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## **ETHICS LAWS AND PRINCIPLES**

*Transparency, Openness and  
Fairness in Government*

## OVERVIEW OF CALIFORNIA'S ETHICS LAWS: AB 1234

This booklet<sup>1</sup> is a summary of many, but by no means all, of California's numerous laws pertaining to "ethics," which agency officials (including designated employees) are required to familiarize themselves with under AB 1234.<sup>2</sup> Some of these laws are prohibitory in terms of forbidding certain actions. Other laws, such as those requiring transparency, openness, and fairness in government, place affirmative obligations on officials and their agencies. Regardless of how these laws are framed, their central purpose is to protect the public's *trust* in local government institutions and those who serve in them.

### I. Transparency Laws

Two key California laws ensure that local government actions are done openly and that records are accessible so that the public can monitor the "people's business."

#### A. The Brown Act

**General Rule.** The Brown Act requires that public agency meetings are open to the public, and all persons are allowed to attend and participate in the meeting.<sup>3</sup> A "meeting" is any gathering of a majority of the members of a legislative body to hear, discuss or deliberate about any item that is within its subject matter jurisdiction.<sup>4</sup> A meeting is not just a traditional meeting of all members in a room. A meeting can also be any use of direct communications, including technological devices (such as phones or e-mail) or social media platforms<sup>5</sup> (e.g., Facebook, Twitter), that a majority of the members use to discuss, deliberate, or take any action on any item of business within the subject matter jurisdiction of the entity.<sup>6</sup>

Officials should be particularly careful of a *serial meeting*, which may occur when through a series of communications with one or more other members outside of a meeting, a quorum of the members develops a collective concurrence on action the body will take.<sup>7</sup>

<sup>1</sup> The information in this booklet is for educational purposes only and does not constitute legal advice. Specific legal questions should be directed to agency legal counsel.

<sup>2</sup> Assembly Bill (AB) 1234 became effective on January 1, 2006, and is codified in Government Code sections 53234 to 53235.2.

<sup>3</sup> Government Code § 54950 and following.

<sup>4</sup> Government Code § 54952.2(a).

<sup>5</sup> See Government Code § 54952.2 (codifying rules on interaction with other legislative body members and the public when on social media.)

<sup>6</sup> Government Code § 54952.2(b).

<sup>7</sup> Government Code § 54952.2(b), 63 Cal. Op. Atty. Gen. 820 (1980).

There are numerous exceptions to the general Brown Act meeting rule such as the attendance of a majority of members of the legislative body at social events and conferences. Members of a legislative body may also attend an open and noticed meeting of a standing committee of the legislative body; provided, however, that the members of the body who are not members of the committee attend only as observers.<sup>8</sup>

**Social Media.** From January 1, 2020 through January 1, 2026, stricter rules apply to discussions on social media platforms. For example, AB 992 prohibits even one member of the legislative body from responding in any manner to any other member's social media posts: "A member of the legislative body shall *not respond directly* to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body."<sup>9</sup> There are no exceptions to this rule and it applies to just one response, making it a violation of the Brown Act regardless of whether a majority of the legislative body reads the response.

AB 992 also prohibits a majority of the members of the legislative body from using social media to "discuss among themselves" business of a specific nature that is within the subject matter jurisdiction of the legislative body.<sup>10</sup> It prohibits "communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body."<sup>11</sup> This prohibition against members "discussing among themselves" specifically includes emojis.

**Meeting Location.** In general, meetings must be held within the boundaries of the agency's jurisdiction except under specified circumstances.<sup>12</sup> Joint powers authorities (JPAs) may meet within the territory of any member, or if members are located throughout the state, then they can meet anywhere in the state.<sup>13</sup>

**Teleconferencing.** There are now three kinds of remote teleconferencing available as exceptions to normal Brown Act meeting requirements. First, under traditional teleconferencing rules, a quorum of the legislative body must meet in person in the same location within the jurisdiction, the address where an official is participating remotely must be included on the agenda, the agenda must be posted regularly and at

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<sup>8</sup> Government Code § 54954.2(c)(1)-(6).

<sup>9</sup> Government Code § 54952.2(b)(3)(A).

<sup>10</sup> Government Code § 54952.2(b)(3)(A).

<sup>11</sup> Government Code § 54952.2(b)(3)(B)(i).

<sup>12</sup> Government Code § 54954(b).

<sup>13</sup> Government Code § 54954(d).

the remote location, the remote location must be open to the public and votes must be taken by roll call.<sup>14</sup>

Second, under new limited remote teleconferencing rules that were effective January 1, 2023, less than a quorum of local officials can participate remotely if at least a quorum participates in-person at a single location identified on the agenda that is open to the public, and the legislative body follows certain procedural and substantive requirements.<sup>15</sup> Regular noticed meeting and agenda posting requirements apply. The public must be allowed to access the meeting and provide real-time comments, including by teleconference with instructions.<sup>16</sup> Submission of comments in advance cannot be required.<sup>17</sup> The meeting must be paused when there is any teleconference disruption for the public and access requirements for requests for reasonable accommodations, including giving notice of the procedure, must be followed.<sup>18</sup> Members attending remotely must participate through *both* audio and visual technology and disclose, before any action, adults present in room and their relationship to the member.<sup>19</sup> The member must need to participate remotely for “just cause” or “emergency circumstances” as defined in the statute, and notify the legislative body at the earliest opportunity possible.<sup>20</sup> Local officials are prohibited from participating remotely in meetings for more than three consecutive months or for 20% of the regular meetings in a calendar year for emergency circumstances or for more than twice per calendar year for just cause.<sup>21</sup>

***Agendas and Action on Agenda Items.*** Agendas for regular meetings must be posted at least 72-hours in advance, including on the agency’s website if it has an Internet website,<sup>22</sup> and must contain a brief description of all agenda items sufficient to allow the public to understand what business will be discussed.<sup>23</sup> If an item is not on the agenda, members can only make a short report on activities, briefly respond to public statements, ask for clarification, or ask staff to put a matter of business on a future agenda.<sup>24</sup> If a late item is an emergency or a subsequent need item, the body may vote to place the matter on the agenda.<sup>25</sup>

<sup>14</sup> Government Code § 54953(b).

<sup>15</sup> Government Code § 54953(f) (AB 2449). AB 361, which allowed legislative bodies to meet remotely for 30 days during a state of emergency expired January 1, 2024.

<sup>16</sup> Government Code § 54953(f)(1)(C).

<sup>17</sup> Government Code § 54953(f)(1)(E).

<sup>18</sup> Government Code § 54953(f)(1)(D).

<sup>19</sup> Government Code § 54953(f)(2)(B) & (C).

<sup>20</sup> Government Code § 54953(f)(2)(A).

<sup>21</sup> Government Code § 54953(f)(2)(A)(i) & (f)(3).

<sup>22</sup> Government Code §§ 54954.2, 54956.

<sup>23</sup> Government Code § 54954.2(a)(1).

<sup>24</sup> Government Code § 54954.2(a)(2).

<sup>25</sup> Government Code §§ 54954.2(b)(1), 54956.5.

**Public Participation.** A regular meeting agenda must allow an opportunity for members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. The public must be allowed to speak on a specific item of business *before* or *during* the legislative body’s consideration of it. The legislative body may adopt reasonable regulations, including decorum and time limits on public comments (e.g., three minutes per speaker plus at least twice the normally allotted time if language translation is needed).<sup>26</sup> The public is also entitled to see copies of all open session documents provided by the agency to the legislative body at the time they are provided to a majority of the legislative body, or promptly after a meeting upon request if prepared and submitted at the meeting by some other person.<sup>27</sup>

**Removing Disruptors.** Effective January 1, 2023, a new section of the Brown Act adds authority for the presiding member of the legislative body conducting a meeting (or their designee) to remove, or cause the removal of, an individual for disrupting the meeting.<sup>28</sup> “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, (a) a failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Government Code section 54954.3 or any other law; or (b) engaging in behavior that constitutes use of force or a true threat of force.<sup>29</sup> Prior to removing an individual, the presiding member (or their designee) must first warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The individual may then be removed if they do not promptly cease their disruptive behavior following the warning.<sup>30</sup> A warning, however, is not necessary prior to removal if the disruptor’s behavior constitutes a use of force or a true threat of force.<sup>31</sup> “True threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.<sup>32</sup>

**Closed Sessions.** Legislative bodies may meet without the public present in closed session, but only for specific purposes that must be clearly stated on the agenda.<sup>33</sup> The discussion in a closed session must be limited to the specified subject matter.<sup>34</sup> Generally, only authorized attendees, who are *necessary* for the consideration

<sup>26</sup> Government Code § 54954.3(b).

<sup>27</sup> Government Code § 54954.1, 54957.5(b).

<sup>28</sup> SB 1100; Government Code § 54957.95(a)(1).

<sup>29</sup> Government Code § 54957.95(b)(1).

<sup>30</sup> Government Code § 54957.95(a)(2).

<sup>31</sup> Government Code § 54957.95(a)(2).

<sup>32</sup> Government Code § 54957.95(b)(2).

<sup>33</sup> Government Code §§ 54954.2(a), 54954.5.

<sup>34</sup> See *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904.

of the closed session item (such as board members, agency counsel, management and support staff, consultants, and other persons with an official role in the closed session item) may attend the closed session.<sup>35</sup> Convenience or an interest in the closed session item, by itself, is not enough.<sup>36</sup> Moreover, “semi-closed” sessions where certain interested members of the public are admitted while the remainder of the public is excluded are not permitted.<sup>37</sup>

**Disclosure of Closed Session Information.** The disclosure of confidential information acquired in a closed session is prohibited unless the legislative body authorizes disclosure of the information. “Confidential information” means communication made in closed session that is specifically related to the basis for the closed session meeting.<sup>38</sup> If permitted by a policy or bylaw of a JPA, a member of the legislative body of a local agency that serves on the board of a JPA may disclose confidential information obtained in a closed session of the JPA to: (a) legal counsel of the local agency and (b) other members of the local agency legislative body in a closed session of the local agency.<sup>39</sup>

**Penalties.** It can be a misdemeanor to violate the Brown Act if an official takes action and *intends* to deprive the public of information to which the member knows or has reason to know the public is entitled.<sup>40</sup> Moreover, actions taken in violation of the Brown Act are voidable if the legislative body refuses, after notice is given, to cure the violation.<sup>41</sup> A court may award reasonable attorneys and costs to a plaintiff who prevails in an action for certain Brown Act violations.<sup>42</sup>

## B. The Public Records Act

**General Rule.** Under the Public Records Act,<sup>43</sup> members of the public have the right to inspect and obtain copies of “any *writing* containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.”<sup>44</sup> This right of access extends to electronic data regarding agency business (e.g., emails, texts, etc.), maintained in personal accounts or on personal devices.<sup>45</sup> This right is enshrined in the California

<sup>35</sup> 83 Ops. Cal. Atty. Gen. 221 (2000).

<sup>36</sup> 82 Ops. Cal. Atty. Gen. 29 (1999).

<sup>37</sup> 46. Ops. Cal. Atty. Gen. 34 (1965).

<sup>38</sup> Government Code § 54963(a).

<sup>39</sup> Government Code § 54956.96; *see also* Government Code § 54954.5(j) providing safe harbor agenda language for local agency closed session on JPA closed session information.

<sup>40</sup> Government Code § 54959.

<sup>41</sup> Government Code § 54960.1; Education Code §72121(b).

<sup>42</sup> Government Code § 54960.5.

<sup>43</sup> Government Code § 7920.000 and following.

<sup>44</sup> Government Code § 7927.300.

<sup>45</sup> *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608.

Constitution<sup>46</sup> and is broadly construed by the courts to further the public’s right of access to public records.

**Agency Obligations.** The Public Records Act requires public agencies to assist members of the public in making focused records requests and establishes time frames in which to respond to such requests.<sup>47</sup>

**Official’s Access to Records.** Except for records within an official’s scope of duties, public officials generally have no greater rights of access to public records than members of the public.<sup>48</sup>

**Exceptions.** Similar to closed session meetings under the Brown Act, the Public Records Act recognizes that in some instances a public agency should be able to withhold certain records, particularly where records may contain privileged or confidential information, or where the disclosure may violate a personal privacy interest. These exceptions are enumerated in the Act or established by case law and are narrowly construed.<sup>49</sup>

For example, attorney-client privileged communications, containing information such as advice, legal research, or strategy, are exempt from disclosure.<sup>50</sup> Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy, are exempt from disclosure.<sup>51</sup> Information that may jeopardize law enforcement activities, or endanger the safety of witnesses, is also exempt from disclosure.<sup>52</sup> In some cases, the agency may withhold a record if the agency can demonstrate that the public interest in withholding the record “clearly outweighs” the public interest in disclosing the record.<sup>53</sup> This includes information related to the “deliberative process” of an agency officials where the courts have recognized that the public interest is furthered by candid internal discussion, such as access to a broad range of opinions that may assist in policymaking, and in certain situations, the exposure of such decisionmaking processes may discourage such candid discussions.<sup>54</sup>

<sup>46</sup> Cal. Constitution, art. I, § 3.

<sup>47</sup> Government Code §§ 7922.600, 7922.535.

<sup>48</sup> Government Code § 7920.515.

<sup>49</sup> See Government Code §§ 7923.600-7930.215.

<sup>50</sup> Government Code § 7927.705; Evidence Code § 954; Business & Professions Code § 6149.

<sup>51</sup> Government Code § 7927.700.

<sup>52</sup> Government Code §§ 7923.600–.625.

<sup>53</sup> Government Code § 7922.000; see *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.

<sup>54</sup> See *Times Mirror Company v. Superior Court* (1991) 53 Cal.3d 1325.

**Renumbering.** Effective January 1, 2023, the Public Records Act was recodified, reorganized and moved to Government Code section 7920.000, *et seq.*<sup>55</sup> For example, former Government Code section 6254(c) (which exempts “personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy”) is relocated to Government Code section 7927.700. There were no substantive revisions to the Public Records Act as a result of this renumbering.

**Penalties.** If an agency unreasonably denies access to public records, it is liable for a mandatory award of court costs and reasonable attorney’s fees.<sup>56</sup>

## II. Personal Advantages and Perks

California law prohibits acceptance of certain personal advantages and perks associated with public office and service. The general principle underlying the “no perks” laws is that one’s status as a public servant and one’s access to public resources should not afford that person special privileges. There are two categories of “no perks” laws. One relates to perks that others provide public officials (*e.g.*, gifts). The other involves advantages that officeholders provide themselves (*e.g.*, use of public resources).

The laws in this area are designed to promote the general ethical values of fairness, responsibility, and trustworthiness. For example, receipt of perks from others undermines the public’s trust that decision-makers are treating everyone who comes before them fairly and making decisions based on the general public interest.

When officeholders give themselves perks or misuse resources, the public’s trust that these officeholders are being careful and public-minded stewards of taxpayer resources is undermined. To the extent that some of these perks involve political advantages, they undermine the fairness of campaigns and elections. The applicable laws address the following issues:

### **Compensation:**

State law limits compensation for legislative body members. For instance, council members of a general law city to \$300 - \$1,000 per month, depending on the size of the jurisdiction.<sup>57</sup> Irrigation District board members’ compensation is set forth California Water Code section 21166.

<sup>55</sup> AB 473 & 474.

<sup>56</sup> Government Code § 7923.115(a).

<sup>57</sup> Government Code §§ 36516, 36516.1.



### **Expense Reimbursement:**

As a general rule, agencies may only reimburse officials for **actual** and **necessary** expenses.<sup>58</sup> AB 1234 further requires that an agency adopt a written policy specifying reimbursable activities and rates.<sup>59</sup> Officials must timely report reimbursable expenses using report forms and must provide receipts documenting the expenses.<sup>60</sup> AB 1234 also requires officials to report on “meetings” of other bodies subject to the Brown Act attended at public expense at the next meeting of the official’s legislative body.<sup>61</sup>

If an official does not comply with the local policy and procedures, the official risks the loss of the reimbursement privilege, having to pay restitution and civil penalties (including penalties of triple the value of the resources) and could be banned from holding public office.<sup>62</sup>

### **Gifts:**

A gift is anything of value an official receives for which the official does not provide monetary or other consideration of equal or greater value.<sup>63</sup> Rebates and discounts provided to officials may also constitute “gifts” unless made in the regular course of business and without regard to the official’s status.<sup>64</sup> A meal is considered a gift, unless it is provided at a person’s home as part of an individual’s “home hospitality,” provided as part of a “reciprocal exchange” between an official and a non-lobbyist,<sup>65</sup> friend, or a governmental agency pays for it.<sup>66</sup> Gifts to family members of public officials are treated as gifts to the official unless the donor and the family member have an established social or work relationship, and the donor does not have business before the official.<sup>67</sup>

**Gift reporting.** Certain officials must report gifts on their Statements of Economic Interests, also called Form 700.<sup>68</sup> The gifts must be reported if the total value

<sup>58</sup> Government Code § 53232.2.

<sup>59</sup> Government Code § 53232.2(b).

<sup>60</sup> Government Code § 53232.3.

<sup>61</sup> Government Code § 53232.3(d).

<sup>62</sup> Government Code § 53232.4.

<sup>63</sup> Government Code § 82028(a).

<sup>64</sup> *Id.*

<sup>65</sup> Lobbyists may not gift more than \$10 per month to any official. Government Code § 86203.

<sup>66</sup> 2 Cal. Code Regs. §§ 18942(a)(7); 18942(a)(8); 18942.2; 18944.3.

<sup>67</sup> 2 Cal. Code Regs. § 18943.

<sup>68</sup> Government Code §§ 87200, 87207, 89503; 2 Cal. Code Regs. § 18940(a).

of all gifts from a source during the calendar year is \$50 or more.<sup>69</sup> If the official does not know the amount of the gift, he or she must make a good faith estimate of its fair market value.<sup>70</sup>

**Gift limitations.** Beginning in 2023 through 2024, an official may not receive gifts from one source of a value of more than \$590 in a calendar year.<sup>71</sup>

**Travel gifts.** These gifts are particularly fraught with peril for an official. An elected or appointed official must *forfeit* his or her office if he or she receives free or discounted transportation from transportation companies.<sup>72</sup> If travel is provided by anyone other than a transportation company, other rules apply. Generally, the official must report the travel gift on the official's Form 700 if the travel expense was worth more than \$50.<sup>73</sup> Like any other gifts, reportable travel expenses are subject to a maximum gift limit. Travel related expenses are not gifts if provided in connection with giving a speech or participation in a program such as admission, refreshments, intrastate transportation for the event, necessary lodging and meals on the day of activity.<sup>74</sup>

### **Gratuities and Rewards:**

An official commits a misdemeanor if he or she receives any type of gratuity or reward for performing his or her official duties.<sup>75</sup>

### **Honoraria:**

An official cannot receive an honorarium for giving a speech, writing an article, or attending a public or private conference, convention, meeting, social event, meal or similar gathering in his or her capacity as an official.<sup>76</sup> Honoraria are prohibited because such communications are part of an official's public service. An official may return an honorarium within 30 days of receipt without penalty or may donate the honorarium to a non-profit group.<sup>77</sup> Payment for a speech or article in connection with private business is not considered an honorarium.<sup>78</sup>

<sup>69</sup> Government Code § 87207(a)(1).

<sup>70</sup> 2 Cal. Code Regs. § 18946(b).

<sup>71</sup> Government Code §§ 89503, 89506; 2 Cal. Code Regs. § 18940.2(a). The gift limit is generally adjusted every two years.

<sup>72</sup> Cal. Constitution, art. XII, § 7.

<sup>73</sup> Government Code § 87207(a)(1).

<sup>74</sup> Government Code § 89506; 2 Cal. Code Regs. § 18950–18950.3.

<sup>75</sup> Penal Code § 70(a).

<sup>76</sup> Government Code § 89502.

<sup>77</sup> Government Code § 89501(b)(2).

<sup>78</sup> 2 Cal. Code Regs. § 18932(a)(1).

### **Misuse of Public Resources:**

Officials cannot use public funds or resources for personal, non-public purposes, including campaigns.<sup>79</sup> “Public resources” includes such things as staff time, office equipment (telephones, fax machines, photocopiers and computers), and office supplies (stationary, stamps, and other items), but excludes incidental or minimal uses.<sup>80</sup> “Personal” use of public resources includes activities that are for personal enjoyment, private gain or advantage. “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. Penalties for violation are severe: they include jail, disqualification from office, civil penalties up to \$1,000 per day plus three times the value of the unlawful use.<sup>81</sup>

### **Gifts of Public Funds:**

Local agencies cannot make a “gift” of public money or anything of value.<sup>82</sup> A gift means that the agency receives no consideration for the gift – that it gets nothing in return. Even if a private party incidentally benefits from a public expenditure, however, it is not a gift of public funds if the payment was made for public purposes within the agency’s jurisdiction (e.g., the agency offering discounted rates to a nonprofit organization for the use of its facilities). Courts generally give great deference to an agency’s determination of public purposes.

### **Mass Mailings:**

Officials cannot send newsletters or other “mass mailings” at public expense.<sup>83</sup> The rule generally applies to the distribution of 200 or more items “featuring” the official.<sup>84</sup> “Featuring” means documents that contain the name or pictures of an elected official except as part of a standard letterhead. While there are some exceptions, no exception applies for someone who is a candidate, 60 days before that election. An official could have criminal liability and be forced to pay restitution if he or she violates this law.<sup>85</sup>

<sup>79</sup> Penal Code § 424; Government Code § 8314.

<sup>80</sup> Government Code § 8314(b)(1) and (3).

<sup>81</sup> Government Code § 8314(c)(1).

<sup>82</sup> Cal. Constitution, art. XVI, § 6.

<sup>83</sup> Government Code § 89001.

<sup>84</sup> Government Code § 89001(a)(2)

<sup>85</sup> Government Code §§ 91000, 91002, 91005.5.

### **Loan Restrictions:**

An official cannot receive a loan from those within his or her agency or with whom the agency contracts.<sup>86</sup> (This does not operate to prohibit bank or credit card indebtedness made in the regular course of the company's business.) An official also cannot receive a personal loan greater than \$500, unless the loan is made in writing, with clear terms, and with the date, amounts and interest payable.<sup>87</sup> However, loans are not covered by these rules if they are made to the official's campaign committee, are normal bank and credit indebtedness, or are loans from family members.<sup>88</sup>

### **Solicitations of Political Support:**

Soliciting campaign funds from agency officers or employees is unlawful except when included as part of a communication to a significant segment of the community.<sup>89</sup> Officials also cannot condition employment or compensation decisions on political support.<sup>90</sup>

### **Reporting of Behested Payments:**

Elected officials must report payments (*i.e.*, donations) made to a government agency or charity at their request for legislative, governmental, or charitable purposes within 30 days of the date on which the payment or payments exceed \$5,000 for a single source in a calendar year.<sup>91</sup> Like many of the disclosure requirements, the underlying purpose of this law is to allow the public to know when there might be a potential for influence over a public official.

## **III. Personal Financial Gain**

California law – unsurprisingly – prohibits the use of public office for personal financial gain.

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<sup>86</sup> Government Code § 87460.

<sup>87</sup> Government Code § 87461.

<sup>88</sup> Government Code §§ 87460, 87461.

<sup>89</sup> Government Code § 3205.

<sup>90</sup> Government Code §§ 3204, 3205.5.

<sup>91</sup> Government Code § 82015; 2 Cal. Code Regs. § 18215.3

## A. General Laws.

### Bribery and Extortion:

It is a crime to request, receive or agree to receive anything of value, including money or “advantages,” in exchange for official action.<sup>92</sup> The advantage can be a future one and need not involve the payment of money. It is also illegal to receive payments for appointments to public office.<sup>93</sup> Extortion is the wrongful use of an official’s position in order to get something of value from someone.<sup>94</sup> Penalties for bribery and extortion are harsh: criminal fines, forfeiture of office, and disqualification from office.<sup>95</sup>

## B. Political Reform Act and Other Conflict of Interest Rules.

### Conflict of Interest Rules:

The two primary statutory schemes addressing conflicts of interest are the Political Reform Act and supporting Fair Political Practices Commission regulations, along with Government Code section 1090 and following. Conflict of interest rules are based on the idea that public officials owe the highest loyalty to the public, and that their personal or private financial needs should not be part of their political decisions.

***Disclosure of financial interests.*** Public officials report their financial interests in their Form 700 statements. These statements are intended to alert officials to personal interests that might interfere with public duties, and also let the public know about potential conflicts. The disclosure requirements apply to nearly every local elected official, members of commissions, boards, committees and other local bodies with significant decision making authority, and staff members designated by the local agency.<sup>96</sup> The forms require the disclosure of interests in real property, investments, business positions, sources of income, and gifts.<sup>97</sup> The forms are filed within 30 days of the official assuming office, each year thereafter (by April 1), and within 30 days after leaving office.<sup>98</sup> The document is filed online or sometime with the local agency, which will send it to the FPPC if needed, and may be posted on the local agency’s website.<sup>99</sup> These forms are public records,<sup>100</sup> and late filers may face fines or penalties.<sup>101</sup>

<sup>92</sup> Penal Code §§ 7, 68.

<sup>93</sup> Penal Code § 74.

<sup>94</sup> Penal Code § 518.

<sup>95</sup> Penal Code §§ 68(a), 85; see also Government Code §§ 3060 - 3074.

<sup>96</sup> Government Code § 82019.

<sup>97</sup> Government Code §§ 87206 -87210.

<sup>98</sup> Government Code §§ 87202 – 87204.

<sup>99</sup> Government Code §84616.

<sup>100</sup> Government Code § 81008.

<sup>101</sup> Government Code § 91013.

***Economic Interest Conflicts.*** Generally, a public official may not make, participate in, or influence a governmental decision that will have a foreseeable and material financial effect on the official's economic interest.<sup>102</sup> Such economic interests include those of the official as well as the official's immediate family.<sup>103</sup> The prohibition does not just apply to voting, but the entire process leading up to voting.

The conflict rules are extremely complicated. Officials should seek advice very early if the official believes any of these economic interests may be affected by a decision:

- ✚ any source of income of \$500 or more during the prior 12 months for either the official or his or her spouse or partner;<sup>104</sup>
- ✚ any business entity in which the official has a direct or indirect investment of \$2,000 or more or where the official is a director, officer, partner, trustee, manager or employee of the business;<sup>105</sup>
- ✚ real property interests worth \$2,000 or more<sup>106</sup> (and look out for any projects that may affect the characteristics of the land use or zoning around the official's real property, modify the taxes, fees or assessments applicable to the property, or generally affect the market value of properties, especially if it is within a 500 foot radius of the project site or if there are particular facts raising concerns about the effects of the decision on that real property interest);<sup>107</sup>
- ✚ sources of gifts to the official worth \$590 or more (total) in the past 12 months;<sup>108</sup> or

<sup>102</sup> See Government Code § 87100 and following.

<sup>103</sup> See Government Code § 87103.

<sup>104</sup> Government Code § 87103(c); 2 Cal. Code Regs. § 18700(c)(6)(C).

<sup>105</sup> Government Code § 87103(a), (d); 2 Cal. Code Regs. §§ 18700(c)(6)(A), 18700(c)(6)(D).

<sup>106</sup> 2 Cal. Code Regs. § 18700(c)(6)(B).

<sup>107</sup> 2 Cal. Code Regs. § 18700(c)(6)(B). The new rules indicate that there may be a conflict of interest if the real property interest is: (1) within 500 feet of the project site, unless there is clear and convincing evidence that there is no measureable impact on the real property interest; (2) 500 to 1,000 feet of the real property interest, if the decision would affect the development potential, income producing potential, highest and best use, character, or market value of that real property interest; and (3) 1,000 feet or more, unless there is clear and convincing evidence available that the decision will have a substantial effect on the real property. 2 Cal. Code Regs. §18702.2.

<sup>108</sup> 2 Cal. Code Regs. § 18700(c)(6)(E).

- ✚ personal finances if the official or officials' immediate family's finances would receive a measurable financial benefit or loss of \$500 or more in any 12-month period due to the decision.<sup>109</sup>

**Exceptions to disqualification rule.** Two exceptions apply that may allow an official to participate in a decision even if he or she has one of the interests listed above. First, the **public generally** exception means that an official may participate in a decision if the decision would affect a "significant segment of the public" and, in comparison, that effect on the public official's financial interest is not "unique".<sup>110</sup> Second, the **legally required participation** exception may apply if a conflict disqualifies so many officials that there would not be a quorum to take action.<sup>111</sup>

**Future Employment Conflicts.** An official is not allowed to participate in a decision involving a prospective employer.<sup>112</sup> This situation arises when an official is negotiating or has "any arrangement" concerning prospective employment with someone with business before the official's agency. Moreover, *revolving door* rules restrict an official and senior management from representing parties before their former agency until they have been out of office for at least one year.<sup>113</sup> Note that some agencies have adopted even more restrictive prohibitions.

**Incompatible Office Conflicts.** There can be such a thing as too much public service, particularly where an official holds multiple public offices and the duties of such offices create potentially conflicting loyalties. State law prohibits public officers from simultaneously holding multiple *offices* that are "incompatible" (e.g., the powers or jurisdiction of the offices may overlap such as a city council member and school board member).<sup>114</sup> Acceptance of the second office results in the official automatically vacating the prior office.<sup>115</sup> This prohibition does not extend, however, where the simultaneous holding of particular offices is compelled or expressly authorized by law.<sup>116</sup> For example, the incompatible office doctrine does not apply to joint powers

<sup>109</sup> 2 Cal. Code Regs. § 18702.5.

<sup>110</sup> 2 Cal. Code Regs. § 18703. A "significant segment of the public" is at least 25 percent of the businesses or non-profit entities within the official's jurisdiction, real property, and all individuals within the jurisdiction; or at least 15% of the residential real property if the only interest at issue is the official's primary residence. The regulation also has specific rules for certain decisions, including those involving public services and utilities, rental properties, and states of emergency.

<sup>111</sup> Government Code § 87101. Note: this exception does not apply where a quorum could later be met with a qualified member who is absent.

<sup>112</sup> Government Code § 87407.

<sup>113</sup> Government Code § 87406.3.

<sup>114</sup> Government Code § 1099.

<sup>115</sup> Government Code § 1099(b).

<sup>116</sup> Government Code § 1099(a); *People ex rel. Lacey v. Robles* (2020) 44 Cal.App.5th 804.

agencies where the agreement that created the agency provides for its governing board members to be elected officials from the member agencies.<sup>117</sup>

**Campaign Contribution Conflicts.** Beginning January 1, 2023, the disqualification rules under the Levine Act (Government Code section 84308) regarding campaign contributions were expanded.<sup>118</sup> Certain officers are prohibited from making, participating in making or influencing decisions on licenses, permits and other entitlements for use (which includes contracts and franchise agreements) where they have received a campaign contribution of more than \$250 within 12 months before or after a decision.<sup>119</sup> SB 1439 extended the timeframe from 3 months before and after a decision to 12 months and eliminated an exception to the Levine Act for Councilmembers acting in their elected roles; the prohibition now applies to Councilmembers acting in either elected or appointed roles.<sup>120</sup> Prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant must disclose that fact on the record of the proceeding and recuse themselves.<sup>121</sup> The FPPC issued an opinion that SB 1439 applies to contributions received starting in 2023.

**Other Personal Interests or Bias Conflicts.** An official must be careful to be aware of - and not act on - personal interests or biases about the facts or parties that could cast doubt on the official's ability to make a fair decision. Such biases may result in disqualification under the common law doctrine.<sup>122</sup>

**What If An Official Is Disqualified?** If an official is disqualified due to a conflict of interest, then he or she must take the following steps, immediately before the consideration of the regular or closed session item:<sup>123</sup>

- state the specific nature and provide specific details of each type of financial interest, (it is not enough to simply say "I have a conflict");

<sup>117</sup> 78 Ops. Cal. Atty. Gen. 60 (1995); \_\_\_ Ops. Cal. Atty. Gen. \_\_\_ (2019) [2019 WL 3523679 (in the Joint Exercise of Powers Act the Legislature has abrogated the rule against holding incompatible offices as to constituent governing board members serving on the governing boards of joint powers agencies).

<sup>118</sup> SB 1439.

<sup>119</sup> Government Code § 84308(b)&(c).

<sup>120</sup> Government Code § 84308.

<sup>121</sup> Government Code § 84308(c).

<sup>122</sup> See *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170-1173.

<sup>123</sup> 2 Cal. Code Regs. § 18707. Partial absence does not excuse the official's public identification requirement.



- ✚ step down from the dais and leave the room<sup>124</sup> when the matter is discussed; and
- ✚ do not discuss the issue with staff or other officials or otherwise participate in the decision.<sup>125</sup>

Even if disqualified, an official can appear before the agency as a member of the public on matters that directly affect the official's personal interests.<sup>126</sup>

**Penalties.** Violations of the conflict of interest rules may result in criminal and civil sanctions, disqualification from office, and administrative fines assessed by the FPPC.

### C. Section 1090: Ban on Contractual Conflicts of Interest

Government Code section 1090 bans self-dealing, so that officials cannot personally benefit from contracts with their agency. This law makes it illegal for officials to have financial interests in contracts that they make in their official capacities or any contract made by the board or body of which the official is a member.<sup>127</sup> Courts have interpreted broadly what constitutes a contract.<sup>128</sup> An official does not actually need to have financial gain in order to trigger this rule.<sup>129</sup> Moreover, Section 1090 does not require an officer to have any actual significant personal influence over a contract, but rather the "mere possibility of any such influence."<sup>130</sup> Unlike the Political Reform Act, the prohibited interest does not need to have a "material effect" on the public official's source of income. "*Any interest*, except a remote one, which would prevent the official from exercising absolute loyalty and undivided allegiance to the best interest of the state is prohibited under the statute."<sup>131</sup>

Simply choosing not to vote (abstaining) does not make the contract acceptable.<sup>132</sup> The agency body cannot enter into an agreement if one of its members has a financial interest in it.

<sup>124</sup> City Councilmembers and Planning Commissioners are required to leave the room and for other public officials, leaving the room is a best practice.

<sup>125</sup> 2 Cal. Code Regs. §§ 18704, 18707; Government Code § 87105.

<sup>126</sup> 2 Cal. Code Regs. §§ 18704(d)(2), 18707(a)(3).

<sup>127</sup> Government Code § 1090.

<sup>128</sup> *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.

<sup>129</sup> *People v. Honig* (1996) 48 Cal.App.4th 289, 315.

<sup>130</sup> *Id.* at 325.

<sup>131</sup> *Id.* at 328.

<sup>132</sup> Government Code § 1092.

**Exceptions.** There is no problem if the contract existed before the official took office, provided that the contract is not changed while the official is in office.<sup>133</sup> Moreover, contracts may not be prohibited if the official's interest is terminated before participating in the governmental decision.<sup>134</sup> There are also more complicated exceptions for what are designated as "remote" and "non-interests", which may allow the contract to be executed provided the official a "remote" interest does not participate in the making of the contract.<sup>135</sup> An official should speak with the agency's counsel to get advice about whether these exceptions apply.

**Penalties.** Severe penalties apply to those who violate Section 1090. First, a contract that violates Section 1090 is void, and the government will get the money back that was paid under the contract.<sup>136</sup> A *willful* violation is punishable by jail, fine, and disqualification from public office.<sup>137</sup>

#### IV. General Ethics Principles

Despite the myriad rules and regulations pertaining to ethical conduct, officials and their agencies are often confronted with situations where there are no black and white rules. In addition, many of the ethics laws simply set minimum standards as to what must (or must not) be done, not what should be done. Thus, the question of how high to raise the ethical ceiling is often left to agencies and their officials to determine.

To resolve an ethical dilemma, an official must first determine what type of dilemma he or she is facing. There are two common types of ethical dilemmas: (1) *personal costs* and (2) *right-versus-right*.

A "personal cost" dilemma can involve concerns that doing the right thing may jeopardize one's position or impact a valued relationship. While these decisions are not easy, the answer is relatively straightforward: being ethical means doing the right thing regardless of personal costs.

A "right-versus-right" dilemma can be more difficult to resolve because they typically involve competing positive interests. For example, what do you do when a loyal supporter or employee is competing for a position? Loyalty is a bona fide value, but so is responsibility in terms of selecting the person who will best serve the agency. When deciding a right-versus-right dilemma, the official must evaluate which ethical values are involved in the decision, whether the values conflict, whether a course of

<sup>133</sup> 85 Ops.Cal.Atty.Gen. 176 (2002); 68 Ops.Cal.Atty.Gen. 337 (1985); see also *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191.

<sup>134</sup> 86 Ops.Cal.Atty.Gen. 187 (2003).

<sup>135</sup> Government Code §§ 1091, 1091.5.

<sup>136</sup> Government Code § 1090, 1092.

<sup>137</sup> Government Code § 1097.

action will meet both values, whether one course of action will better meet a more important value, what decision best benefits the community as a whole, and what decision will promote public confidence in the official's agency and leadership.

Members of the board of a separate joint powers agency (JPA) who are appointed by their local agency to the JPA often face the dilemma of voting in accordance with the position taken by the member agency's board and constituents versus voting in a manner the representative believes may be in the best interests of the JPA. While such representatives to a JPA may exercise discretion in voting, a vote "contrary" to the position of his or her appointing body or constituents may result in the removal of the individual from the JPA board of directors.<sup>138</sup>

An official must establish his or her own ethical framework to assist in making tough decisions. Important public service values attach to all public officials, including *community first, trustworthiness, responsibility, respect, and fairness*.

*Community First* includes compliance with applicable laws and policies, making impartial decisions free of any outside or personal financial influences, and not using agency resources for personal gain.

*Trustworthiness* includes such behaviors as acting truthfully with the public, staff and other officials, using accurate information to support a position, and reporting suspected improprieties.

*Responsibility* includes coming prepared for meetings, avoiding representing personal opinions as agency positions, and only making realistic promises.

*Respect* includes treating everyone with courtesy, listening carefully and asking questions, and making sure to involve relevant staff members with decision making.

*Fairness* requires that an official focus on the merits of issues, not personalities, promote public involvement, apply agency policies consistently, and consider exceptions when policies have unintended consequences or undue burdens.

Finally, *public perception* is a good test of whether a decision is ethical or not. If an official would not be comfortable reading about the action on a newspaper's front page or an internet web portal or social media platform, the official should consider the action carefully with the law and these principles in mind.

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<sup>138</sup> *Harbach v. El Pueblo de Los Angeles etc. Com.* (1971) 14 Cal.App.3d 828, 834 (joint powers agency board member may exercise discretion in voting); see also 83 Ops. Cal. Atty. Gen. 267 (2000).

## Ethics Resources

An official can turn to several resources for ethics advice.

- The FPPC has a toll free number (1-877-ASK-FPPC) and a website at [www.fppc.ca.gov](http://www.fppc.ca.gov).
- The California Attorney General's office has resources available online at [www.oag.ca.gov](http://www.oag.ca.gov).
- The Institute for Local Government has many excellent publications on ethics available at [www.ca-ilg.org](http://www.ca-ilg.org).
- League of California Cities also has many helpful articles and publication on ethics at [www.cacities.org](http://www.cacities.org).

Finally, an official may ask his or her own agency's legal counsel for assistance.