  
RDA – Redevelopment Agency  
RFP/RFQ – Request for Proposal/Qualifications  
RHNA – Regional Housing Needs Assessment  
RLUIPA – Religious Land Use & Institutionalized Persons Act  
ROW – Right-of-Way  
RPA – Regional Planning Agency  
RTPA – Regional Transportation Planning Agency  
SAFETEA-LU – Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users  
SB – Senate Bill  
SBA – Small Business Administration (federal)  
SBX1 4 – i.e. Senate Extraordinary Session 1, Bill 4  
SCA – Senate Constitutional Amendment  
SCR – Senate Concurrent Resolution  
SEC – Securities & Exchange Commission  
Section 8 – Low income housing (federal)  
SFD – Single-Family Dwelling  
SGP – Strategic Growth Plan  
SHSP – Strategic Highway Safety Plan  
SJR – Senate Joint Resolution  
SLAPP – Strategic Lawsuits Against Public Participation  
SMSA – Standard Metropolitan Statistical Area  
SRO – Single-Room Occupancy  
SSA – Social Security Administration  
SSI – Supplemental Security Income  
STIP/TIP – State Transportation Improvement Plan/Transportation Improvement Plan  
SWRCB – State Water Resources Control Board  
TAC – Technical Advisory Committee  
TAN – Tax anticipation Notes

TCPW – Transportation Communication & Public Works (LCC policy committee)  
TDM – Transpiration Demand Management  
TDR – Transfer of Development Rights  
TEA -21 – Federal Transportation Equity Act for the 21<sup>st</sup> Century  
TEFRA – Tax Equity & Fiscal Responsibility Act  
TIF – Tax Increment Financing  
TIN – Taxpayers Identifying Number  
TOD – Transit-Oriented Development  
TOT – Transient Occupancy Tax  
TRAN – Tax & Revenue Anticipation Notes  
TSM – Transportation Systems Management  
UA – Underwriting Agreement  
UBC – Uniform Building Code  
UEC – Uniform Electrical Code  
UFC – Uniform Fire Code  
UAGB – Urban Growth Boundary  
UHC – Uniform Housing Code  
UMTA – Urban Mass Transportation Administration  
UPC – Uniform Plumbing Code  
USCM – U.S. Conference of Mayors  
USDA – U.S. Dept. of Agriculture  
UUT – Utility Users Tax  
VA – Veterans Administration  
VLF – Motor Vehicle License Fee  
VMT – Vehicle-Miles Traveled  
W-2 – Earnings statement  
W-4 – Withholding Statement  
WDR – Waste discharge requirements  
WIC – Women, Infants, Children Nutrition Program  
WiFi – Wireless fidelity  
ZLL – Zero Lot Line



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## **Additional Resources**

# Good Governance Checklist: Good and Better Practices



What practices can a local agency put in place to promote public trust and confidence? What practices can minimize the risk of missteps that could undermine or damage this trust and confidence?

The Institute for Local Government (ILG) has created a checklist to help elected officials, county administrative officers, city managers, agency counsel, local agency staff and the community-at-large answer these fundamental questions. Some of the “good practices” are those necessary to comply with California law. Others set the agency’s sights higher and take good practices to a level of “better practices.” Whenever possible, the checklist offers references for further information on a topic.

The checklist is divided into the following areas:

1	Stewardship of Public Resources (Financial Practices, Use of Public Resources, Procurement and Contracting)
2	Transparency (Open Government Practices, Meetings, Decision-Making)
3	Education, Training and Personnel
4	Campaigns

This checklist can be used by elected officials and staff to evaluate the current practices of an agency, identify deficiencies in policy and procedures, set goals and foster communication within the agency about its practices.

The checklist combines legal requirements included in California law as well as practices suggested by the following resources:

- Government Finance Officers Association’s best practices, available at [www.gfoa.org/best-practices](http://www.gfoa.org/best-practices)
- Institute for Local Government’s “Ethics Law Compliance Best Practices,” available at [www.ca-ilg.org/ethicsbestpractices](http://www.ca-ilg.org/ethicsbestpractices)
- League of California Cities City Managers Department, “Transparency and Your City Self-Assessment Checklist,” draft version available at [www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Managers/Transparency-Subcommittee/Transparency-and-Your-City-checklist](http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Managers/Transparency-Subcommittee/Transparency-and-Your-City-checklist)
- California Special District Leadership Foundation, “District Transparency Certificate of Excellence Checklist,” available at [www.sdlf.org/transparency.htm](http://www.sdlf.org/transparency.htm)
- Sunshine Review, “2013 Transparency Report Card,” available at [http://ballotpedia.org/Transparency\\_report\\_card\\_%282013%29](http://ballotpedia.org/Transparency_report_card_%282013%29)

In addition, the League of California Cities helped develop an extensive fiscal assessment tool designed to probe more extensively into local agency fiscal conditions. This tool is available at [www.californiacityfinance.com/Diagnostic1405.pdf](http://www.californiacityfinance.com/Diagnostic1405.pdf).

## ABOUT THE INSTITUTE FOR LOCAL GOVERNMENT

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The Institute for Local Government is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on ethics visit [www.ca-ilg.org/trust](http://www.ca-ilg.org/trust). If you would like to access this resource directly, go to [www.ca-ilg.org/goodgovernance](http://www.ca-ilg.org/goodgovernance).

The Institute welcomes feedback on this resource:

- Email: [ethicsmailbox@ca-ilg.org](mailto:ethicsmailbox@ca-ilg.org) Subject: Good Governance Checklist: Good and Better Practices
- Mail: 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

## THANKS TO OUR SUPPORTERS

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## HOW TO USE THIS INFORMATION

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Although the Institute endeavors to help local officials understand technical and legal concepts that apply to their public service, these materials are not technical or legal advice. Officials are encouraged to consult technical experts, attorneys and/or relevant regulatory authorities for up-to-date information and advice on specific situations.

# STEWARDSHIP OF PUBLIC RESOURCES

## FINANCIAL PRACTICES | GENERAL

### Minimum Standards/Good Practices

- Consistent with generally accepted accounting principles, agency fully and accurately discloses both positive and negative financial information to the public and financial institutions including:
  - Summaries of all municipal funds, fund balances and changes
  - Summaries of all municipal revenues and expenditures
  - Five year financial forecast
  - General status of reserves and any unfunded obligations (for example, pension obligations)
- Agency creates and documents accounting policies and procedures

**Resource:**

- [www.gfoa.org/documenting-accounting-policies-and-procedures](http://www.gfoa.org/documenting-accounting-policies-and-procedures)

### Beyond the Minimum/Better Practices

- Agency discloses budget and financial documents on agency website. See Government Finance Officers Association's (GFOA) Best Practice: Using Websites to Improve Access to Budget Documents and Financial Reports, available at [www.gfoa.org/sites/default/files/CCIUsingWebsites.pdf](http://www.gfoa.org/sites/default/files/CCIUsingWebsites.pdf)
- Agency prepares five year financial forecasts for both general and other funds, examining issues such as overall economic trends, environmental and regulatory risks, unfunded liabilities, adequacy of fee levels, fund balances, cost deferrals and infrastructure condition
- Agency officials discuss forecasts, comparing actual results to forecasts, accompanied by a broader discussion of risks that could affect core agency service levels and facilities during public meetings
- Agency officials and the public they serve are clear on the financial implications (short and long term) of the policy and other decisions being made; management and decision-makers support a culture of transparency regarding the agency's financial situation
- Agency engages in energy efficiency and conservation measures to save money and natural resources

**Resource:**

- [www.ca-ilg.org/energy-efficiency-conservation](http://www.ca-ilg.org/energy-efficiency-conservation)

# STEWARDSHIP OF PUBLIC RESOURCES

## FINANCIAL PRACTICES | INTERNAL AGENCY CONTROLS

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency segregates duties among staff to minimize risk of error or misconduct</li> <li><input type="checkbox"/> Agency has created a system of authorizations, approval and verification for transactions</li> <li><input type="checkbox"/> Diligent reconciliation process requirements are in place and followed to compare various sets of data to one another; discrepancies are identified and investigated and corrective action is taken when necessary</li> </ul> <p><b>Resource:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.osc.state.ny.us/agencies/ictf/docs/intcontrol_std.pdf">www.osc.state.ny.us/agencies/ictf/docs/intcontrol_std.pdf</a></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Managers are given information and training to take responsibility for internal controls</li> <li><input type="checkbox"/> Manager involvement follows GFOA's best practices including:                             <ul style="list-style-type: none"> <li>• Trainings for all employees</li> <li>• Documentation of internal controls</li> <li>• Practical means for employees to report management override of internal controls that could indicate fraud</li> <li>• Periodic evaluation of internal controls</li> </ul> </li> </ul> <p><b>Resource:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.gfoa.org/getting-management-involved-internal-control">www.gfoa.org/getting-management-involved-internal-control</a></li> </ul>

## FINANCIAL PRACTICES | PERIODIC FINANCIAL REPORTS

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> A certified public accountant prepares agency annual financial reports in accordance with generally accepted accounting principles</li> <li><input type="checkbox"/> Agency officials receive periodic financial reports (mid-year at a minimum)</li> <li><input type="checkbox"/> Reports provide a clear and complete picture of the agency's assets and liabilities</li> <li><input type="checkbox"/> Periodic financial investment reporting occurs in open meetings</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency complies with the Government Finance Officers Association, financial reporting best practices. For more information see <a href="http://www.gfoa.org/conforming-governmental-accounting-auditing-and-financial-reporting-standards">www.gfoa.org/conforming-governmental-accounting-auditing-and-financial-reporting-standards</a></li> <li><input type="checkbox"/> Agency posts and archives periodic reports on the agency website</li> <li><input type="checkbox"/> Reviewing officials receive training/information on how to evaluate reports</li> </ul> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/FinancialReportingandAccounting">www.ca-ilg.org/FinancialReportingandAccounting</a></li> </ul>



# STEWARDSHIP OF PUBLIC RESOURCES

## FINANCIAL PRACTICES | BUDGET

### Minimum Standards/Good Practices

- Agency makes complete current fiscal year budget available on agency website
- Agency has a clear capital financing and debt management policy that addresses how it selects external consultants such as bond counsel, financial advisors, trustees, engineering consultants and underwriters
- Capital financing and debt management policies address disclosure and relations with rating service agencies

### Beyond the Minimum/Better Practices

- Agency complies with Government Finance Officers Association’s, “Best Practices in Public Budgeting” available at [www.gfoa.org/services/nacslb/](http://www.gfoa.org/services/nacslb/)
- Agency makes budgets for the past three years available on agency website
- Agency officials receive training and information of how to review and/or comment on a budget and questions to ask

**Resource:**

- [www.ca-ilg.org/budget-creation-and-monitoring](http://www.ca-ilg.org/budget-creation-and-monitoring) (materials and informational video)

- Agency provides information on the budget to the public through a variety of channels, with an emphasis on presenting the information in plain and understandable terms

**Resource:**

- [www.ca-ilg.org/engaging-public-budgeting](http://www.ca-ilg.org/engaging-public-budgeting)

- Agency holds public budget workshops to get community input on perceived needs

## FINANCIAL PRACTICES | EXPENSE REIMBURSEMENT POLICY

See Use of Public Resources section below

# STEWARDSHIP OF PUBLIC RESOURCES

## FINANCIAL PRACTICES | AUDITS

### Minimum Standards/Good Practices

- Agency auditing practices meet California State Controller’s requirements
- Resource:**
- [www.sco.ca.gov/ard\\_local\\_info\\_resources.html](http://www.sco.ca.gov/ard_local_info_resources.html)
- Agency secures independent audits of financial reports no later than 180 days after year end
  - Agency fully cooperates with state and federal audits
  - Agency posts most recent audit, including opinions on internal controls and other matters, on agency website as well as making such reports available at libraries
  - Agency periodically changes auditors to provide a fresh view of agency finances (no less than every six years)<sup>1</sup>
  - Agency governing body meets with auditor to review results of audit in a full and frank manner during a public meeting; officials treat any issues identified as opportunities to improve agency practices and not as opportunities to blame staff

### Beyond the Minimum/Better Practices

- Agency auditing practices exceed State Controller’s requirements
- Resource:**
- [www.sco.ca.gov/ard\\_local\\_info\\_resources.html](http://www.sco.ca.gov/ard_local_info_resources.html)
- Auditors review agency procedures for handling potential conflicts of interests among agency staff
  - Agency posts the past three years’ audits on agency website
  - Agency officials receive information and training on how to review and comment on an audit
- Resource:**
- [www.ca-ilg.org/audits](http://www.ca-ilg.org/audits)

# STEWARDSHIP OF PUBLIC RESOURCES

## USE OF PUBLIC RESOURCES\* | EXPENSE REIMBURSEMENT

\*AGENCY FUNDS AND ANYTHING PURCHASED WITH THOSE FUNDS

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<input type="checkbox"/> Agency has required travel and expense reimbursement policies for elected and appointed officials, <sup>2</sup> as well as for staff  <b>Resource:</b> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/SampleReimbursementPolicies">www.ca-ilg.org/SampleReimbursementPolicies</a></li> </ul> <input type="checkbox"/> Agency provides the expense reimbursement policy to all new employees and officials  <input type="checkbox"/> Staff carefully and consistently reviews compliance with expense reimbursement policy and receives support from top management and governing body in doing so  <input type="checkbox"/> Compliance with expense reimbursement policy is subjected to independent verification  <input type="checkbox"/> Legislative body members make required brief report of meeting attendance at the agency's expense at the next meeting of the body <sup>3</sup>	<input type="checkbox"/> Policy and organizational culture emphasizes the value of being conservative about using public resources  <b>Resources:</b> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/reimbursementpolicy">www.ca-ilg.org/reimbursementpolicy</a></li> <li>• "Buying Meals for Others on the Public's Dime" available at <a href="http://www.ca-ilg.org/dime">www.ca-ilg.org/dime</a></li> </ul> <input type="checkbox"/> Agency posts the expense reimbursement policy on agency website  <input type="checkbox"/> Staff and elected officials receive periodic reminders on the provisions of the policy that most likely apply to them  <input type="checkbox"/> Members make a brief report on meetings and conferences attended at agency expense, underscoring the value received

## USE OF PUBLIC RESOURCES\* | ALLOWANCES

\*AGENCY FUNDS AND ANYTHING PURCHASED WITH THOSE FUNDS

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<input type="checkbox"/> Any allowance (for example, a telephone or technology allowance) is backed up by documentation explaining the factual basis for the allowance	<input type="checkbox"/> Officials decline overly generous or duplicative allowances/benefits that could create public perception issues or present ethical concerns

# STEWARDSHIP OF PUBLIC RESOURCES

## USE OF PUBLIC RESOURCES\* | AGENCY RESOURCES AND EQUIPMENT

\*AGENCY FUNDS AND ANYTHING PURCHASED WITH THOSE FUNDS

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<p><input type="checkbox"/> Agency adopts policy which takes into account proscriptions against:</p> <ul style="list-style-type: none"> <li>• Gifts of public resources</li> <li>• Personal use of public resources</li> <li>• Political use of public resources (see Campaign section below)</li> </ul> <p><input type="checkbox"/> Agency policy is consistently applied</p> <p><input type="checkbox"/> Staff and elected officials understand and comply with mass mailing prohibitions<sup>4</sup></p> <p><b>Resource:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/massmailing">www.ca-ilg.org/massmailing</a></li> </ul> <p><input type="checkbox"/> Those with special access to agency equipment receive training and periodic reminders on prohibitions of use of agency resources for personal or political purposes</p>	<p><input type="checkbox"/> Orientation of newly elected officials, newly appointed officials and newly hired staff address the issue of permissible and impermissible uses of public resources</p> <p><input type="checkbox"/> Agency periodically reminds team members of policies and proscriptions at relevant time points (for example, before election season)</p> <p><input type="checkbox"/> Agency explores opportunities to share limited resources among a network of local agencies (cities, schools, special districts, counties, etc.) to leverage capital and staff resources through joint training programs, sharing services, and joint use of facilities and equipment</p> <p><b>Resource:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/shared-services-and-joint-use">www.ca-ilg.org/shared-services-and-joint-use</a></li> </ul>

# STEWARDSHIP OF PUBLIC RESOURCES

PROCUREMENT AND CONTRACTING   RULES AND POLICIES	
Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency has a transparent and fair process for selecting with whom it will do business</li> <li><input type="checkbox"/> Agency complies with state competitive bidding requirements for public works projects<sup>5</sup></li> <li><input type="checkbox"/> Agency has clear organization-wide standards and guidelines regarding procurement and contracting</li> <li><input type="checkbox"/> Agency has policy for advertising contracts open for bidding</li> <li><input type="checkbox"/> Agency has policies in place for the proper disposal of surplus property – policies are communicated to staff</li> <li><input type="checkbox"/> Local officials involved in contracting decisions receive information and/or training on the laws prohibiting self-dealing in agency contracts<sup>6</sup></li> <li><input type="checkbox"/> Officials involved in contracting and purchasing decisions must be included in an agency's conflict of interest code and regularly file a Statement of Economic Interests (Form 700)<sup>7</sup> <ul style="list-style-type: none"> <li>• Form 700 is available at: <a href="http://www.fppc.ca.gov">www.fppc.ca.gov</a></li> </ul> </li> <li><input type="checkbox"/> Agency completes Agency Report of Consultants (Form 805)<sup>8</sup> and ensures that all consultants in designated positions complete and file a Statement of Economic Interests (Form 700) <ul style="list-style-type: none"> <li>• Form 805 is available at: <a href="http://www.fppc.ca.gov/forms/805.pdf">www.fppc.ca.gov/forms/805.pdf</a></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency complies with both the letter and the spirit of procurement laws and policies, that all interested parties are given the opportunity to do business with the agency on an equal basis</li> <li><input type="checkbox"/> Agency website explains processes for doing business with the agency</li> <li><input type="checkbox"/> Agency website includes information about contract opportunities and Requests for Proposals (RFPs)</li> <li><input type="checkbox"/> Vendors receive information about ethics standards for doing business with the agency</li> <li><input type="checkbox"/> Agency conducts periodic training and outreach to educate prospective and current vendors on the agency contracting process</li> <li><input type="checkbox"/> Agency engages in climate friendly purchasing practices <ul style="list-style-type: none"> <li><b>Resource:</b> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/climate-friendly-purchasing">www.ca-ilg.org/climate-friendly-purchasing</a></li> </ul> </li> </ul> </li> <li><input type="checkbox"/> Agency engages in regional or shared bidding processes among local agencies in a geographic area to reduce costs.</li> </ul>

# TRANSPARENCY

## OPEN GOVERNMENT PRACTICES | PROMOTING TRANSPARENCY

### Minimum Standards/Good Practices

- Agency anticipates information the public needs concerning the agency’s activities and makes the information available through a variety of channels including the agency website
- Local officials and designated staff are current in making their Statement of Economic Interests (Form 700) disclosures
  - Form 700 is available at: [www.fppc.ca.gov](http://www.fppc.ca.gov)
- Agency institutes a policy for receipt of free tickets/event admissions for officials and ensures reporting compliance on the FPPC Agency Report of Ceremonial Role Events and Ticket/ Admission Distributions (Form 802)<sup>9</sup>
  - Form 802 is available at: [www.fppc.ca.gov/forms/802.pdf](http://www.fppc.ca.gov/forms/802.pdf)

### Beyond the Minimum/Better Practices

- Agency creates a “transparency portal” on its website that provides anticipated information the public needs from all agency departments in one easy to find location
- Agency makes Statement of Economic Interests (Form 700) disclosures available on the agency website
- Agency makes Ticket/Admission Distribution Report (Form 802) available on the agency website
- Agency makes Payment to Agency Report (Form 801) available on the agency website
  - Form 801 is available at: [www.fppc.ca.gov/forms/801.pdf](http://www.fppc.ca.gov/forms/801.pdf)
- Agency uses an electronic filing system to make posting and completion of the required disclosures easier

## OPEN GOVERNMENT PRACTICES | PUBLIC RECORDS ACT REQUESTS

### Minimum Standards/Good Practices

- Agency adopts policy for handling Public Records Act requests and makes the policy available on website and through other channels
- A designated staff member handles all records requests in order to ensure prompt compliance with records requests
- (Alternative for Larger Agencies) Designated staff members within each department receive training on Public Records Act compliance to enable the department to properly respond to such requests.

### Beyond the Minimum/Better Practices

- Agency accepts online records requests
- Agency anticipates commonly requested records and posts them on the agency website, including all Fair Political Practices Commission forms
- Agencies participating in joint use or shared services provide online access to documents and materials about cross-agency relationships

## OPEN GOVERNMENT PRACTICES | PUBLIC ENGAGEMENT

### Minimum Standards/Good Practices

- Agency has an easy to use website that makes public information readily available
- Agency website uses plain language and minimizes the use of acronyms to ease understanding
- Agency provides information explaining how the decision-making process works and how people can provide input

**Resource:**

- [www.ca-ilg.org/PEOrientations](http://www.ca-ilg.org/PEOrientations)

- Agency engages in regular communications through a variety of channels to keep the public up-to-date on agency activities

**Resource:**

- [www.ca-ilg.org/PEstrategiccommunications](http://www.ca-ilg.org/PEstrategiccommunications)

- Communications are translated as needed and distributed to appropriate community groups

**Resource:**

- [www.ca-ilg.org/EthnicMediaInfographic](http://www.ca-ilg.org/EthnicMediaInfographic)

- Agency officials maintain regular office hours
- Department heads maintain an “open door policy” for the public

### Beyond the Minimum/Better Practices

- Residents can subscribe to an e-notification system for meetings, summaries of actions taken at meetings, workshops or other events/information
- Agency uses social media and other digital tools to engage and communicate with the public

**Resource:**

- [www.ca-ilg.org/online-engagement-guide](http://www.ca-ilg.org/online-engagement-guide)

- Agency uses mobile app for community members to report issues

**Resource:**

- [www.ca-ilg.org/technology-and-public-input](http://www.ca-ilg.org/technology-and-public-input)

- Agency develops relationships with community based organizations, neighborhood groups, ethnic media and clergy/congregations to distribute information and solicit input on issues of potential interest to those groups

**Resource:**

- [www.ca-ilg.org/partnering-community-based-organizations](http://www.ca-ilg.org/partnering-community-based-organizations)

- For potentially controversial and/or complex issues, the agency creates additional opportunities for individuals to learn about and have input into decisions on those issues

**Resource:**

- [www.ca-ilg.org/DeeplyHeldConcerns](http://www.ca-ilg.org/DeeplyHeldConcerns)

- Agency has or creates youth commissions as an opportunity to connect with younger generations about public services and needs

**Resource:**

- [www.ca-ilg.org/engaging-youth](http://www.ca-ilg.org/engaging-youth)

- Agency collaborates and partners with other local agencies to engage shared constituencies, through activities such as joint meetings and newsletters

## OPEN GOVERNMENT PRACTICES | INFORMATION ABOUT KEY ELECTED AND APPOINTED OFFICIALS AND STAFF

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Contact information, including telephone numbers, mailing addresses, office locations and email addresses are available on agency website and kept current</li> <li><input type="checkbox"/> Terms of office/appointment and next election date are disclosed</li> <li><input type="checkbox"/> Agency Report of Appointments (Form 806) is posted on agency website<sup>10</sup> <ul style="list-style-type: none"> <li>• Form 806 is available at: <a href="http://www.fppc.ca.gov/forms/806.pdf">www.fppc.ca.gov/forms/806.pdf</a></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Website and other communications explain terms of office and next election/appointment date for elected and appointed officials</li> <li><input type="checkbox"/> Materials and information on how to seek election and appointment are available on agency website</li> <li><input type="checkbox"/> Agency website contains a dedicated page for links to other local, state and federal agencies, clarifying the functions and services of each agency and makes referrals to other agencies where appropriate</li> </ul>

## OPEN GOVERNMENT PRACTICES | BOARDS AND COMMISSIONS

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency complies with California law relating to creation of a Local Appointments List (Maddy Act), which is a list of all appointed positions that expire within the next calendar year. The list is made available to members of the public by various means and provided to the local library with the largest service population<sup>11</sup></li> <li><input type="checkbox"/> Agency posts unexpected vacancies in the agency's clerk's office, the local library with the largest service population and other locations as directed by the legislative body<sup>12</sup></li> <li><input type="checkbox"/> Agency posts the Local Appointments List on the agency website on or before January 2 of each year</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency supports leadership program(s) to familiarize potential applicants who are thinking of applying to boards and commissions with relevant roles and responsibilities</li> <li><input type="checkbox"/> Agency distributes the Local Appointments List broadly through social and print media, ethnic media, community-based organizations, and clergy and congregations</li> <li><input type="checkbox"/> Agency publicizes unexpected vacancies broadly through press releases, social and print media, ethnic media, community-based organizations, and clergy and congregations</li> <li><input type="checkbox"/> Agency encourages local officials to engage in widespread outreach through their networks to inform all segments of the community about opportunities to serve on boards and commissions</li> </ul>



## MEETINGS | POLICIES AND PROCEDURES

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<p><input type="checkbox"/> All elected and appointed officials have received information/training related to California’s open meeting laws<sup>13</sup></p> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/abc">www.ca-ilg.org/abc</a></li> </ul> <p><input type="checkbox"/> Chairperson receives training/information about the role of the chairperson</p> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/chairmeeting">www.ca-ilg.org/chairmeeting</a></li> </ul> <p><input type="checkbox"/> All members of the decision-making body receive training/information about roles, responsibilities and purpose</p> <p><input type="checkbox"/> Agency has adopted rules of procedure to govern meetings that meet the needs of the agency and the public</p> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/parliamentarysimplified">www.ca-ilg.org/parliamentarysimplified</a></li> </ul>	<p><input type="checkbox"/> Agency promotes civility in public meetings</p> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/PromotingCivility">www.ca-ilg.org/PromotingCivility</a></li> </ul> <p><input type="checkbox"/> A statement of basic rules and protocol related to public participation is included on meeting agendas and orally stated at the beginning of public comment period</p> <p><input type="checkbox"/> Agency engages in processes to enable the public to understand how to most effectively communicate concerns about issues before the agency</p> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/publicmeetings">www.ca-ilg.org/publicmeetings</a></li> </ul>

## MEETINGS | WEBSITE CONTENT

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<p><input type="checkbox"/> Agency posts regular meeting agendas 72 hours in advance and special meeting agendas 24 hours in advance on agency website<sup>14</sup></p> <p><input type="checkbox"/> Current year meeting minutes and agendas are available on agency website</p> <p><input type="checkbox"/> Community members can sign up for email notices/reminders of public meetings</p> <p><input type="checkbox"/> Calendar of date, time, location of meetings is available on the agency website</p>	<p><input type="checkbox"/> Agency posts meeting agendas for regular meetings earlier than required to enable the public to understand upcoming issues before the agency</p> <p><input type="checkbox"/> Agency makes archives of meeting minutes and agendas for three years or longer</p> <p><input type="checkbox"/> Agency makes available live audio/video streams and archived recordings of meetings available on the agency website</p> <p><input type="checkbox"/> Agency posts video recordings of meetings with relevant accompanying materials</p> <p><input type="checkbox"/> Agency emails meeting agendas to subscribers with information on how to view related materials on the website</p>

## DECISION-MAKING | DECISION-MAKERS

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> California Fair Political Practices Commission’s Form 700 (Statement of Economic Interests) is distributed and collected in a timely manner on an annual basis (required by law<sup>15</sup>)</li> <li><input type="checkbox"/> Decision-makers know where the 500-foot boundaries are with respect to their various property interests<sup>16</sup></li> <li><input type="checkbox"/> Officials are advised of prohibitions against self-dealing in addition to the Political Reform Act<sup>17</sup></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency staff creates a map of the 500-foot boundaries for each decision-maker to help him or her determine if there is a potential conflict of interest in a decision</li> </ul>

## DECISION-MAKING | PROCESSES

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency has adopted a conflict of interest code as required by the Political Reform Act<sup>18</sup></li> <li><input type="checkbox"/> Decision-makers receive training on due process rules applicable to quasi-adjudicatory (administrative) hearings.</li> </ul> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/bias">www.ca-ilg.org/bias</a></li> </ul> <ul style="list-style-type: none"> <li><input type="checkbox"/> Decision-makers know the agency’s policies for disclosure of information they receive outside of adjudicatory hearings</li> <li><input type="checkbox"/> Agency policies are applied consistently to those seeking agency approvals, regardless of personal connections</li> <li><input type="checkbox"/> Decision-makers listen attentively at public hearings, particularly adjudicatory hearings</li> <li><input type="checkbox"/> Decision-makers consider potential impacts to the resources of other local, state, federal or tribal agencies when making decisions</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Decision-makers voluntarily abstain when their ability to make decisions in the public interest (as opposed to personal or political interests) might be reasonably questioned</li> </ul> <p><b>Resource:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/abstentions">www.ca-ilg.org/abstentions</a></li> </ul>

# EDUCATION, TRAINING & PERSONNEL

## EDUCATION/TRAINING | ONBOARDING

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<input type="checkbox"/> Agency provides materials on duties and responsibilities for all newly elected and appointed officials and staff  <b>Resources:</b> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/new-local-public-service">www.ca-ilg.org/new-local-public-service</a></li> </ul> <input type="checkbox"/> Agency provides information on policies, including ethics policy, upon onboarding	<input type="checkbox"/> Orientation on duties and responsibilities is available to all newly elected and appointed officials and staff  <b>Resources:</b> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/OrientationMaterials">www.ca-ilg.org/OrientationMaterials</a></li> </ul> <input type="checkbox"/> When appropriate agency shares training services and costs among neighboring local agencies

## EDUCATION/TRAINING | ONGOING EDUCATION

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<input type="checkbox"/> Agency supports continuing education activities for staff, appointed and elected officials (including those that are required by law for certain professional license-holders)  <input type="checkbox"/> Agency requires attendance at sexual harassment prevention training for elected officials and those in supervisory positions (two hours every two years required for those in supervisory positions) <sup>19</sup>  <input type="checkbox"/> Agency publicizes and makes available resources to help local officials understand ethics laws	<input type="checkbox"/> Agency encourages regular attendance at local and/or statewide continuing education activities  <input type="checkbox"/> Agency plans regular training sessions and budgets for attendance at trainings  <input type="checkbox"/> Agency provides information and guidance on handling ethical dilemmas in the workplace  <input type="checkbox"/> Agency conducts joint education and information sessions among city, county, school and special district elected officials about roles, responsibilities and purpose of each local government agency to clarify and raise awareness among decision-makers  <input type="checkbox"/> When appropriate agency shares training services and costs among neighboring local agencies (e.g. computer classes for fundamental software programs)

# EDUCATION, TRAINING & PERSONNEL

## EDUCATION/TRAINING | PROMOTING ORGANIZATIONAL ETHICS

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<input type="checkbox"/> Ethics values are included in the agency’s mission statement <input type="checkbox"/> Agency has adopted a value-based code of ethics <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/ethicscodes">www.ca-ilg.org/ethicscodes</a></li> </ul> <input type="checkbox"/> Ethics are part of agency’s hiring practices and interview process <input type="checkbox"/> Agency values collaboration and partnerships with other local agencies and community-based organizations	<input type="checkbox"/> Agency’s leadership leads by example by consistently demonstrating agency’s values through actions <input type="checkbox"/> When collaborating with other agencies, staff and leadership show respect and decorum for the formal and informal processes of partners and the community, developing and formalizing agreements when necessary

## EDUCATION/TRAINING | ETHICS TRAINING (AB 1234)<sup>20</sup>

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<input type="checkbox"/> Elected and appointed officials receive two hours of ethics training every two years (and basic overview training within one year of assuming position) <sup>21</sup> <ul style="list-style-type: none"> <li>• Online training available at: <a href="http://www.fppc.ca.gov">www.fppc.ca.gov</a></li> </ul> <input type="checkbox"/> All local officials who must receive AB 1234 training are current on their training <input type="checkbox"/> Top level staff voluntarily receives training on ethics laws and principles as relevant to their duties within the agency	<input type="checkbox"/> Elected and appointed officials receive basic overview training within two months of assuming position <input type="checkbox"/> Agency takes steps to make AB 1234 training meaningful, understandable and helpful <input type="checkbox"/> AB 1234 training is in-person (as opposed to online) to enable discussion and questions <input type="checkbox"/> Certificates of compliance are easily accessible to the public and media (for example posted on the agency website) <input type="checkbox"/> Agency requires top level staff to participate in training on ethics laws and principles as relevant to their duties within the agency <input type="checkbox"/> Compliance is a condition of continuing appointment (for appointed officials) and reimbursement (elected officials) <input type="checkbox"/> Subsequent trainings are more in depth examinations of required topics <sup>22</sup> <input type="checkbox"/> Agency coordinates with other local agencies to provide AB 1234 training to all local officials and designated staff, including cities, counties, schools and special districts

# EDUCATION, TRAINING & PERSONNEL

## PERSONNEL | PRACTICES AND POLICIES

### Minimum Standards/Good Practices

- Agency has fair and merit based processes in place for hiring and advancing employees
- Agency consistently makes a concerted effort to advertise widely for open positions
- Elected officials generally play a role in selection of chief executive, department heads, agency counsel, and non-elected or appointed staff and provide regular guidance and feedback to those employees

**Resources:**

- [www.ca-ilg.org/Board-Chief-Executive-Relations](http://www.ca-ilg.org/Board-Chief-Executive-Relations)

- Officials understand and abide by agency's adopted policies relating to who makes hiring and other personnel decisions relating to subordinate staff
- Agency has a non-discrimination policy and abides by its terms
- Agency has adopted and follows an anti-nepotism policy
- Agency has adopted a whistleblower protection policy and posted it on the agency website<sup>23</sup> (see Speaking Truth to Power section below)
- Agency has adopted policies regarding second jobs and other potentially incompatible activities<sup>24</sup>

### Beyond the Minimum/Better Practices

- Agency posts compensation and benefits information for all officials and employees on the agency website
- Agency completes salary comparison/benchmarking for staff positions using a reputable salary survey every five years - agency posts summary of results on agency website

# EDUCATION, TRAINING & PERSONNEL

## PERSONNEL | INCENTIVES FOR SPEAKING TRUTH TO POWER<sup>25</sup>

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency has an adopted policy clearly explaining procedures for reporting and investigating allegations of misconduct and protection of those that report misconduct</li> <li><input type="checkbox"/> Unlawful conduct is dealt with swiftly, firmly and consistently within the agency</li> <li><input type="checkbox"/> Agency supervisors and staff are familiar with legal protections related to whistle-blowing activities and receive ongoing training</li> </ul> <p><b>Resource:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/whistle">www.ca-ilg.org/whistle</a></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency supports employees who bring forward truthful, but potentially unwelcome, unsolicited, unpopular or difficult information to the attention of relevant decision- makers</li> <li><input type="checkbox"/> Governing bodies encourage chief executive and financial staff to regularly analyze financial trends for areas of potential concern/risks so the body can discuss and address them</li> <li><input type="checkbox"/> Staff participates in professional associations that provide guidance on ethics as it relates to their role in the organization - for a list of local agency professional associations with ethics codes see <a href="http://www.ca-ilg.org/associationethicscodes">www.ca-ilg.org/associationethicscodes</a></li> </ul>

## PERSONNEL | CHIEF EXECUTIVE

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency chief executive has a college degree in relevant field and a minimum of five years of broad-based management experience</li> <li><input type="checkbox"/> Chief executive is or is willing to become a member of the International City/County Management Association (ICMA) in good standing and adheres to ICMA's declaration of ideals. For more information see <a href="http://www.icma.org">www.icma.org</a></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> The hiring process includes ethics questions in interviews</li> </ul> <p><b>Resource:</b></p> <ul style="list-style-type: none"> <li>• "Promoting Personal and Organizational Ethics" available at <a href="http://www.ca-ilg.org/ppoe">www.ca-ilg.org/ppoe</a></li> </ul>

## PERSONNEL | AGENCY COUNSEL

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency counsel is an active member of the California State Bar in good standing with at least five years' experience in municipal law. See <a href="http://www.calbar.ca.gov">www.calbar.ca.gov</a></li> <li><input type="checkbox"/> Agency counsel is familiar with and adheres to the California State Bar's Rules of Professional Conduct. See <a href="http://www.calbar.ca.gov/ethics">www.calbar.ca.gov/ethics</a></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> The hiring process includes ethics questions in interviews</li> <li><input type="checkbox"/> Agency counsel acts in accordance with the ethical principles and values set forth by the agency and other relevant organizations. For example, "Ethical Principles for City Attorneys" available at <a href="http://www.cacities.org/attorneys">www.cacities.org/attorneys</a></li> </ul>

# EDUCATION, TRAINING & PERSONNEL

PERSONNEL   AGENCY CLERK	
Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<input type="checkbox"/> Agency clerk is or is willing to become a member of the International Institute of Municipal Clerks (IIMC) in good standing and adheres to IIMC's code of ethics. For more information see <a href="http://www.iimc.com">www.iimc.com</a>	<input type="checkbox"/> Agency encourages clerks to engage in education, mentorship and professional development activities through the California Clerk of the Board of Supervisors Association and the California City Clerks Association  <b>Resources:</b> <ul style="list-style-type: none"><li>• <a href="http://www.ccbsa.net">www.ccbsa.net</a></li><li>• <a href="http://www.californiacityclerks.org">www.californiacityclerks.org</a></li></ul>

## CANDIDATES

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Candidates for the governing board receive information on how to comply with campaign laws<sup>26</sup>, including local requirements and restrictions<sup>27</sup></li> <li><input type="checkbox"/> Agency distributes California’s Code of Fair Campaign Practices to all candidates<sup>28</sup></li> <li><input type="checkbox"/> Agency provides candidates with information about ethics laws, including conflicts of interest, incompatible offices and governmental transparency requirements that will be relevant to their service if elected</li> </ul> <p><b>Resource:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/CandidatePamphlet">www.ca-ilg.org/CandidatePamphlet</a></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> A pledge of fair campaign practices is distributed to and signed by all candidates. Available at <a href="http://www.ca-ilg.org/campaigncodes">www.ca-ilg.org/campaigncodes</a></li> <li><input type="checkbox"/> Agency supports one or more leadership programs to familiarize potential candidates who are thinking of running for office with local issues and decision-making practices</li> </ul>

## OFFICIALS AND EMPLOYEES

Minimum Standards/Good Practices	Beyond the Minimum/Better Practices
<ul style="list-style-type: none"> <li><input type="checkbox"/> Officials and employees are advised of prohibitions relating to campaign fundraising directed at agency staff<sup>29</sup></li> <li><input type="checkbox"/> Officials and employees are advised of restrictions relating to political activities of public employees<sup>30</sup></li> <li><input type="checkbox"/> Officials and employees are reminded of the proscriptions against political use of public resources including the use of equipment, photocopying, or mailing of campaign related materials at the public’s expense<sup>31</sup></li> </ul> <p><b>Resources:</b></p> <ul style="list-style-type: none"> <li>• <a href="http://www.ca-ilg.org/massmailing">www.ca-ilg.org/massmailing</a></li> <li>• The Fair Political Practices Commission fact sheet on prohibited mass mailings available at <a href="http://www.fppc.ca.gov">www.fppc.ca.gov</a></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Agency provides trainings to officials and employees on prohibitions and restrictions on the political activities of public employees</li> </ul>



# References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at [www.fppc.ca.gov/index.php?id=52](http://www.fppc.ca.gov/index.php?id=52). A source for case law information is [www.findlaw.com/cacases/](http://www.findlaw.com/cacases/) (requires registration).

- 1 See Cal. Gov't. Code § 12410.6 (“a local agency shall not employ a public accounting firm to provide audit services to a local agency if the lead audit partner or coordinating audit partner having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that local agency for six consecutive fiscal years.”).
- 2 Cal. Gov't Code § 53232.2.
- 3 Cal. Gov't Code § 53232.3.
- 4 Cal. Gov't Code § 89001; 2 Cal. Code Regs §§ 18901-18901.1.
- 5 See Cal. Pub. Cont. Code §§ 20121-20123, 20162-20163.
- 6 See Cal. Gov't Code § 1090.
- 7 See 2 Cal. Code Regs. § 18730.
- 8 Available at [www.fppc.ca.gov/forms/805.pdf](http://www.fppc.ca.gov/forms/805.pdf).
- 9 See 2 Cal. Code Regs. § 18944.1.
- 10 See 2 Cal. Code Regs. § 18705.5.
- 11 Cal. Gov't Code §§ 54970-54973.
- 12 Cal Gov't Code § 54974.
- 13 Cal. Gov't Code § 54950 and following.
- 14 Cal. Gov't Code § 54954.2.
- 15 2 Cal. Code Regs. § 18723.
- 16 See 2 Cal. Code Regs. § 18705.2(a)(11), (A financial effect in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision would consider any decision affecting real property value located within 500 feet of the property line of the official's real property unless the FPPC provides written advice of the determination that there will be no reasonably foreseeable measurable impact on the official's property).
- 17 See Cal. Gov't Code § 1090.
- 18 See Cal. Gov't Code §§ 87300-14.
- 19 Cal. Gov't Code § 12950.1.
- 20 Cal. Gov't Code § 53235 requires ethics training for specified local government officials. For more information see [www.ca-ilg.org/ab1234compliance](http://www.ca-ilg.org/ab1234compliance).
- 21 See Cal. Gov't Code § 53235(a), (b).
- 22 See California Attorney General's Guidelines, available at <http://oag.ca.gov/ethics>.
- 23 See Cal. Lab. Code § 1101-06.
- 24 See Cal. Gov't Code § 1126.
- 25 Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little, Brown, 1979).
- 26 See generally Cal. Gov't Code §§ 84100 – 84511.
- 27 See Cal. Gov't Code § 81009.5 (Local government agencies that have adopted campaign finance ordinances must submit a copy to the FPPC). Copies or links to these ordinances are posted on the FPPC website at [www.fppc.ca.gov/index.php?id=9](http://www.fppc.ca.gov/index.php?id=9).
- 28 Cal. Elect. Code §§ 20440-20444.
- 29 See Cal. Gov't Code § 3205.
- 30 See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- 31 Cal. Penal Code § 424; Cal. Gov't Code §§ 8314, 89001; 2 Cal. Code Regs. § 18901.1.

# How Local Agencies Make Things Happen

Local agency governing bodies make policy and spending (fiscal) decisions. This is a collective decision-making process in which a majority of decision-makers concur on a given course of action.

The *policy* tools local agencies have to take collective action include:

- Ordinances,
- Resolutions, and
- Motions and Minute orders.

In addition, the voters can play a role in decision-making through the **referendum and initiative** process.

The concepts and processes to understand on the fiscal side of local agencies' responsibilities include budget, expenditures and warrants.

## Ordinances

Local agencies make local laws through ordinances. Ordinances typically require or prohibit certain actions under certain circumstances. A local agency's ordinances are frequently indexed and recorded into a "code." These codes become part of the city or county's legislative history and may prove useful even many years after adopted. As access to technology improves, many local agencies publish and/or make their codes available online.

**Drafting.** Typically, an agency's staff, along with the help or oversight of the agency's attorney, will prepare a preliminary ordinance for review by the decision-making body and the public. This also enables staff to be aware of and help the agency comply with any special notice requirements that may apply to that particular kind of ordinance.

**Timing Issues.** There is usually a waiting period between the time the ordinance is first considered by that body (known as the "introduction" of the ordinance) and second or final presentation of the ordinance

### Other Kinds of Action: Quasi-Judicial

Local agency officials also, from time to time, act in a quasi-judicial capacity. This is when decision-makers apply existing policies to specific situation (much as a judge applies legal standards in court cases).

Some of the procedural standards that apply in quasi-judicial decision-making are explored in [www.ca-ilg.org/bias](http://www.ca-ilg.org/bias).

during which it is considered by the governing body for adoption. This introduction process is also known as the first “reading” of the proposed ordinance, because it is the first opportunity decision-makers have to consider the merits of the proposed ordinance. In some limited circumstances, urgency and certain other types of ordinances can be adopted at the time of their introduction without going through a later waiting period.

**Making Revisions during the Adoption Process.** Sometimes decision-makers will ask staff to revise the proposed ordinance. Such changes may respond to ideas or concerns expressed by decision-makers or the public; changes may also result in language that a majority of the decision-making body can support. If substantive changes are made to a proposed ordinance after it is first introduced, it generally will need to be re-introduced and another waiting period must pass before the modified ordinance can be adopted. These steps ensure that laws are drafted as carefully as possible and to ensure that a full and open review of the ordinance occurs that permits the public to review and comment on the proposed law prior to its approval.

**Adoption.** After the initial “reading” and waiting period have occurred, the ordinance is then presented at a subsequent meeting for second reading. A member of the decision-making body moves for approval of the ordinance. If the motion receives a second, the body votes on whether to adopt the ordinance.

**Effective Date.** Most ordinances are effective 30 days after the date of adoption. Staff will typically take care of any requirements for publicizing the ordinance’s adoption during this period (for example, by publishing the ordinance in a newspaper and adding the ordinance to the agency’s code).

## Resolutions

A resolution is a legal action by a decision-making body, such as setting fees and adopting policies. It can also be a vehicle through which the body expresses its opinion on a matter.

Resolutions are formal actions by the decision-making body and are retained as part of the agency’s record. Compared to ordinances, though, resolutions involve fewer procedural requirements. For example, they do not have to be “introduced” and “adopted” over the space of two meetings but may be adopted at one meeting. Furthermore, with limited exceptions (for example, setting tax rates), resolutions do not have to be published in a newspaper.<sup>1</sup>

## Motions and Minute Orders

Local agencies do not always have to adopt an ordinance or resolution to take action. For less important actions, local agencies also may act by motion, which may be summarized in a minute order. Typically, the agenda materials will describe the action that is proposed to be taken.

These actions, along with others at the meeting, are memorialized in the record of the meeting (the minutes). Once approved by the body, the minutes become the official record of the meeting. The agency’s secretary or clerk maintains the official records of the agency, including the minutes.

## Initiative and Referendum

In California, the public also plays a role in the decision-making process by voting on ballot measures. The rules relating to placing matters on the ballot are both complex and technical. Ballot measure proponents are well advised to seek advice from experienced attorneys and political consultants on these matters to avoid missteps.

**Referendum.** If members of the community disagree with a legislative act approved by elected officials, then they can circulate a petition to put the matter on the ballot for the voters to decide whether the law should be repealed. This is called a “referendum” because the petition requires the matter to be *referred* to the voters for approval. The petition process must occur within a short window of time before the law goes into effect.

When a successful referendum petition occurs, a governing body has two choices. It can repeal the law that is the subject of the referendum petition. If the repeal occurs, it becomes unnecessary for the matter to go to a community vote. Otherwise the body must put the matter on a ballot for a vote.

**Initiative.** The public may also propose a new law (or an amendment to an existing law). To do that, they circulate petitions that must include a copy of the proposed law. If enough people sign the petition, then the governing body must either adopt the proposed law without change or put the matter on the ballot for a community vote. This process is known as the “initiative” process, because members of the community are *initiating* the legislative proposal.

## Decisions to Spend Money

Perhaps one of the most important roles elected officials play is deciding how to allocate public funds to pay for necessary services and facilities. There are a number of steps in this process.

**Budget.** A budget is a device that enables decision-makers to project what revenues will be available to fund services and facilities and how those revenues should be allocated and spent. The decision to spend money for particular purposes is an “appropriation,” which is an authorization to spend money consistent with the budget.

Typically the budgeting process involves:

- The administrative head of the agency (county executive officer, city manager or general manager of a special district) prepares and transmits a set of instructions to department heads for submitting budget information and requests;
- Department heads prepare and submit their budget information and requests;
- The administrative head reviews the requests and assembles them into a comprehensive budget document;
- The decision-making body holds budget hearings at which elected officials and the public receive information about the proposed budget;
- Elected officials receive public input/reactions to the proposed budget;

- Elected officials evaluate all the information received and revise (as necessary) and adopt the final budget; and
- The administrative head of the agency (typically the city manager, county executive officer, general manager) is responsible for implementing and executing the budget.

(Note that the budget includes decisions about money that don't involve "spending " per se, such as saving for capital projects, and allocated and unallocated reserves.)

**Expenditures.** The agency then spends money throughout the year in a manner consistent with the adopted budget, which may include expenditures to satisfy contractual obligations (for example, labor agreements, and contracts for goods or services). Some expenditures, such as election costs related to an initiative, referendum or recall may not be budgeted for, but may be a required expenditure directed by the public through the signature gathering process.

**Warrants.** These are specific authorizations to spend money from a local agency's bank account. To avoid having to take every minor payment to the decision-making body for approval, some agencies have policies delegating authority to staff to authorize payment for budgeted expenditures up to certain amounts.

## About the Institute for Local Government

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## References

<sup>1</sup> The rates of taxes to be levied or the amount of revenue required to be raised by taxation must be fixed either by ordinance or resolution. Government Code Sections 36936.1, 53724. If such tax rate or amount of revenue is fixed by resolution, the resolution must be published in the same manner and within the same time as ordinances are required to be published. Government Code Section 36936.1. Tax levies are subject to voter approval. Government Code Sections 53722, 53723. Some taxes (for example a documentary transfer tax) must be approved by ordinance. See Revenue and Taxation Code Section 11911.

# Sources of Law for Local Agencies

The “law” affecting California local agencies can be found in a number of places:

- **California’s Constitution** specifies the relationship among the various levels and branches of government, as well as establishes a number of individual rights. Changing the Constitution requires a vote of the people. Proposals to change the Constitution may be placed on the ballot by either the Legislature or by initiative petition.
- **Charters**, in those counties and cities whose residents have elected to have charters, determine how an agency is organized and gives the agency certain prerogatives even in the face of conflicting state statutes under some circumstances. For more information on the special powers of charter cities, see [www.cacities.org/Resources/Charter-Cities](http://www.cacities.org/Resources/Charter-Cities). For more information about charter counties, see [www.csac.counties.org/general-information/county-structure-0](http://www.csac.counties.org/general-information/county-structure-0).
- **State Statutes** are typically enacted by the Legislature in a series of “codes.” The California Government Code, for example, contains a number of provisions relating to the organization of local agencies, as well as land use, planning and employee relations matters. Note that voters can amend state statutes through the initiative process.
- **Local Ordinances** represent local agencies’ exercise of law-making powers within their respective jurisdictional boundaries.
- **Federal Constitution and Statutes** apply nationwide and typically act as restrictions on the exercise of power by state and local government.
- **Judicial Decisions** interpret all of the above, frequently resolving the conflicts among them.

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# Understanding the Role of Chair

Meetings are central to the local agency decision-making process. Through public meetings, elected and appointed officials come together to receive public input, discuss, deliberate and decide issues on behalf of the public. Such decisions typically require support of a majority of the decision-making body.

All members of the decision-making body usually have the same voting power. The meeting chair, however, plays a special role in helping the group reach wise decisions. The following tip sheet offers suggestions for performing that role well.

## Goal of Meeting Discussions

The usual goal of any discussion at a public agency meeting is for decision-makers to:

- Receive and share information, so everyone can make informed choices;
- Share thoughts and perspectives on what decision best serves the public's interests and other community values; and
- Reach a decision on what the best option is.

Another goal is for the group to reach decisions in a way that builds and maintains relationships as well as promotes trust in both decision-makers and the decision-making process.

## Everyone's Role

*All* participants in the decision-making process are responsible for working towards achieving these meeting goals. Moreover, everyone has a shared stake in having an opportunity to be heard and being treated fairly. Thus, all officials have an interest in supporting the chair's efforts to conduct the meeting effectively and fairly

## The Chair's Role

The chair's role includes:

- Helping the group determine whether it has all the information necessary and available to make a decision;

- Encouraging decision-makers to share multiple points of view;
- Actively listening to determine potential points of agreement and testing those points for actual agreement;
- Managing any conflicts that may arise during the discussions;
- Keeping the discussion on topic;
- Ensuring that clear decisions are made;
- Sticking to the agenda; and
- Getting through the agenda items in a timely manner.

As a result, the role of the chair can be understood as:

- A team captain who leads by example and helps the group function as a team;
- A coach who encourages participants to perform at their best, including as it relates to principles of fair play and sportsmanship; and
- A referee who has authority to stop the action and apply the rules of play.<sup>1</sup>

For the chair to play the role of referee effectively, the chair needs the group's trust and respect. To earn this trust and respect, the chair needs to conduct the meeting fairly. This means applying the group's agreed upon standards in an impartial manner. If one's colleagues understand that the chair's goal is to be an impartial facilitator to help the group achieve consensus, the group will be more inclined to act in ways that support the chair's efforts and achieve the meeting's goals.

To achieve both the perception and the reality of impartiality, it can be helpful for the chair to hold off expressing his or her views on a matter and not engage in debate.

## Strategies for Success

### At the Beginning of the Meeting

- **Welcome and Introductions.** It can be helpful for the public (particularly first-timers) to know who is sitting at the dais, what opportunities there will be to provide input, and how they can understand what is going on (for example, if translation equipment/service is available, where people can pick up the equipment). This can communicate decision-makers' earnest desire to both receive public input and have the public understand what is going on.
- **Agenda Overview.** A brief statement of the major sections of the agenda can remind both decision-makers and the public of the scope of what needs to be accomplished during the meeting.
- **Aspirational Statement on Decorum.** If the body has adopted a guidelines and goals for civility, a brief reminder to that effect can help set the tone for both decision-makers' interactions and encouragement for other meeting participants' conduct.



## As the Body Moves to New Agenda Sections/Items

- **Agenda Sections.** Different agenda sections are sometimes subject to different procedures. For example, a consent agenda usually is a group of items that are routine and non-controversial and are taken up as a group.

Conversely, other items are taken up one by one. Sometimes certain items are subject to special procedures (for example, public hearings). It can be helpful for the chair to briefly note these differences, as a reminder to new decision-makers and first time attenders at the meeting.

*Example: Chair: “Now we are at the public hearing portion of the agenda. To be respectful of the rights and interests of all involved, there will be three stages to our consideration of each item:*

1. *Facts and Evidence:*
  - a. *First staff will summarize their analysis of the issue before us.*
  - b. *Then, the applicant will be given a chance to explain, based on facts and evidence, how the applicant has met standards necessary for us to approve the application.*
  - c. *Next the public will be given an opportunity to offer their thoughts and evidence on the merits of the application. This can include any suggestions or questions that the public thinks we should ask of the applicant.*
  - d. *We will then ask any questions of the applicant.*
2. *Law and Analysis:*
  - a. *After listening to and considering both the applicant’s and the public’s information, it becomes our turn to discuss among ourselves what we have learned based on what has been presented.*
  - b. *Once it appears that a consensus is developing, we may ask questions of staff on what kinds of findings need to be made to explain our decision based on the information we have received.*
3. *Decision:*
  - a. *The chair will entertain a motion to make a decision and adopt findings consistent with that decision.*
  - b. *If the motion receives a second, we’ll vote to see if a majority of us can agree.”*

- **Being Clear on the Issue to Be Resolved.** In addition to calling the agenda item, it can be helpful to identify the issue to be resolved.

*Example: Chair: “The issue before us is whether the application to engage in X enterprise meets the standards in our zoning code for such activities.”*

### When Consensus is not Immediately Forthcoming

If the conversation does not seem to be coalescing into a consensus or even a majority position, one technique for non-time sensitive matters is to refer the matter back to staff for further work. Staff will then have time to craft a decision that endeavors to take into account as many of the concerns expressed as possible.

This reminds staff, decision-makers, the applicant and the public the standard which needs to be focused on. In addition, for complex or divisive items, sometimes participants can lose sight of the issue to be decided. A helpful role the chair can play in getting the discussion to a point of resolution is to remind participants of the issue to be resolved (or ask staff to state the issue to be resolved).

- **Note about Technical Language.** Public agency decisions sometimes involve special terminology, jargon and acronyms. This can lead to confusion and misunderstanding, which in turn, can take the discussion in unproductive directions. Another important role of the chair is to make sure the conversation occurs at a level that everyone can understand. The chair can ask speakers to define unfamiliar terms and explain unfamiliar concepts.

## Fostering Discussion and Decision

- **Opening up the Issue for Discussion.** Having stated the issue and heard staff and the public's information on it, ask for decision-makers' thoughts. To enable the chair to be a fair guider of the discussion, the chair will typically refrain from offering their thoughts at the beginning.
- **Who Speaks When and to Whom.** At this point in the meeting, the discussion is among decision-makers and therefore decision-makers should be speaking to each other in an effort to come to a decision, not the public.

### Staff can be a Resource

Depending on the nature of the topic under discussion, agency staff and legal counsel can sometimes assist the chair in listening for consensus or clarifying misunderstandings that are impeding the effort to reach consensus.

Where staff sits can determine how helpful they can be in this role. Being able to signal or make eye contact with the chair is one issue. Many agencies have key staff (attorney and chief administrative official) sit at the dais with the body.

An important role of the chair is to make sure only one person speaks at a time, so both the public and decision-makers can understand and follow the discussion. A typical approach is for each decision-maker to offer their thoughts and then listen to other decision-makers' thoughts in turn.

If it appears multiple people want to talk at once, the chair has the option of asking people to raise their hands to be recognized before speaking. The chair can keep a list of who has asked to be heard, to call on each person to speak in sequence. Everyone who wants to speak should know that they are on the list and their turn is coming.

- **Keeping Discussion Participation Balanced.** Some bodies have a norm that each person will take a turn in asking all their questions and sharing their thoughts. Others find that such a restriction interferes with dialogue and the deliberative process. If a person seems to be repeating him or herself or otherwise dominating the discussion to the exclusion of others, one approach is for the chair to acknowledge that the individual's perspective has been heard.

Example: Chair *“We have heard that Supervisor Nasirian feels strongly that fixing our roads is an urgent priority. What are others’ thoughts?”* or *“Is there anyone who hasn’t spoken yet who would like to share their thoughts?”*

The chair can also give preference to those who haven’t spoken.

Example: Chair *“I see your hand up Council Member Cooke and we’ll get to you in a moment; I am going to recognize Council Member Suarez first since she hasn’t yet spoken.”*

- **Avoiding Interrupting one Another.** When people are passionate or otherwise convinced of the correctness of their position or information, they will sometimes jump in to respond to what a colleague is saying. A chair’s role is to intervene to protect the person’s ability to finish their thought. (*“Let’s let Director Feliciano finish his thought; you’ll have an opportunity to share your perspectives.”*)
- **Dealing with Conflict.** Differing perspectives is inherent in a group decision-making process and healthy. However, if the discussion gets particularly heated among two or more decision-makers, a helpful device is to have people address their remarks to the chair. Another is to summarize the points of disagreement and then move the discussion away from those who are in conflict by asking others how they see the issue. If the conversation turns personal, the chair can ask the group to keep the discussion focused on the problem at hand, not underlying motivations or personalities. If these techniques are unsuccessful, calling a recess can be helpful to enable people to step away from the conflict and reflect on how to move the discussion forward. *See also Dealing with Emotional Audiences ([www.ca-ilg.org/dealing-emotional-audiences](http://www.ca-ilg.org/dealing-emotional-audiences)).*
- **Actively Listening for Signs of Consensus.** The chair’s role is to listen for points of agreement and possible consensus and then test the chair’s sense of where people are leaning. Tools the chair has to help the group get to a decision point include:
  - *“It sounds like Supervisor Rodriguez and Supervisor Ifill are both concerned about the impact of the proposed use, even with the proposed conditions on the permit, on surrounding neighbors. Am I understanding your concerns? Would either of you like to move that the application be denied?”*
  - *Thank you Council Member Chen for sharing that view; would you like to make a motion to that effect?”*
  - *“It sounds that there are two views on the board: [state the two views]. Which strikes people as having more advantages for our community? “What’s the group’s pleasure? The question before us is [restate the issue before the group].”*
- **Motion and Second.** Once a motion is made, the chair asks for a second. A second to the motion indicates that at least one other person agrees with the maker of the motion.
  - If no one seconds the motion, the chair can note that the motion is appearing to die for lack of a second. The chair can ask if someone else wants to make a different motion.
  - If the group seems ambivalent, the chair can ask if someone wants to second the motion for purposes of discussion. Through that discussion, an approach at least a majority can agree on may emerge, in which case the chair may want to ask whether there’s a friendly amendment to the original motion or a substitute motion.

- **Vote.** It's helpful for the chair to re-state the motion on which the group is voting.

## At the End of the Meeting

- **End on an Upbeat Note.** If at all possible, end the meeting on a positive note and thank everyone for their contributions to the meeting and their participation.
- **Explain Next Steps.** Note that the actions taken at the meeting are being recorded through meeting minutes, which will be reviewed at the next meeting. Note when the next meeting will be.

### If at First You Don't Succeed

People can take a while to get used to the norms associated with group decision-making. If an approach doesn't work perfectly the first time, don't give up. Think about what worked and what didn't and consider whether persistence might help get the group to a better place. Many agencies have key staff (attorney and chief administrative official) sit at the dais with the body.

## More Resources

### Dealing with Emotional Audiences

[www.ca-ilg.org/EmotionalAudiences](http://www.ca-ilg.org/EmotionalAudiences)

### Codes of Conduct for Elected Boards

[www.ca-ilg.org/CodesOfConduct](http://www.ca-ilg.org/CodesOfConduct)

### ILG's Meeting Resource Center

[www.ca-ilg.org/meeting-resource-center](http://www.ca-ilg.org/meeting-resource-center)

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## References

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at [www.fppc.ca.gov/index.php?id=52](http://www.fppc.ca.gov/index.php?id=52). A source for case law information is [www.findlaw.com/cacases/](http://www.findlaw.com/cacases/) (requires registration).

<sup>1</sup> See Vermont Institute for Government, *Born to Chair: An Introduction to the Science and Art of Chairing a Board Meeting* (1998), available at [www.sec.state.vt.us/municipal/pubs/chair.pdf](http://www.sec.state.vt.us/municipal/pubs/chair.pdf) and <http://crs.uvm.edu/citizens/chair.pdf>.

# Local Agency Powers and Limitations

What can local agencies do to address issues that arise within their boundaries? The answer to that question turns on the division of labor between state and local government in California's Constitution. Federal laws can sometimes also be a limiting factor.

## Regulatory (“Police”) Powers

For example, as general purpose governments, California's counties and cities get some aspects of their authority directly from the California Constitution. That document says that cities and counties may make and enforce within their limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.<sup>1</sup> This is commonly known as the “police power,” and is the source of counties' and cities' regulatory authority to protect public health, safety and welfare.

Cities exercise this authority within their boundaries (known sometimes as “incorporated areas” reflecting the notion that residents voted to form/”incorporate” the city). Counties exercise this authority in the areas not within cities (unincorporated areas).

For purposes of comparison, special districts are creations of state law. They get their authority from the statute that authorizes the district's creation and do not have police power. Special districts have only those powers given to them by the Legislature.<sup>2</sup>

## Preemption

As a general matter, the restriction on the exercise of a county or city's authority depends on whether the proposed local enactment conflicts with federal or state general laws. This is a concept known as “preemption.” Federal or state law may preempt local officials' ability to legislate in a particular area, either explicitly or by implication.

The test for preemption of local law by federal or state laws is similar. A local ordinance will be preempted by state law when it is in express conflict with state or federal law.<sup>3</sup> Preemption may also occur even when there is no direct conflict if the state or federal government has fully occupied the area of law in general.<sup>4</sup> In the absence of judicial decisions determining whether a particular form of local legislation is preempted, the analytical process local agency lawyers must engage in to advise their clients that a matter on whether such legislation has been preempted can be complex.

## Exception to Preemption: Charter City Powers

Under California's Constitution, certain kinds of cities have an additional measure of protection from state preemption. Charter cities have an extra measure of authority over municipal affairs.<sup>5</sup> If a matter is a "municipal affair" (and not a "matter of statewide concern"), a charter city has power to act, even to the extent that the city's action may be at odds with a state law. The chief restriction on local action under these circumstances is whether the action would be inconsistent with the city's charter or the state and federal constitutions.

In a charter city, the residents adopt a charter. This charter functions as a local constitution that provides for the organization and structure of the city. It also can create limits on city powers and functions. Some charters have a great deal of detail; others are quite brief. Either way, when residents have determined that their city should be a charter city, their city then has the option deviating from state law with respect to municipal affairs.

Courts, rather than the Legislature, are the ultimate deciders of whether a subject is a municipal affair or a matter of statewide concern.<sup>6</sup> This determination is made on a case-by-case basis, which means that it frequently takes litigation to determine the scope of charter cities' exercise of authority.

More specific information on charter city authority can be found on the League of California Cities website at [www.cacities.org/chartercities](http://www.cacities.org/chartercities).

## Charter County Powers

Another section of California's Constitution provides special prerogatives for counties to become charter counties. The courts have determined that the charter county provision of California's Constitution, because it is worded differently, confers less authority on counties.<sup>7</sup>

The authority extends to the subjects described in the constitution's charter county language, which refers to such issues as:

- How the five member board of supervisors are elected (by district, at large or at large, from a district);
- Compensation, terms and removal of supervisors;
- Elected sheriffs, district attorneys, assessors and other officers (their election or appointment, compensation, terms and removal);
- Specified personnel functions (including setting compensation).<sup>8</sup>

Nonetheless, these charter county provisions were one reason that the California Supreme Court overturned legislation that would have imposed binding arbitration to resolve public safety employees' salary negotiation impasses.<sup>9</sup>

## Other Restrictions on State Legislative Powers Relating to Cities and Counties

California's Constitution forbids the Legislature from taking certain kinds power away from county and city officials and giving it to private parties.<sup>10</sup> More specifically, the Legislature may not delegate to private

persons or entities power over municipal improvements, money (including taxes and assessments), property, or functions.<sup>11</sup>

The Legislature also may not single out a particular city or county for special legislation.<sup>12</sup> However, the courts have allowed the Legislature to create classes of cities and counties as long as the individualized treatment bears a rational relationship to a legitimate state purpose.<sup>13</sup> One way of classifying counties and cities is by population.<sup>14</sup>

## Operation of Public Works

The California Constitution provides that counties and cities may establish, purchase, and operate public works to furnish their inhabitants with light, water, power, heat, transportation, or means of communication.<sup>15</sup> They may furnish those services outside their boundaries, except within another municipal utility's boundaries that furnishes the same service and does not consent.

Case law suggests that special districts may fall under this section in some ways, but not all.<sup>16</sup>

The constitution also provides that persons or corporations supplying these services may operate within cities upon conditions and under regulations that the city may prescribe.<sup>17</sup>

## Revenue Authority

California's system for financing local government operations is a complex web of constitutional and statutory provisions. This system is summarized in *Understanding the Basics of County and City Revenues*, available at [www.ca-ilg.org/revenuebasics](http://www.ca-ilg.org/revenuebasics).

## State and Federal Constitutional Limitations

Local officials' actions must also comply with the United States Constitution and federal law. Areas of federal law that frequently arise for local agencies include:

- The First Amendment establishment of religion, free exercise of religion and free speech clauses.<sup>18</sup>
- The Fourth Amendment prohibition against unreasonable search or seizure.<sup>19</sup>
- The Fifth Amendment right to remain silent (for example, in police interrogations) and the requirement of just compensation for the taking of property.<sup>20</sup>
- The Fourteenth Amendment's protections of due process, equal protection and property rights.<sup>21</sup>

California's Constitution also contains similar declarations of rights, as well as other provisions that may limit local actions. Some examples include provisions relating to water rights,<sup>22</sup> workers compensation,<sup>23</sup> alcoholic beverage regulation,<sup>24</sup> public housing projects<sup>25</sup> and the non-partisan nature of municipal government.<sup>26</sup>

Local officials should also be aware of the various federal civil rights laws, which prohibit public agencies from discriminating against individuals based on a number of protected characteristics (for example, race,



gender, physical disability and age). The state also has a number of laws that contain similar—but not always the same—protections.

## More Resources

### California's Constitution

[www.leginfo.ca.gov/const.html](http://www.leginfo.ca.gov/const.html)

### California School Boards Association Handbook

[www.csba.org/~media/51E3FBB839504700825CB16B7265F3C4.ashx](http://www.csba.org/~media/51E3FBB839504700825CB16B7265F3C4.ashx)

### California's Department of Education: School District Governance History

[www.cde.ca.gov/re/lr/do/](http://www.cde.ca.gov/re/lr/do/)

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## References

<sup>1</sup> Cal. Const., art. XI, § 7.

<sup>2</sup> *Los Angeles County Flood Control Dist. v. Southern California Edison Company*, 51 Cal. 2d 331, 339, 333 P.2d 1 (1958).

<sup>3</sup> *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141, 10 L. Ed. 2d 248, 83 S.Ct. 1210 (1963) (federal law conflicts when it is physically impossible to comply with both federal and state/local law); *Cohen v. Board of Supervisors*, 40 Cal. 3d 277, 290, 219 Cal. Rptr. 467 (1985) (Local legislation that conflicts with state law is void).

<sup>4</sup> *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604, 115 L.Ed. 2d 532, 111 S. Ct. 2476 (1991) (federal law preemption by occupying the field analysis); *Candid Enterprise v. Grossmont Union High School District*, 39 Cal. 3d 878, 886, 218 Cal. Rptr. 303 (1985) (state preemption by occupying the field).

<sup>5</sup> See generally Cal. Const., art. XI, § 5.

<sup>6</sup> The threshold inquiry is whether a conflict exists between a charter city law and state law. If no conflict exists, the charter city law stands. If a conflict exists, the court will find the matter is a municipal affair unless it qualifies as a matter of statewide concern.

Even if the subject matter is of statewide concern, the state law must be reasonably related and narrowly tailored to address that statewide concern. See *Johnson v. Bradley*, 4 Cal. 4th 389, 14 Cal. Rptr. 2d 470 (1992).

<sup>7</sup> See *Johnson v. Bradley*, 4 Cal. 4th 389, 405, 14 Cal. Rptr. 2d 470 (1992).

<sup>8</sup> Cal. Const., art. XI, § 4.

<sup>9</sup> *County of Riverside v. Superior Court*, 30 Cal. 4th 278, 132 Cal. Rptr 713 (2003).

<sup>10</sup> Cal. Const., art. XI, § 11.

<sup>11</sup> Cal. Const., art. XI, § 11.

<sup>12</sup> Cal. Const., art. IV, § 16.

<sup>13</sup> *City of Los Angeles v State*, 138 Cal. App. 3d 526, 534, 187 Cal. Rptr. 893 (1982).

<sup>14</sup> *Keenan v. San Francisco Unified School District*, 34 Cal. 2d 708, 713, 214 P.2d 383 (1950).

<sup>15</sup> Cal. Const., art. XI, § 9(a).

<sup>16</sup> See *Morrison v. Smith Brothers*, 211 Cal. 36, 293 P. 53 (1930).

<sup>17</sup> *Id.*

<sup>18</sup> U.S. Const. amend. I.

<sup>19</sup> U.S. Const. amend. IV.

<sup>20</sup> U.S. Const. amend. V.

<sup>21</sup> U.S. Const. amend. XIV, § 1.

<sup>22</sup> See Cal. Const., art. X.

<sup>23</sup> See Cal. Const., art. XIV, § 4.

<sup>24</sup> See Cal. Const., art. XX, § 22.

<sup>25</sup> See Cal. Const., art. XXXIV.

<sup>26</sup> See Cal. Const., art. II, § 6.



# Types and Responsibilities of Local Agencies

## Counties

Counties play a dual role in California's system of government. California is divided into 58 counties.

- **Countywide Services.** Counties provide a variety of important county-wide welfare and social services that serve all residents within a county. Those include services relating to health and welfare, as well as the criminal justice system. In these respects, counties are part of a statewide system that delivers certain kinds of programs and services to Californians.

Counties' district attorneys work with county sheriffs and city police departments to prosecute crimes.

- **Municipal Services and Regulations.** For those areas that are not within a city (often referred to as the "unincorporated areas" of a county), counties provide law enforcement services through the sheriff's office. For these areas, counties may also provide such services as fire protection, animal control, parks, recreation, public works, planning and land use, water, waste water, solid waste, and library—services that are similar to those cities provide within their boundaries (known as the incorporated areas). Sometimes counties and cities provide these services collaboratively. These services may also be provided by a private company or by a special district.

Counties also have regulatory authority within the unincorporated areas (such as land use planning authority and building code enforcement). This includes the power to adopt regulations to promote the public good within those areas.

## Cities

California has nearly 500 cities. Within city boundaries, cities have responsibility for such services as police and fire, animal control, parks, public works, water, waste water, solid waste, and library. Sometimes these services may be provided by the city itself or by the county, a special district or a private company.

Cities also have authority to adopt regulations that promote the public good within city limits. These include regulations relating to land use and building code enforcement.

# Schools

School districts are responsible for educating children from kindergarten through high school. Some school districts also provide pre-school services. Unlike some other states, in California public schools and cities/counties have separately elected governing bodies.

California's public education system also includes community college districts, the California State University system and the University of California system.

This is perhaps the most important thing to understand about California's public education system—it is indeed a multi-leveled, complex system. There are many state laws that determine how schools operate. The availability of funding for schools is also largely determined by the state, through the budget process. Locally elected school boards are a part of this system, as are county offices of education.

In 2013, California adopted legislation to change how K-12 public education is funded. The Local Control Funding Formula (LCFF), based on principles of equity, flexibility and transparency, allows educators and partners to be more responsive to the needs of students in their community. Along with this increase in flexibility and local control, local educational agencies (LEAs) are required to prepare Local Control and Accountability Plans (LCAP), which describe how agencies intend to meet annual goals for all pupils. The LCAP is a three-year plan that must be updated annually, and requires the school district to engage parents, students and community members.

## “Charter” Agencies

Some public agencies are “charter” agencies. This means that they have special powers.

- **Charter Cities.** The residents of a city can vote to have their city become a charter city. That means, among other things, that the city's organization and manner of operation is determined by a charter, as opposed to certain state laws, which apply to “general law cities.”

The charter is a “mini-constitution” for the city and determines how the city is organized, operated and authorized to provide for municipal functions. It also includes limitations that the residents of that city may legally choose to place on the city. Generally, charter cities have an extra measure of independence from certain kinds of state requirements, such as establishing their own election dates, rules and procedures that would otherwise apply as a general law city.

- **Charter Counties.** Like charter cities, charter counties operate according to a charter adopted by county voters. Charter counties have authority relating to the election, compensation, terms, removal and salary of the governing board; for the election or appointment (except the sheriff, district attorney, and assessor who must be elected), compensation, terms and removal of all county officers; for the powers and duties of all officers; and for consolidation and segregation of county offices.
- **Charter Schools.** Charter schools are governed by the terms of their charters and by certain state laws, as well as the federal laws that govern public school districts. Charter schools' governance structures vary widely, with some being under the authority of the district's governing board (or the County Office of Education or the State Board of Education), and others operating autonomously. The entity that approved the charter is responsible for certain oversight functions, and has authority to revoke the charter under certain circumstances, but is otherwise not responsible for the charter school's operations.

# Special Districts

Special districts are public agencies created to provide one or more specific services to a community, such as water service, sewer service, parks, fire protection and others. California has nearly 3,300 special districts.

- **Dependent Special Districts.** Sometimes the governing board of either a city or county will also serve as decision-makers for a special district. These kinds of special districts are called “dependent special districts.” About one third of special districts are dependent.
- **Independent Special Districts.** Other special districts operate under a locally elected, independent board of directors, which oversees district functions. These kinds of special districts are called “independent special districts.” About two thirds of special districts are independent.

Most special districts perform a single function, such as water service, parks and recreation, fire protection, pest abatement or cemetery management. Other districts have multiple functions, such as community service districts. Some special districts provide services for residents in both cities and counties, while others provide services only for residents who live outside city boundaries in the unincorporated areas.

In California, cities must be located in one county, and city boundaries may not cross county lines. On the other hand, special districts may cross city and county boundaries. For example, the Metropolitan Water District of Southern California serves residents in six different counties and most of the cities within those counties.

Special districts generate revenue from several sources including property taxes, special assessments, and fees. “Enterprise” special districts provide more specific services and are primarily funded by fees for those services. “Non-Enterprise” special districts provide more general governmental services and are funded primarily from property taxes.

## Other Kinds of Local Agencies

- **Joint Powers Authorities.** (JPAs) Local agencies will sometimes enter into agreements to exercise shared powers to provide more effective or efficient government services or to solve a service delivery problem. One common form of joint powers authority is one that serves as a form of insurance company for local agencies.

Through the joint powers agreement, these agencies pool their resources to promote activities to reduce risk and pool their assets to pay claims against member entities (for example, workers compensation claims).

Joint powers authorities typically have their own board of directors (typically public officials appointed by each participating public entity), their own policy development system, and their own management structure.

- **Councils of Government.** A council of government is a particular form of joint powers authority created to engage in certain policy-making activities. The exact combination of duties varies from region to region.

The two most prevalent duties are:

1. Planning-related activities relating to affordable housing and
2. Transportation on a regional level.

Some councils of government cover one county; others cover multiple counties. Some councils of governments cover such a large area (as in the Southern California area) that local agencies also participate in sub-regional council of government activities as well.

- **Local Agency Formation Commissions (LAFCOs).** A 1963 law created local agency formation commissions with three purposes:
  - To encourage the orderly formation of local government agencies,
  - To preserve agricultural land resources, and
  - To discourage urban sprawl.

Each county has a local agency formation commission. The composition of each commission varies, but at a minimum each has two representatives from the county board of supervisors, two representatives who serve as city council member from cities within the county, and one representative from the public. Local agency formation commissions make important boundary decisions that affect resident services.

In addition, local agencies will sometimes create nonprofit corporations to perform certain functions for the community. These nonprofits are governed by a board of directors according to an adopted set of bylaws. As with public agencies, there are certain transparency requirements for nonprofit corporations because of their special status.

## More Resources

**California State Association of Counties**

[www.csac.counties.org](http://www.csac.counties.org)

**League of California Cities**

[www.cacities.org](http://www.cacities.org)

**California Association of School Boards**

[www.csba.org](http://www.csba.org)

**California Special Districts Association**

[www.csda.net](http://www.csda.net)

**California Association of Joint Powers Authorities**

[www.cajpa.org](http://www.cajpa.org)

**Senate Local Government Committee Publication**

[“A Citizen’s Guide to JPAs”](#)

**California Association of Councils of Governments**

[www.calcog.org](http://www.calcog.org)

**California Association of Local Agency Formation Commissions**

[www.calafco.org](http://www.calafco.org)

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