

Understanding Public Service Ethics Laws & Principles: AB 1234 Training

Northern California
New Mayors and Council Members Academy

Thursday, January 19, 2023, 7:45 am



HOUSEKEEPING

You **MUST** be signed in

You must be present for the full two-hour training

You will receive your certificate at the end of the training

We also have certificates for attorneys for MCLE credit

Contact Taylor Buck (tbuck@ca-ilg.org) with questions or concerns

ILG IS NONPROFIT, NONPARTISAN & HERE TO HELP

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



OUR PROGRAMS AND SERVICES

Program Areas

Leadership & Governance

Civics Education & Workforce

Public Engagement

Sustainable & Resilient Communities



Services

Education & Training

Technical Assistance

Capacity Building

Convening

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

The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, centered within a white rectangular box.

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The background of the slide is a photograph of a classical building facade, featuring large, white, fluted columns and ornate architectural details. The sky is visible in the upper right portion of the image, showing light blue and white clouds.

LOCAL AGENCY ETHICS TRAINING

Presentation By
Andrew Shen, Senior Counsel
Renne Public Law Group

INTRODUCTIONS

1. AB 1234 (Gov. Code Section 53235) Training Requirement
2. Fair Political Practices Commission (FPPC) Topics
3. Goals
4. Common sense!

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CONFLICTS OF INTEREST

January 19, 2023

FINANCIAL CONFLICTS OF INTEREST

1. California Political Reform Act
2. Government Code Section 1090
3. Common Law Conflicts

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POLITICAL REFORM ACT

June 21, 2021

Political Reform Act

A public official may not make, participate in making, or attempt to use your official position to influence a **governmental decision** in which you know or have reason to know you have a **financial interest.**

Political Reform Act

1

Do you have a
FINANCIAL INTEREST?

2

Are you involved in a
GOVERNMENTAL DECISION?

1 Do you have a **FINANCIAL INTEREST**

- Real property
- Income
- Investments (stock, stock options and business ownership)
- Gifts
- Personal finances

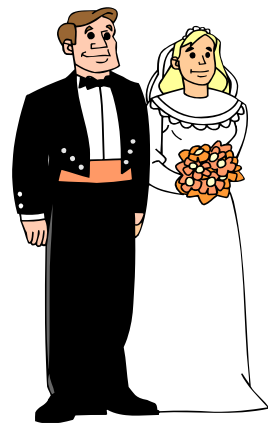
1

Do you have a **FINANCIAL INTEREST**



You

**Your Spouse,
Registered Domestic
Partner and
Dependent Children**



1 Do you have a **FINANCIAL INTEREST**

Real property



- That you own or rent (more than month to month)
- Your interest is worth \$2,000 or more.

1

Do you have a **FINANCIAL INTEREST**

Real property



- **500-Foot Rule:** If the decision affects your property or other property within 500 feet, you should presume you have a conflict.

1

Do you have a **FINANCIAL INTEREST**

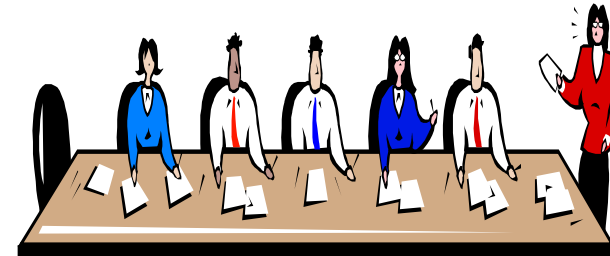
Sources of Income



- Any source of income of **\$500** or more in the past **12 months**

1 Do you have a **FINANCIAL INTEREST**

Investments



- Any business entity **“doing business” in your jurisdiction**
- In which you have an investment worth \$2,000 or more
- Or are a director, officer, partner, manager, trustee or employee

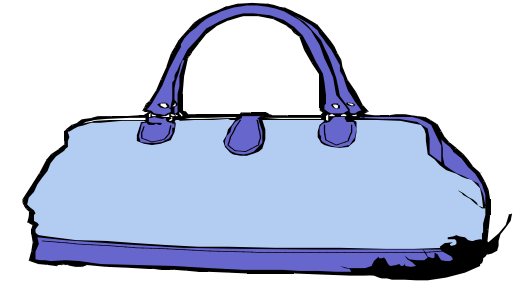
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Do you have a **FINANCIAL INTEREST**

Gifts



- Any source of gifts worth **\$590** or more in the past **12 months**.

1**Do you have a****FINANCIAL INTEREST****Personal finances**

- The decision will affect your immediate family's finances by \$500 or more in a 12-month period.

2**GOVERNMENTAL DECISION**

Making a governmental decision includes:

- Voting
- Appointing a person
- Entering into a contract
- Committing your department to a course of action

2 GOVERNMENTAL DECISION

Participating in a governmental decision includes:

- Attending board or commission discussions
- Advising or making recommendations to a final decision-maker

2 GOVERNMENTAL DECISION

Using your position to influence a governmental decision includes:

- Communicating with members or your own department or board
- Purporting to act as a representative of your agency

Political Reform Act

If you have a conflict, you must **abstain** from **any** participation or efforts to influence the decision.

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FINANCIAL DISCLOSURES



2007/2008

FORM 700 Statement of Economic Interests

Also available on the FPPC Web site:
Form 700 Reference Pamphlet

a public document

Fair Political Practices Commission
428 J Street, Suite 620 • Sacramento, CA 95814
Toll-Free Advice Line: 866-ASK-FPPC • (866) 275-3772
Telephone: (916) 322-5660
www.fppc.ca.gov

Financial Disclosures – Form 700

Why do you file?

- Allows the public to monitor their officials. Form 700s are public documents.
- Encourages officials to review their financial interests to avoid conflicts.

Financial Disclosures – Form 700

What must you disclose?

- Property ownership
- Sources of income
- Investments (stock and business ownership)
- Sources of gifts
- Personal finances

Financial Disclosures – Form 700

What must you disclose?

- The jurisdiction's Conflict of Interest Code assigns each official or employee a disclosure category.
- Disclosure categories should correspond to the types of decisions that the official or the employee make.

Financial Disclosures - SEI

When do you file?

- **Assuming office statements:** within 30 days of taking office
- **Annual statements:** every year by April 1!
- **Leaving office statements:** within 30 days of leaving office

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SECTION 1090

January 19, 2023

Section 1090

Neither you, nor the board of which you are a member, may make a **contract** in which you have a financial interest.

Section 1090

What is a *financial interest*?

- Not defined, but the courts construe the term broadly.
- Examples of financial interests: your employer, your clients, your investments

Section 1090

What is making a contract?

- Approving a contract or RFP
- Planning
- Negotiations
- Preliminary discussions

Section 1090

Exceptions to section 1090:

- **Remote interests:** Board and commission members must disclose and abstain, but can remain on the board or commission
- **Non-interests:** OK to participate

Section 1090

Consequences of Section 1090 conflict:

- **For board/commission members:** must give up the financial interest or resign from board or commission
- **For department heads and other employees:** must abstain from any participation in the decision

Common Law Conflicts of Interest

- *May* apply to noneconomic interests (as opposed to the financial interests addressed by the Political Reform Act and Section 1090)
- Fact-specific determination

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GIFT LAWS



Gift Rules

1. What is a gift?
2. \$50 reporting threshold
3. \$590 annual gift limit
4. Gifts from travel companies
5. Honoraria (speaking fees)
6. Loans

What is a gift?

A gift is **anything** of value for which you do not provide something of equal or greater value in return

EXAMPLES:



What is a gift?

The gift rules do not apply if within **30 days** of receiving a gift you:

- Pay for it
- Donate it (without a tax deduction)
- Return it

What is a gift?

Common exceptions to the gift rules



What is a gift?

“Gift” of travel exceptions (not subject to limits, but still subject to reporting):

- Travel for speech within U.S.
- Travel paid for by government agency or 501(c)(3 nonprofit

1 Gift Disclosure

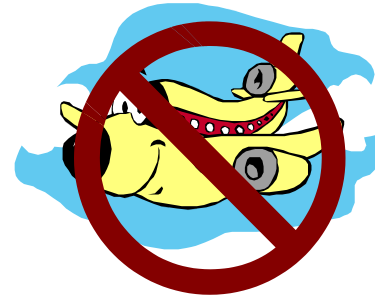
- Must report all gifts worth **\$50 or more** from sources in your disclosure category.
- Cumulative: disclosure threshold applies to series of gifts

2 Gift Limit



- Do not accept more than \$590 of gifts from any one source in a calendar year
- Cumulative limit
- Applies only to gifts from sources in your Form 700 disclosure category

3 Free Travel from Transportation Companies



Public officers may not accept free travel from transportation companies.

- Includes free airline upgrades
- Does not apply to redemption of frequent flyer miles under same terms as general public

Honoraria

Form 700 filers may not accept honoraria (speaking fees) from anyone in their disclosure category.



Honoraria

Options:

- Return within 30 days
- Donate to agency (no tax deduction)
- Donate to nonprofit (no tax deduction)



Loans

- Local elected officials may not receive a loan worth more than \$250 from other agency officials
- Loans to local elected officials of \$500 or more must be in writing (including interest rate and when payments are due)

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A photograph of a classical building facade with large, fluted columns and a pediment, set against a blue sky with light clouds. The image is partially obscured by a blue horizontal bar at the top and bottom.

ETHICS:
THE BEST OF THE REST

Topics

1. Bribery
2. Nepotism
3. Common Law Duty of Loyalty
4. Campaign Contributions
5. Use of Public Resources
6. Incompatible Offices
7. Post-Employment Restrictions
8. Behested Payments

Bribery



- No gifts (or anything of value) intended to influence you in your official duties.
- Quid pro quo

Nepotism

- Generally, a matter of policy (and respect for civil service system)
- Should not participate in or influence decisions regarding employment of a relative

Common Law Duty of Loyalty

You owe an **undivided duty of loyalty** to the public. Where your private interests interfere with your duties to the public, you should abstain.



Campaign Contributions

- **Cal. Government Code § 84308**
 - Applies to **appointed** officials (commissioners & department heads)
 - As of January 1, now also applies to local **elected** officials

Campaign Contributions

- **Section 84308 applies in certain proceedings:**
 - Licenses, permits, land use entitlements
 - Most contracts
 - **Not** generally applicable laws

Campaign Contributions

- **Prohibition on soliciting or accepting contributions**
 - Cannot solicit or accept any contribution over \$250 from a party or participant in a proceeding
 - While the proceeding is pending, and for twelve months thereafter

Campaign Contributions

- **Disqualification requirement**
 - If a party or participant has made a contribution of more than \$250 to the official within previous 12 months, the official must abstain.
 - Recent FPPC guidance

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USE OF PUBLIC RESOURCES

January 19, 2023

Gifts of Public Funds

- Under California Constitution, public funds must be used for a “public purpose”
- Determining what constitutes a “public purpose” is usually within the public officials’ discretion

Use of Public Resources for Personal Purposes

- Public employees and officers may not use public resources for **any** non-public purpose
- Includes computers, email system, phones, letterhead, staff time

Political Activity

No campaign activities while using public resources.

- Be careful with respect to local ballot measures!



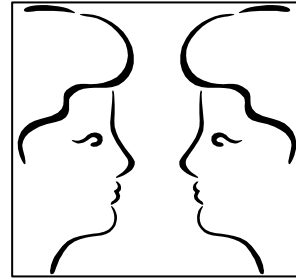
Mass Mailings

Mass mailings are prohibited if:

1. Tangible item (not email);
2. Features an elected official;
3. Paid for with public funds; and
4. More than 200 pieces sent in a calendar month.



Incompatible Offices



Cannot hold two offices if:

- The offices are incompatible because of overlapping responsibilities or jurisdiction (Gov. Code Section 1099)
- Separate rules for incompatible *activities* (Gov. Code Section 1126)

Post-Employment Restrictions

1. Negotiating Future Employment

- Do not participate in or influence decisions relating to a prospective employer while you are negotiating future employment
- Applies to all public officials

Post-Employment Restrictions

2. Lobbying Your Former Agency

- Do not lobby your former agency on behalf of others for **one year** after leaving
- Applies to:
 - Local elected officials
 - City managers and county chief administrators

Post-Employment Restrictions

2. Lobbying Your Former Agency

- Applies to:
 - Administrative decisions
 - Legislative actions
 - Permit, license, grant or contract
 - Sale or purchase of property or goods

Post-Employment Restrictions

- The other ethics rules still apply!
 - Political Reform Act
 - Section 1090
 - Use of public resources

Behested Payments

- Solicitation of charitable contributions
 - Potential reporting obligation if \$5,000 or more (FPPC Form 803)
 - Be careful!

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**FAIR PROCEDURES:
ADJUDICATORY PROCEEDINGS AND
COMPETITIVE BIDDING**

Due Process

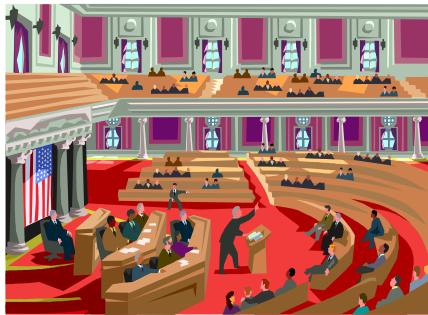
- A board or commission may act like a legislature or a court.
- If adjudicative, must protect the parties' due process rights

Due Process - Examples



➤ Adjudicative:

- Revoking or suspending permits or licenses
- Terminating employees
- Property tax appeals



➤ Legislative:

- Adopting an ordinance, regulation or policy

Due Process



- If adjudicative, private party has the right to:
 - A fair hearing
 - An unbiased decision maker

Due Process



- Commissioners must act like judges:
 - Listen to evidence
 - Base decision solely on evidence
 - Follow procedural rules

Due Process



- Bias:
 - Financial interests
 - Professional background?
 - Public statements?
 - Personal grudges

Competitive Bidding

- With limited exceptions, must use a competitive process
- Once a process is established, the agency must follow it
- Commissioners may not interfere with the competitive process

Competitive Bidding

- Purposes of competitive bidding:
 - To protect against corruption or favoritism
 - To improve the quality of the bids (and the work to be carried out)
 - To increase the quantity of the bids



**Questions?
Concerns?
Discussion**

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PUBLIC MEETINGS

June 21, 2021

Overview

1. What is a Meeting?
2. Notice of Meetings
3. Public Participation
4. Closed Sessions

What is a Meeting?

- A majority of the policy body
- Are together
 - at the same time and place, or
 - via communications
- Subject matter of discussion?

Meetings (or not)

- Formal meetings
- Retreats?
- Conferences?
- Community meetings?
- Ceremonial events?

(Illegal) Meetings

- “Pre-meetings”
- “Post-meetings”
- Teleconferences and group texts
- “Seriatim” (or serial) meetings

Types of Seriatim Meetings

- A to B, B to C, C to D
- A to B, A to C, A to D
- Some combination of above

How Seriatim Meetings Occur

- In person
- Use of technology
 - E-mail
 - Text message
 - Phone call
- Human intermediaries

Non-Meetings of a Majority

- Non-member of body communicates with a majority, if
 - one-on-one communications
 - not discuss views of other members
- Attendance of majority at
 - Conference, community meeting or ceremonial event

If (1) open to the public, (2) no collective discussion of business

Remote Meetings

- New rules: limited options
 - Quorum must still meet in person
 - “Just cause” (up to 2 per year)
 - Childcare, contagious illness, travel on official business
 - “Emergency circumstance”
 - Not allowed for more than three consecutive months or 20 percent of regular meetings within a calendar year

Remote Meetings

- Old rules: rarely used
 - All teleconference locations are identified in the notice and agenda
 - An agenda is posted at each teleconference location
 - The public is entitled to attend at each teleconference location
 - All votes are taken by roll call
 - At least a quorum of the members participating are within the geographic jurisdiction of the public agency

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NOTICE OF MEETINGS

Posting the Agenda

- When: At least 72 hours before the meeting (regular)

- Where: location “freely accessible to members of the public”
 - Website
 - Library
 - Outside meeting room

Meeting the 72-Hour Deadline

- Recommendation: Don't wait to the last minute
- Amending an agenda item
 - Before the deadline
 - After the deadline
- Special meetings (24-hour notice)

Describing an Agenda Item

- Sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected of reason to attend the meeting or seek more information on the item
- No bright-line test
- Safe-harbor language

Why does this matter?

**A POLICY BODY CANNOT DISCUSS
OR ACT ON ITEMS NOT ON THE
AGENDA.**

Limited Exceptions

- Announcements
- Request to agendize items
- Direction to staff
- Limited follow-up to general public comment

Other Required Information

- Basics –
 - date and time
 - location
- Opportunities for public comment

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PUBLIC PARTICIPATION

Public Participation

- Ability to attend
- Public comment
- Receipt of agenda materials

Ability To Attend

- Nondiscriminatory admission
- Disability access
- No preconditions
- No fee
- No sign-in sheet (ok if says it is optional)

Public Comment

- General Public Comment
 - any time in meeting
- Agenda Item Comment
 - before action taken on item
 - for discussion item, before consideration of item ends

General Public Comment

- Agendize it
- Members of body may not discuss general public comment or respond substantively; limited follow-up ok

Public Comment

- Equal speaking time for members of the public
 - Other speakers can go longer
 - Calculating speaker time
 - Considering translator time
- Free to criticize policy body, members, department staff

Limits on Public Comment

- Time limits
- No right to speak off-topic – but use judgment as chair
- No right to disrupt – but “offensive” speech is OK
- No right to a response

Public Disruptions

- New rules – allow for removal when:
 - Failure to comply with body's regulations (but must provide warning)
 - Use of force or threat of force

Public Disruptions

- Practical tips
 - Warnings
 - Recess
 - Turning off microphone

Receipt of Agenda Materials

- Intended for distribution before meeting – right to inspect/copy before meeting
- Distributed during meeting, before item heard – right to inspect (should copy if possible) before item heard
- Distributed during meeting, when item heard – depends on if source of materials is department/policy body/member

Types of Closed Sessions

- Personnel matters
- Pending litigation
- Instruct labor negotiator
- Instruct real estate negotiator
- Security
- Miscellaneous others

Requirements Before

- Special agenda format
 - Safe harbor formats (Gov Code Section 54954.5)
- Public comment before going into closed session

Requirements During

- Stay on topic
- Limit attendance
 - Commissioners
 - Staff/employees to aid the body
 - Necessary participants in the session

Requirements After

- Notice of certain final actions
- Maintain confidentiality of closed session

Consequences for Brown Act Violation

- Willful action – potential criminal liability
- Voiding of action
- Injunction or declaratory relief to stop or prevent violations of Act
- Attorneys' fees and costs

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PUBLIC RECORDS

Overview

1. Definition of “Public Record”
2. Process for Handling Requests
3. Exemptions

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DEFINITION OF “PUBLIC RECORD”

What is a Public Record?

- Writing, regardless of physical form or characteristics
- With information relating to the conduct of the public's business
- Prepared, owned, used, or retained
- By any state or local agency

Use of Personal Devices

- A public record, if the message meets the definition – the medium doesn't matter
- Consider substance of message, purpose, context, sender, recipient
- Responsibility for search lies with employee/official
- Request doesn't have to specifically ask
- Texting/emailing during meeting - beware

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PROCESS FOR HANDLING REQUESTS

The Request

- Must specify record/category of records – not a strict requirement
- May be oral – written is better
- Magic words like “public records request”/“sunshine” not required
- No justification required

Types of Requests

- Inspection vs. copying
- Requester's choice – may choose both

Time for Response

- Standard – 10 calendar days
- Time extension – 14 calendar days
 - Other storage facilities
 - Voluminous
 - Involves other agencies

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Moral of the Story

**START WORKING ON THE
PUBLIC RECORDS REQUEST
RIGHT AWAY**

Responses – Nuances

- May attempt to narrow
- May negotiate deadline
- Produce records on “rolling” basis

Duty to Assist Requester

- Clarify unclear request
- Identify types of records that exist
- Direct requester to other departments

Duty to Conduct Reasonable Search

- A matter of degree; not have to seek “needle in haystack”
- Consult relevant people/files
- Keep records in orderly files to facilitate search
- Method of searching personal electronic device

No Duty:

- To respond to written questions (may or may not be good practice)
- To create record that doesn't exist (but different for compiling existing electronic data)
- To create privilege log

Nature of Response

- Written
- Options
 - No responsive records
 - Responsive records
- For responsive records
 - Disclose all/some/none
 - Within record, may redact

Nature of Response

- If withhold a record (in full or part), state legal justification
- Explain process for requester to inspect and/or copy records
- State copying fees, if any

May Not Charge For ...

- Search for/collection of records
- Redacting records
- Overseeing inspection of records
- Time to copy records
- Preparing response

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EXEMPTIONS

Exemptions

- Attorney-client communications
- Attorney work product
- Library circulation records
- Real estate appraisals (before completion of transaction)
- Test questions
- Law enforcement investigative and security records

Exemption Pointers

- No “embarrassment exemption”
- Large number of exemptions
 - some obscure
- Mandatory vs. discretionary exemptions

Consequences for Public Records Act Violation

- Declaratory and injunctive relief ordering disclosure of record
- Attorneys' fees and costs



**Questions?
Concerns?
Discussion**