

# **Ethics and Public Service**

## ***Laws and Principles***

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# Session Objectives

- ✓ To make you aware of laws that govern your service *and* when to ask questions
- ✓ To encourage you to *think beyond legal restrictions* and provide tools for doing so
- ✓ To help you comply with AB 1234 requirements

**"What you do has far greater impact  
than what you say."**

**- *Steven Covey***

# Public Service Ethics are *Different*

When you are a public servant, it's not just about your own sense of personal ethics; it's also about the public's perception of your ethics.

Ethical Values: acting at all times in such a way as to uphold the public trust. Public servants shall perform their duties and arrange their private affairs so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

# Four Groups of Ethics Laws

1. Personal Financial Gain
2. Personal Advantages and Perks
3. Governmental Transparency
4. Laws Relating to Fair Processes



**Key Ethics Law Principles For Public Servants**

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

**PERSONAL FINANCIAL GAIN**  
Public officials:

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

**PERSONAL ADVANTAGES & PERKS**  
Public officials:

- Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$360 (2006) from a single source in a given year.
- Cannot receive compensation from third parties for speaking, writing an article or attending a conference.

**GOVERNMENT TRANSPARENCY**  
Public officials:

- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- May only be reimbursed for actual and necessary expenses consistent with their agency's reimbursement policy.
- Cannot participate in decisions that may affect (positively or negatively) their personal interests.
- Cannot accept free transportation from transportation companies.
- Cannot send mass mailings at public expense.
- Cannot make gifts of public resources or funds.
- Cannot receive loans over \$250 from those within the agency or those who do business with the agency.

**FAIR PROCESSES**  
Public officials:

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

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# Personal Financial Gain



- **Principle:** Public servants should not benefit financially from their positions
- **Rule:** As a public official, you may not make, participate in making, or use your official position to influence a decision if the decision will have a **reasonably foreseeable and material financial effect**, indistinguishable from its effect on the public generally, on you or your financial interests.

**Conflicts of Interest pursuant to the  
Political Reform Act (PRA); administered by the FPPC**  
(Gov. Code §§ 87100 -87103)

- Strong public policy: insure that public officials “perform their duties in an impartial manner, free from bias caused by their own financial gain...”
- **General rule:** You are not to participate in, or use your official position to influence, a governmental decision in which you *or a family member* have a financial interest unless (1) your participation is **legally required**, or (2) the effect of the decision is indistinguishable from the effect on the public generally. (Gov. Code §87100)

**The COI rules of the PRA only apply to conflicts that arise from five *specific* financial interests:**

1. Business entities
2. Real property
3. Sources of income to the public official
4. Sources of gifts to the public official
5. The “personal financial effects” rule.

# Threshold for Financial Interest

- \$2000 ↑ (investments)
- \$2000 ↑ (real property)
- \$500 ↑ in prior 12 months (source of income)
- \$630 ↑ in prior 12 months (gift from single source, and may include gift to family member)
- Director, officer, partner, trustee, employee, management power

# Conflict-of-Interest Analysis

**Step One:** Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?

- If NO – There is NO conflict
- If YES – Go to Step Two

**Step Two:** Will the reasonably foreseeable financial effect be **material**?

- If NO – There is NO conflict
- If YES – Go to Step Three

**Step Three:** Can the public official demonstrate that the material financial effect on the official's financial interest is indistinguishable from its effect on the public generally?

- If YES – There is NO conflict
- If NO – Go to Step Four (Official has a Conflict)

**Step Four:** If after applying Steps 1 through 3 the Public Official has a conflict of interest, then they must identify, recuse, and not participate UNLESS public official's participation is ***Legally Required*** (2CCR § 18700(e) & § 18705) or local agency may properly apply ***Segmentation*** (2 CCR § 18700(f) & § 18706).

Upon identifying a conflict of interest or a potential conflict of interest and immediately before consideration of the matter, you must:

1. Publicly identify the financial interest in “*detail sufficient to be understood by the public*”; and
2. Recuse yourself from discussing or voting on the matter. (Leave room until after discussion or disposition of matter, except if matter is on consent agenda. )

# Warning!

## Special Rules for Contracts

(Gov. Code § 1090 et seq.)



- Disqualification may not be enough.
- Section 1090 applies to direct or indirect interests in a contract.
- There are only limited exceptions. Exceptions to § 1090's general prohibition for "remote interests" are in § 1091, and exceptions for "non-interests" are in § 1091.5.
- In some cases, § 1090 not only prohibits the financially interested officer from making or participating in the making of the public contract, it also prohibits the governing body of the public entity in which the officer is a member from entering into the contract. (89 Ops.Cal.Atty.Gen. 49, 50 (2006))
- ***New law***—AB 334 for independent contractors assisting with preliminary work on initial stages of a project

# Violations

Potential consequences of a violation of § 1090:

- A contract made in violation of § 1090 is void and unenforceable.
- A contract in violation of § 1090 will result in disgorgement of the contract benefits.
- A willful violation of § 1090 is punishable by a fine of up to \$1,000 or imprisonment in the state prison and lifetime ban from public office. (Gov. Code § 1097.)
- Aiding and abetting liability

# Conflict of Interest & Campaign Contributions

- **Levine Act**
  - Made part of Political Reform Act
  - Applies to local appointed and elected officials
  - SB 1439 extends the time within which a conflict may arise—from 3 to 12 months



# Conflict of Interest & Campaign Contributions

- **Pre-Decision:** Cannot make, participate in, or influence a proceeding involving a pending license, permit, or other entitlement for use if the officer willfully or knowingly received a contribution of more than \$500 within the preceding **12 months** from any party, participant or their agent involved in the proceeding.
- **Pending Proceeding:** Cannot accept, solicit, or direct a contribution of more than \$500 from any party or participant while a proceeding for a license, permit or other entitlement is pending (no **agent** contribution).
- **Post-Decision:** Cannot accept, solicit, or direct a contribution of more than \$500 from any party or participant involved in the decision for 12 months after decision (no **agent** contribution).

# Conflict of Interest & Campaign Contributions

- If received contribution over \$500, must disclose and recuse
- If unknowingly received while proceeding is pending, may only participate if, within 30 days you:
  - Disclose the contribution on the record;
  - Confirm that the contribution will be returned within 30 days from learning of the financial interest; and
  - Return the contribution within that time frame.
- If received after proceeding, must return within 30 days, provided officer did not knowingly or willfully accept/solicit/direct contribution

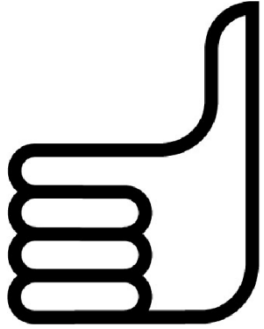
# Conflict of Interest & Campaign Contributions

## *Broad Application*

- Party: person who files an application for, or is the subject of, a proceeding
- Agent: person who represents a party or participant for compensation and appears or communicates with officer to influence pending proceeding
- Participant: person who supports or opposes a particular decision and who has a financial interest in a proceeding

Proceedings include:

- Business, professional, trade permits & licenses,
- Land use permits, licenses, and other entitlements for use\*,
- Contracts\*, and
- Franchises
- \*doesn't apply to ministerial permits or licenses or competitively bid contracts, labor contracts, and personal employment contracts



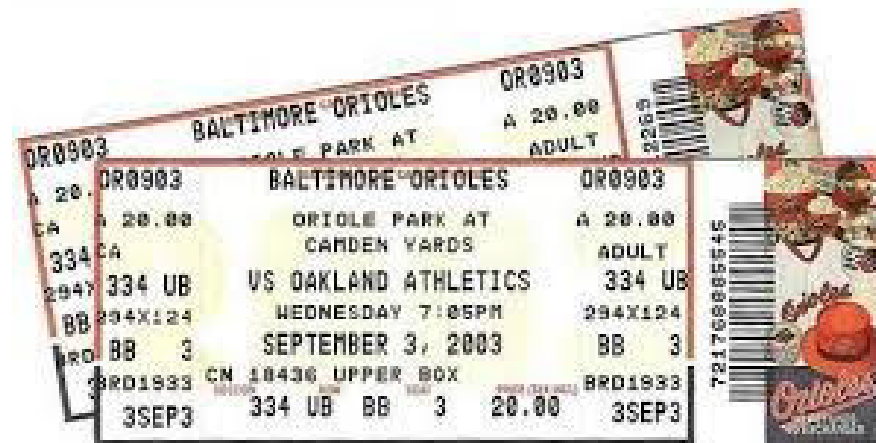
## Best Practices

- Avoid temptation to look at public service as an opportunity for financial gain
- Look at every decision and ask yourself whether it involves some kind of financial interest for you or for your family
- Seek advice from your legal advisor or the FPPC if you suspect you have a conflict of interest with respect to a decision

# Personal Advantages & Perks

## Principles:

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



# Limitations on Receipt of Gifts and Honoraria

(Gov. Code § 89503 and §89506)



- Gifts:** A payment made of any thing of value that provides a personal benefit to an official when the official does not provide full consideration for the value of the benefit received. (Reg 18940) *Reportable* if **cumulative value is \$50 +** (includes travel)
- Local elected officers, candidates for local elective office, specified local officials, and designated employees of a local government agency may not accept a gift or gifts from any single source **totaling more than \$630 in a calendar year.** (Reg 18940.2)

# Misuse of Public Resources

- Personal use of public resources prohibited (includes **staff time** and agency equipment)
- Political use of public resources also prohibited
- Embezzlement (Pen. Code §424)



# Revolving Door Prohibitions

Local elected officials, chief administrative officers, and city managers

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

Public official

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



# Mass Mailing Restrictions

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

**Mailings cannot:**

- Feature an elected officer affiliated with the agency; or
- Include the name, photograph, or other reference to an elected officer if the item is prepared in coordination with the elected officer.

# Exceptions to Mass Mailing Rule

Press Releases

Inter/Intra-Agency  
Communications

Payment/  
Collection of  
Funds

Letterhead/Roster  
Listing

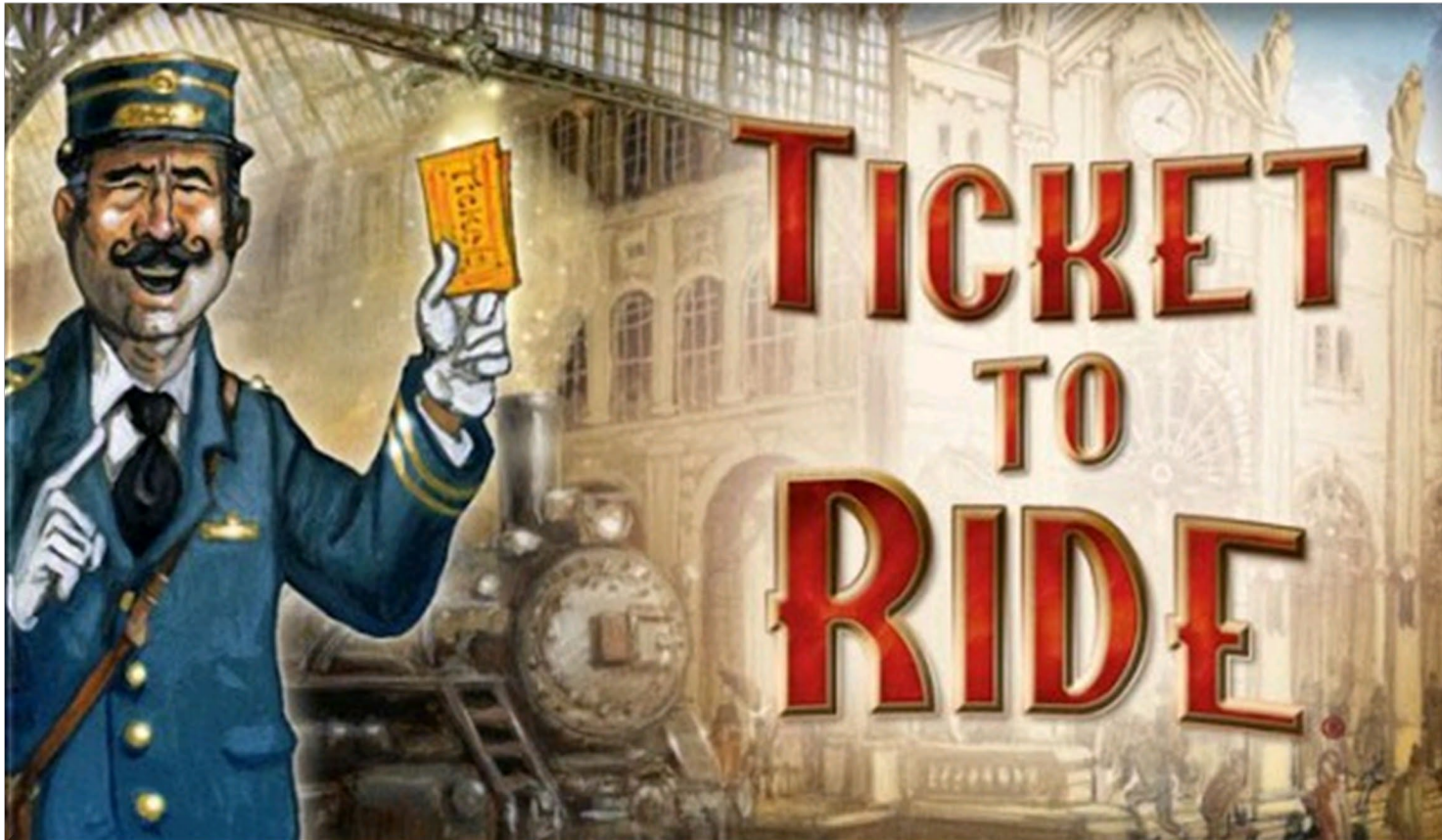
Essential Program  
Mailings

Legal Notices

Directories

Meeting Notices

# Travel Payments: Article XII, § 7

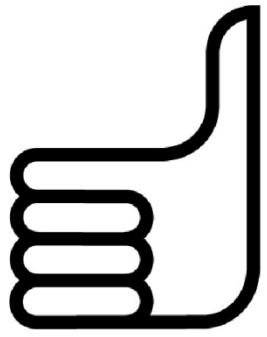


- A transportation company may not grant free passes or discounts to anyone holding an office in this State; acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office.
- Punishable by forfeiture from office



# Nepotism

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



## Best Practice

Avoid perks *and* the temptation to rationalize about them

- Legally risky
- Public relations headache



# Transparency Laws

- Conduct business in open and publicized meetings (covered in Brown Act section)
- Allow public to film and ask questions (important to post if area is confidential)
- Allow public inspection of records

**The public trusts a process it can see**

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**The ABCs of Open Government Laws**

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

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

**CALIFORNIA'S TRANSPARENCY LAWS REQUIRE PUBLIC OFFICIALS TO:**

**A.** Conduct the public's business in open and publicized meetings, except for the limited circumstances under which the law allows closed sessions.

**B.** Allow the public to participate in meetings.

**C.** Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.

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

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

# Public Records Act

(Gov. Code § 7920.000 et seq.)

A “public record” is broadly defined to include “any writing containing information relating to the conduct of a public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristic”

- Includes employment contracts
- Includes e-mails—even if using personal email account

# Public Records Act (CPRA)

- Public Records Request need **not** be in writing
  - Practice tip: When in doubt, treat any records inquiry as a CPRA request
  - Practice tip: Encourage use of written CPRA request form or have staff memorialize verbal request on form
  - Requester does not have to provide their name
- An agency must:
  - Assist requestor to identify responsive records
  - Respond w/in 10 days of request unless “unusual circumstances” justify up to 14 more days – response needs to state whether have records or not
  - Make records available for inspection during business hours
  - Provide copies “promptly”

# Public Records Act

- An agency must make electronic records available in electronic format or:
  - In any format used by the agency
  - In any format in which agency holds it
- Agency may recover only direct cost of duplication
  - Requester pays hardware and software costs for unusual formats
- Agency has no duty to create a record, but it can if it's easier to do so

# Public Records Act

- Numerous exemptions that require agency to withhold records, e.g.:
  - Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy
  - Real estate appraisals
  - Taxpayer data received in confidence
  - Records protected by legal privilege (attorney client, work product, etc.)
  - Utility ratepayer information
  - General balancing exception:
    - “Public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.”
- When in doubt—check with your legal counsel

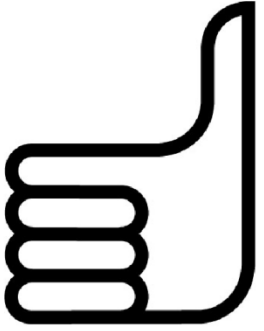
# Public Records Act

- **Remedies:**
  - Adverse media attention
  - Requesters can take to court to challenge denial
  - **Agency pays costs and attorney fees if lose**
  - Agency wins fees only if suit is “clearly frivolous”
- **Recommendations:**
  - Don’t create unhelpful records
  - Copy staff on all items provided to entire legislative body
  - Don’t retain records without a reason (update retention policy)
  - Segregate exempt from non-exempt records
  - Segregate personal from public
  - Be careful with email

# Financial Interest Disclosure

- Transparency includes obligation for high level public officers to disclose financial interests (**Form 700**)
  - Assuming office
  - Annually while in office
  - Upon leaving office(Be familiar with your agency's Conflict of Interest Code)





## Best Practices

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

# Fair Process Laws

## **Principle:**

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

- Due process requirements and **rules against bias**
  - *Nasha v. City of LA* - allowing a biased decision maker to participate in the decision is enough to invalidate the decision
  - *Clark v. City of Hermosa Beach* - councilman who is disqualified by reason of a conflict of interest in any matter **shall not**, once the conflict is ascertained, **participate in the discussion in any way or comment on the matter in any way** to any including any councilman and shall not vote on such matter
- **Incompatible office prohibitions (GC §1099)**

- Competitive bidding requirements
  - State law defines - Public Contract Code and policies differentiate small purchases and informal vs. formal solicitations

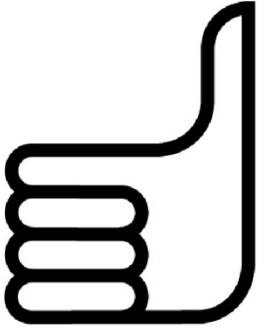


### **Principle:**

- Everyone has a right to compete for agency's business – need for a transparent process
  - That competition produces the best price for taxpayers
- 
- Example of what not to do:
    - Council member steered contracts to a firm where they would receive a kickback

# ***SB 827 Fiscal and Financial Training***

- Two-hour training must be completed every two years
  - Within six months of starting service (if start date is on or after January 1, 2026); **or**
  - By January 1, 2028 (if start date is before January 1, 2026).
- Mandated for “local agency officials”:
  - “Any member of a local agency legislative body or any elected officer of a local agency”
  - “Any official who is appointed by the governing body who, as part of their official duties, makes decisions or recommendations regarding financial administration, budgeting, or the use of public resources.”
  - “A local agency executive, as defined in subdivision (d) of Section 3511.1, or other similar administrative officer of a local agency”
  - “An employee designated by a local agency governing body to receive the training specified under this article”



## **Best Practices**

Think fairness and merit-based decisions while making your decisions

- What would make the public feel best or inspire their confidence?
- What is your responsibility to your community?
  - Violations of ethics laws carry stiff penalties
  - When in doubt ask – and ask early
  - Do it because it is the right thing to do, and not because you might get caught!



"Some sunshine is good for the soul, but I always make sure I wear a big hat."

**Miranda Kerr**

# ***The Intent of the Brown Act***

- Government officials are elected by the people and govern on behalf of the people.
- Legislative bodies must discuss, deliberate and act on the public's business openly.
- The public needs to have access and the ability to observe, monitor, and evaluate its legislative bodies.
- Goal is to create a culture of compliance.

# To whom does it apply? (54952)

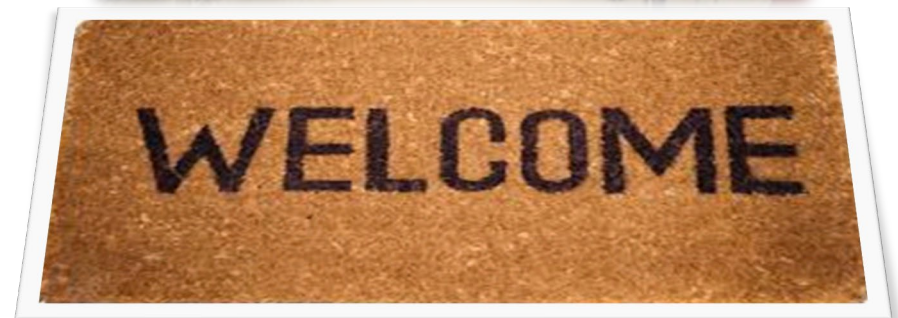
Legislative bodies: the governing body of a local agency or *any other local body created by state or federal statute*

Includes subsidiary bodies:

- ▶ Any board, commission, committee or other body of a local agency... created by charter, ordinance, resolution or formal action of a legislative body.
- ▶ Regardless of whether body is **permanent or temporary, advisory or decision making**.
  - Exception for AD HOC advisory committee comprised solely of less than a quorum. Must be single subject, short duration.
  - Exception does not apply if it is a STANDING COMMITTEE with continuing subject matter jurisdiction.
  - *Includes elected but not yet in office*

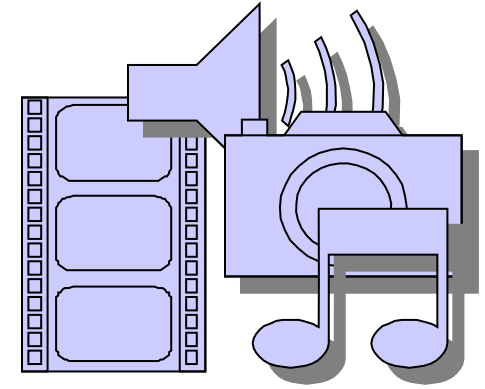
# Purpose (54953)

- All meetings of the legislative body of a local agency shall be **open and public**, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as provided by law.
- Report of vote taken in open session



# General Rights of Public

- To have meetings **open and public** - few exceptions. (54950, 54953)
- To have **no conditions**, such as registration, or other information, attached to their right to attend meetings. (54953.3)
- To be able to **audio and video record** and take photos of the proceedings, *unless to do so causes a disturbance*.
- To be **able to inspect** any such recordings made by the agency (and would be subject to a PRA) 54953.5.
- Be aware of 1<sup>st</sup> Amendment persons contacting you or your staff – if in a public area, they can video record.



- To be able to **broadcast the proceedings**, unless it would disrupt the meeting. (54953.6)
- To request and have **mailed a copy of all agendas** and the agenda packet at the time each agenda is posted, or upon distribution of the agendas to the board. (Legislative body can set reasonable fee) (54954.1)

*Note: failure to receive an agenda or packet does not invalidate any action taken at the meeting.*

- To have the meeting **held at a facility that does not discriminate and which is accessible to disabled persons.** (54961)

# Public Comment

- Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject area of the legislative body.
- Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration. **The right to address the Board *shall* be listed in the agenda.**
- The Brown Act permits legislative bodies to adopt “[r]easonable regulations” for public comment periods, but the body may not “prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.” Gov. Code § 54954.3(b), (c). See also *Norse v. City of Santa Cruz* (9<sup>th</sup> Cir. 2010) 629 F.3d 966.



# Board's Rights to Regulate Public Input

- The board may adopt reasonable regulations governing the rights of public input.
- These regulations can include limitations on the **total amount of time allocated to agenda issues** and limitations on the amount of time for each individual speaker.
- The input can be restricted to “matters within the board’s subject matter jurisdiction.”





- **A board cannot prohibit public criticism of the “policies, procedures, programs, or services” of the public agency, or of its “acts or omissions.” (54954.36(c))**
- **However, it probably can prohibit public criticism of individual employees of the agency, referring such matters to the appropriate department head and/or hearing the complaint in closed session.**

A board may stop a speaker who becomes **overly repetitious** or whose subject is **irrelevant to the board's subject matter jurisdiction**.

## **SB 1100**

The Chair may remove or cause the removal of an individual for disrupting the meeting.

In public meetings, “[c]itizens have an enormous first amendment interest in directing speech about public issues to those who govern their city.” (*White v. City of Norwalk* (9<sup>th</sup> Cir. 1990) 900 F.2d 1421.)

# Orderly Conduct at Meetings: SB 1100

- Board may remove an individual from a meeting if the individual “disrupts” the meeting by either:

Failing to comply with reasonable and lawful regulations adopted by a legislative body related to public comment or any other law; or	Requires warning—what behavior is disruptive and that if the individual does not stop, he/she may be removed
Engaging in behavior that constitutes use of force or a true threat of force.	Does not require warning

# What is a meeting?(54952.2)

Definition:

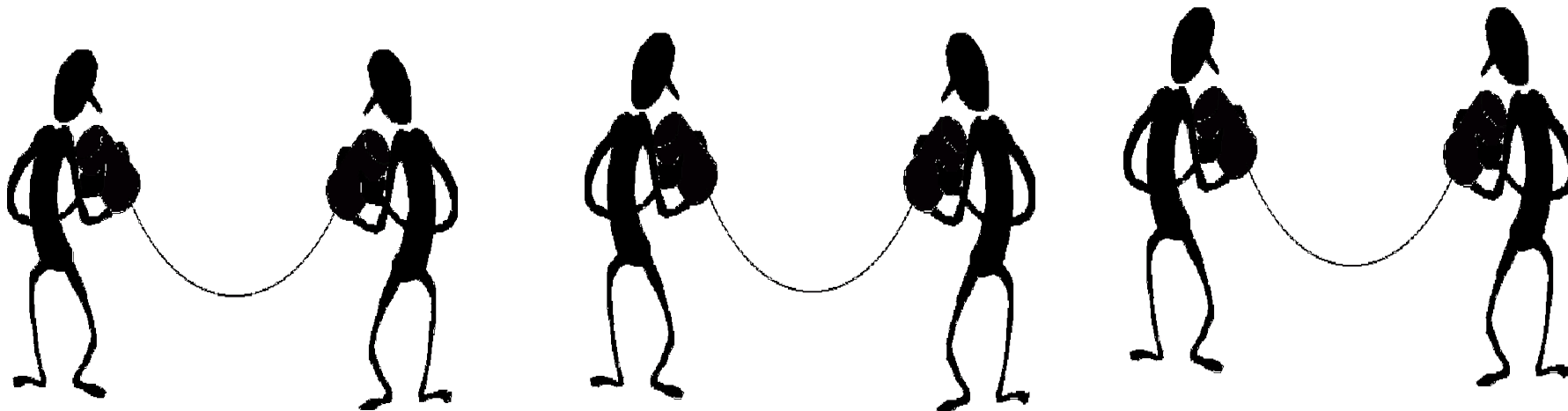
“Any congregation of a majority of the members of a legislative body at the same time and location, ... to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the local agency.”



- **Face to face** – a majority of the members gathering at the same time and place discussing topics *within subject matter jurisdiction*



- **Retreats or workshops**
- **Serial meetings** – includes chains and hub and spoke
- *Historical video teleconferencing* (54953)



Any use of a *series of communications* of any kind, directly or through intermediaries or tech devices, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

- ✓ The board does not have to be formally convened.
- ✓ The board's **deliberations**, including the consideration, analysis or debate of an issue, and any vote which may ultimately be taken are covered.
- ✓ The body doesn't have to "**act**" to be covered.

# “Serial” Meetings

- A series of communications... be a “chain” (A to B to C) or to B and A to C...)
- Each of which involves **less than a quorum** of the legislative body... but which **taken as a whole**, involves a majority of the body’s members.
- Series of contacts to reach agreement on an action.
- Includes use of technological devices and 3<sup>rd</sup> parties.



# Exceptions to what is a meeting

The act DOES NOT APPLY to:

1. Individual contacts
2. Conferences
3. Community meetings
4. Meetings of other legislative bodies
5. Attendance of standing committees
6. Social or ceremonial events



# E-mail

- A majority of members may not e-mail **each other** to deliberate or discuss any item of Board business.
- This rule applies even if:
  - e-mails are copied to staff,
  - posted on the Board’s website, or
  - reported at the next public meeting.



❑ Beware of the “reply-all button” – Use the “Bcc” field

# Text Messaging Concerns

- Adjudicative vs. legislative action
  - Ex parte contacts
  - Due process concerns
- Public's (in)ability to respond to a text sent to a Board member
- Appearance of secretive communications
- Risk of serial meeting
- Public records – Texts and E-mails sent on private servers are subject to disclosure under the Public Records Act when they relate to County business. *City of San Jose v. Superior Court*, 2 Cal. 5<sup>th</sup> 608 (2017).

# Social Media – AB 992

(Revised Gov. Code § 54952.2)

- “Internet-based social media platform”
- “Open and accessible to the public”
  - Facebook
  - Twitter
  - Snapchat
  - Instagram
  - Blogs
  - Public chat rooms
  - Newspaper comments sections



# Permissible Social Media Use

- You may engage in separate conversations or communications on social media regarding Board business to:
  - answer questions
  - provide information to the public
  - solicit information from the public.

*i.e.*, you can post on social media about Board business without engaging in a serial meeting.



# *Impermissible Social Media Use*

BUT ... you cannot respond directly to any post that is “made, posted, or shared” by another Board member.

- Includes minor contacts
- “Liking” a comment
- Responding with emojis.
- **Unusual rule** — prohibits communication between less than a majority.



# Social Media Use Summary

- Allows Board members to interact with the public through social media without conducting a serial meeting – so long as members are not using social media to discuss business amongst themselves.
- Board members may not interact directly with social media posts from other Board members regarding Board business – even if their number does not constitute a quorum.



# 5. Notice & Agenda Requirements

## For **REGULAR MEETINGS**:

Must occur at a time and location set by ordinance, resolution or by-laws.

Agenda must be posted at least 72 hours prior to the meeting.

Agenda must contain a brief description of each item to be discussed, including items in closed session.

## For **SPECIAL MEETINGS**:

Agenda must be *received* at least 24 hours prior to the meeting.

No action may be taken on any item not appearing on the agenda, unless one of the exceptions in 54954.2(b) [emergency or need arose after agenda was posted] applies. (54954.3(a))

When can the Board act on or discuss items that are not on the agenda?

- **Previously posted for a prior meeting** – if the present meeting is held within 5 days of the prior meeting (continued or adjourned regular meeting)
- **Emergency item** – a work stoppage or crippling disaster which severely impairs public health and safety – majority vote.
- 2/3 vote of those present determine that there is a need for immediate action which has come to the attention of the body after the agenda posted.

# Written Materials

Requires that **any non-confidential writing** relating to an agenda item for an open session of a regular meeting that is distributed within 72 hours of the meeting be made available for public inspection “without delay,” and no later than the time it is distributed to the members of the body.

## ***Legislative fix to Sierra Watch v. Placer County (2021)—***

The local agency can distribute to Board members less than 72 hours if the agency immediately posts the materials on their website in a position and manner that makes it clear that the writings relate to an agenda item for an upcoming meeting.

# Emergency Meetings

“Emergency” applies to a crippling disaster, work stoppage or other activity which severely impairs public health, safety or both.

- no notification time requirement except to local newspaper / radio

# Special Meetings

**Notice must be received at least 24 hours prior to the meeting** by all members of the body and media.

No other business shall be considered.

Notice needed even if the meeting is only for a closed session and even if no action is taken.

Notice must describe the public's right to comment on any item described in the agenda before or during consideration of that item (but no general public comment).

# **SB 707 “Eligible Legislative Bodies”**

- New mandates effective July 1, 2026 for “Eligible Legislative Bodies”

- basically BOS, hospital districts...

- Remote public access

- Translation

- Web access

# SB 707 “Eligible Legislative Bodies”

- Definition of “eligible legislative bodies”:
  - City councils of cities with a population of 30,000+
  - City councils of cities located in a county with a population of 600,000+
  - County boards of supervisors of counties with a population of 30,000+
  - Boards of directors of special districts with an internet website and:
    - Boundaries that include entirety of a county with a population of 600,000 and has over 200 full-time equivalent employees.
    - Has over 1,000 full-time equivalent employees.
    - Has annual revenues exceeding \$400 million (adjusted annually for inflation starting January 2027) and employs over 200 full-time equivalent employees

# Remote Public Access

- Members of the public must be able to attend and participate in meetings via:
  - Two-way telephone service: a dial-in service that does not require internet
  - Two-way audiovisual platform: an online platform allowing both video-conference and telephone service; must use automatic captioning
- Must adopt a policy and procedures for recessing and reconvening a meeting if connection is disrupted
- Exceptions for meetings to inspect property, to meet with legislators, emergency situations, etc.

# Translation

- Beginning July 1, 2026, BOS “shall reasonably assist” citizens with translation or interpretation by another member of the public, so long as the interpretation is not disruptive
- Agency shall allow members of the public to post additional translations of the agenda in a physical location
- “Agenda” does not mean whole agenda packet.

# Web Access

- Must make agendas and agenda packets available by e-mail if requested or online platform (with prominent, direct link posted on agency's home page)
- Must establish an accessible webpage dedicated to public meetings that includes, or provides a link to:
  - A general explanation of public meeting process;
  - An explanation of how to provide public comment during meeting or submit written comment;
  - A calendar of all public meeting dates with calendar listings that include the date, time, and location of each public meeting; and
  - The agenda posted online
- Make reasonable efforts to invite groups that do not traditionally participate in public meetings

# Standard Teleconference Meetings

- Audio or video or both connecting locations
- All votes are by roll call
- A quorum participates from within the jurisdiction
- The notice and agenda identify the remote location
- All locations posted and accessible to the public
- No limit on use



# “New” Teleconferencing Rules

- State of Emergency – state or local (GC 54953.8.2)
- Just Cause (GC 54953.8.3) – examples: caregiving, contagious illness, a physical or mental condition, travel on official business of the legislative body
- Eligible Subsidiary Body (GC 54953.8.6) that serves exclusively in an advisory capacity
- Multi-jurisdictional body (GC 54953.8.7) such as a JPA – must have adopted a resolution authorizing such teleconferencing

# “New” Teleconferencing Rules

- Must use two-way audiovisual platform OR two-way telephonic service with a live webcasting of the meeting.
- Must provide an opportunity for public to attend and comment via a call-in option or an internet-based service option.
- If connection is disrupted, may not take further action on items until public access is restored (unless longer than 1 hour.)
- Must identify the teleconferencing member in meeting minutes.
- Must identify individuals 18+ present in the room and the general nature of the member's relationship with those individuals.

# State of Emergency or Local Emergency

- Majority vote to determine meeting in person would present imminent risk to health or safety of attendees
  - Must reconsider every 45 days
- No need to provide physical location for public to participate
- May use two-way telephonic service without live webcasting

# “Just Cause” Remote Participation

- “Just Cause”:
  - Childcare or family caregiving needs;
  - Contagious illness or physical or mental condition;
  - Travel on official government business
  - Immunocompromised family member;
  - Physical or family medical emergency;
  - Military service obligations (50+ miles away)

# “Just Cause” Remote Participation

- Quorum participates in single location in jurisdiction.
- Member must use audio **and** video technology.
- Limited number:
  - If body meets once per month → 2 per year.
  - If body meets twice per month → 5 per year.
  - If body meets 3+ times per month → 7 per year.
- “Meeting” includes multiple meetings in 1 day.
- Must identify the “just cause” in meeting minutes.

# Eligible Subsidiary Body

- A commission, committee, board, or other body of a local agency, whether permanent or temporary, ... created by charter, ordinance, resolution, or formal action of a legislative body
- Exclusively advisory;
- Not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements, grants, or allocations of funds;
- Does not have primary subject matter jurisdiction regarding elections, budgets, police oversight, privacy, library materials, or taxes

# Eligible Subsidiary Body

- Legislative body must authorize (and renew every 6 months) by finding teleconferencing would enhance public access and attraction/retention/diversity of members.
  - May withdraw authorization at any time.
- At least one staff member must be present at physical location designated on the agenda.
- Elected official serving on subsidiary body cannot use this provision (must use “traditional” procedures).
- Must use two-way audio-visual platform.
- No limit.

# Eligible Multijurisdictional Body

- “Eligible Multijurisdictional Body”
  - A multijurisdictional board, commission, or advisory body of a multijurisdictional, cross-county agency, the membership of which board, commission, or advisory body is appointed
- “Multijurisdictional”
  - Legislative body that includes representatives from more than one county, city, or special district;
  - Legislative body of a joint powers entity

# Eligible Multijurisdictional Body

- Body must authorize itself to use teleconferencing via resolution
- Quorum must participate from public location(s) w/in agency
- If member is compensated, remote location must be open to public
- Agenda and minutes identify which members are remote
- Remote location must be 20+ miles away from meeting location(s)
- Must use two-way audio-visual platform
- Limited number:
  - If body meets once per month → 2 per year
  - If body meets twice per month → 5 per year
  - If body meets 3+ times per month → 7 per year

# Teleconferencing as an Accommodation

- “Nothing in this chapter shall be construed to prohibit a member of a legislative body with a disability from participating in any meeting of the legislative body by remote participation as a reasonable accommodation pursuant to any applicable law.”
- May participate only through audio technology if disability results in a need to participate off camera.
- Must identify individuals 18+ present in the room and the general nature of the member's relationship with those individuals.
- Counts as in-person attendance.

# Closed Sessions

## *General principles*

### Exceptions to the open meeting rule

- Personnel matters
- Pending litigation (attorney must be present)
- Labor negotiations
- Real estate negotiations
- Other exceptions (permitted closed sessions)

Closed sessions are exceptions to the general rule

- Permitted only where specifically available by statute
- Standard is NOT whether the subject is sensitive, embarrassing or controversial

Who can participate?

- Members of the body
- Required support staff or clerks

Specific agenda rules for each closed session type

Announcements prior to closed session & report out

Votes reported in open session

- Who voted and how was it voted
- May be reported orally or in writing

# Checklist



## When handling a closed session matter, ask:

- Is it a proper subject for closed session?
  - ~ Consult statute and legal counsel if unsure
- Is it clear what can & cannot be done in closed session?
- What are the agenda and reporting requirements?
- What prior announcements need be made?
- What documents must be made available to the public?

# Sanctions for Violations

A board member may be held criminally liable (misdemeanor) for intentional violations of the act. (54959)

A member of the public may sue to enjoin an agency or board for violations and threatened violations of the Brown Act.

A court can order an agency to tape record its closed sessions so the court can review these actions to determine if the agency is violating the act. (54960)

A court can award attorney fees and costs to petitioners. (54960, 54960.1, 54960.5)

## RESOURCES:

- <http://www.fppc.ca.gov>
- <https://oag.ca.gov/ethics>
- [Ethics & Transparency - Institute for Local Government](#)
- Ethics Resources for Further Reference  
<http://localethics.fppc.ca.gov/ab1234/resources.pdf>
- Open & Public VI – A Guide to the Ralph M. Brown Act : [open-public-vi-revised-2024.pdf](#)
- The People’s Business – A Guide to the California Public Record’s Act (revised 9/2025):  
[the-people's-business.pdf](#)