



MEETING DATE: February 15, 2023

**STAFF PRESENTATION
FOR THE CITY COUNCIL SPECIAL JOINT MEETINGS**

**BROWN ACT & ETHICS TRAINING
WEDNESDAY, FEBRUARY 15, 2023**

Ethics and Public Service

Laws and Principles (AB 1234)

City of Morro Bay



Presented by

Chris F. Neumeyer, City Attorney

Lona Laymon, Assistant City Attorney

February 15, 2023

Session Objectives

1. To familiarize you with laws that govern your service *and* when to ask questions



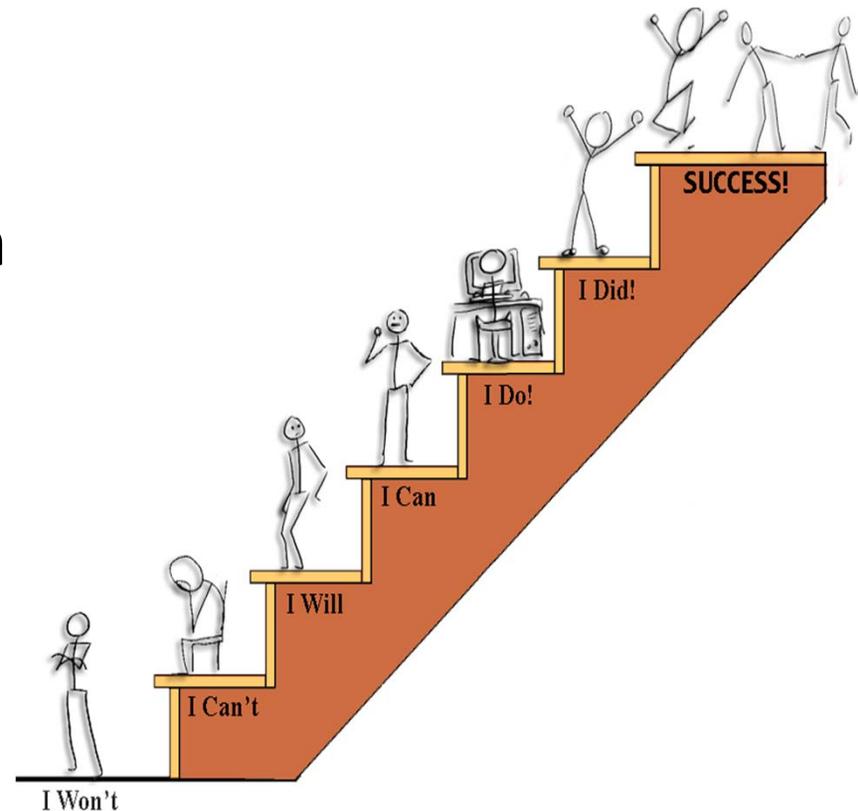
2. To encourage you to *think beyond legal restrictions* and provide tools for doing so



3. Help you comply with AB 1234 requirements

Session Logistics

- **2 hour session**
 - Specified content
 - Breadth versus depth
- **Questions**
- **Proof of participation**
 - Certificates



“Ethics Laws” versus “Ethics”

- Law is often starting point for ethical analysis in public services
- *Law is what we must do*



- Just because it's legal, doesn't mean it is ethical (or the public will perceive it to be so)
- *Ethics are what we should do*

AB 1234 Ethical Values

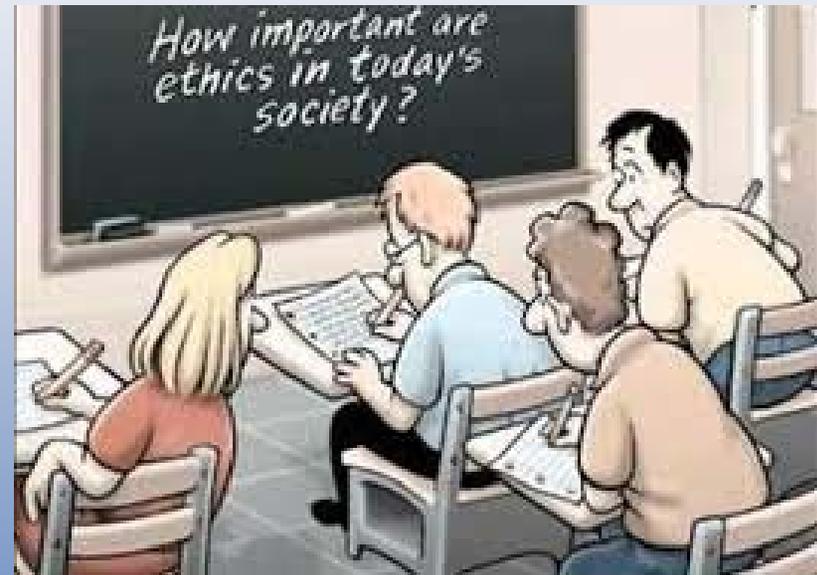
- ✓ Trustworthiness
 - Integrity, honesty, loyalty
- ✓ Respect
 - Courtesy, autonomy, tolerance
- ✓ Responsibility
 - Accountability, conscientiousness, self-restraint
- ✓ Fairness
 - Impartiality, open-mindedness, equity



***These values promote public trust
in government, as does avoiding even
an appearance of impropriety***

Rate Yourself

- ✓ I am always ethical
- ✓ I am mostly ethical
- ✓ I am somewhat ethical
- ✓ I am seldom ethical
- ✓ I am never ethical



Now How Would Others Rate You?

- ✓ That person is always ethical
- ✓ That person is mostly ethical
- ✓ That person is somewhat ethical
- ✓ That person is seldom ethical
- ✓ That person is never ethical



Rationalizations for Unethical Conduct

- ✓ It was necessary; the ends justify the means.
- ✓ It was legal.
- ✓ It won't hurt anyone. (Who's going to know?)
- ✓ It can't be wrong, everyone is doing it.
- ✓ It's OK, I didn't gain personally.
- ✓ I deserve it.
- ✓ I'm only fighting fire with fire.



Public Service Ethics Are Different

- Purpose of ethics laws = to protect the public's trust in the institutions and individuals that serve them
- In public services ethics, remember:
 - ✓ Perception as important as reality
 - ✓ Gut is not a reliable guide
 - ✓ Better to err on the side of caution
 - ✓ "If in doubt, send it out"



AB 1234 Ethical Values & The Laws That Promote Them

✓ **Trustworthiness**

- Bribery, Conflicts of Interest, Contractual Conflicts, Campaign Contributions

✓ **Responsibility**

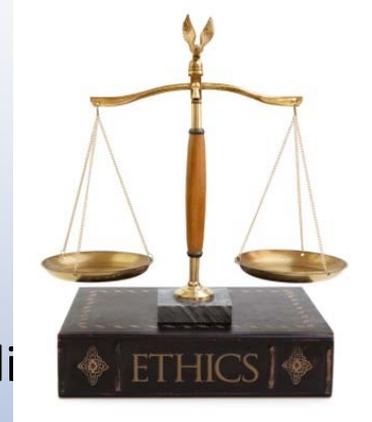
- Gift restrictions, misuse of public funds, gifts of public property, mass mailing restrictions

✓ **Respect**

- Political Reform Act disclosures, Brown Act, Public Records Act

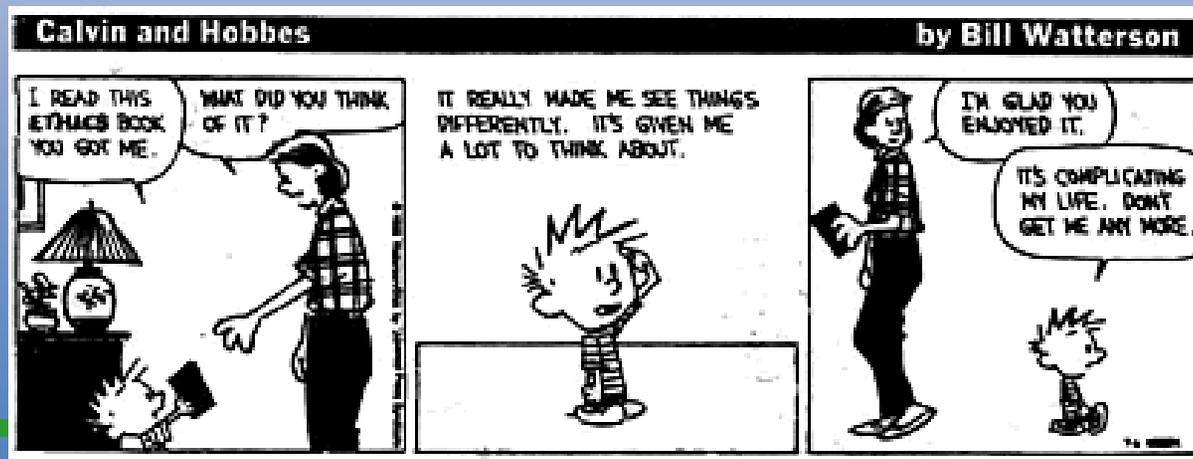
✓ **Fairness**

- Protections against bias, due process, incompatible offices, competitive bidding, anti-nepotism



Understanding Ethics Laws

- What They Cover
- When You Need to Ask Questions
- Resources for Further Reference



Four Groups of Ethics Laws

1. Personal financial gain
2. Personal advantages and perks
3. Governmental transparency
4. Fair processes



Group 1:

Personal Financial Gain Issues

- **Principle:** Public servants should not benefit financially from their positions



Examples of Laws



- Bribery and related crimes
- Financial interest disqualification requirements
- Revolving door restrictions





Bribery

- **What is bribery?** Conferring a benefit on a public official to influence a person's vote, opinion, action or in-action.
- Penalties: Loss of office, prison time, fines, restitution, attorney's fees and public embarrassment
 - *Mandatory fines of \$2,000-\$10,000 **whether or not the bribe was actually received***



Recent Case Study: Palm Springs

- Former mayor of Palm Springs allegedly accepted \$375,000 in bribes from two developers



- Result?
 - 21 felony counts for the former mayor
 - Facing up to 19 years in State prison



2017 Case Study: Westminster

- Federal jury convicted David Vo, a former planning commissioner, of one count of bribery.
 - Accepted \$15,000 in exchange for liquor license.



- The maximum penalty is 10 years in prison, three years of probation, and a \$250,000 fine.

2014 Case Study: Moreno Valley

- In January 2014, former Moreno Valley Councilmember Marcelo Co pled guilty to accepting a **\$2.36 million** bribe from an undercover FBI agent in exchange for promise to re-zone land to make its value skyrocket.



- Sentenced June, 2015 to five years in prison





Bribery: Similar Crimes

- Extortion
- Receiving rewards for appointing someone to public office
- Embezzlement—converting public funds or property to your own



Disqualification Based on Financial Interests

- Rule: You may not participate in a decision if financial interests are affected by a decision (Gov. Code § 87100, *et seq.*)
- A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family. (FPPC Regulation 18700)
- Effect can be positive or negative



Disqualification versus Abstention

- Mere existence of a conflict does not imply wrongdoing *unless you don't disqualify yourself when you should*
- Abstention vs. Disqualification
 - Abstention = voluntary
 - Disqualification = legally required





What Kinds of Interests?

General Rule: “Reasonably Foreseeable” AND “Material Effect”

Under the Political Reform Act you have a conflict if it is “**reasonably foreseeable**” the matter could have a **material financial effect** on you, on your immediate family, or on a source of income to you. Certainty that there will be such an economic effect is not required.



FPPC FOUR PART TEST for CONFLICT of INTEREST



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

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

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

Step Four: If after applying the three-step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision. If the public official will be called upon to make, participate in the making, or use his or her official position to influence a governmental decision in which he/she has a financial interest as determined under Steps One through Three, he/she will have a prohibited conflict of interest.

What Kinds of Interests?

INCOME

“\$500 Rule” - Sources of direct income of \$500 or more in prior 12 months

- Your own income
- Promised income
- Partner's/child's income
- Loans/guarantors



What Kinds of Interests?

VALUE OF BUSINESS OR REAL PROPERTY

“\$2000 Rule” - Investment in business entity
or interest in real property



Real Property Interests

New law as of January 2019: Three specific categories of materiality based on the location of the real property interest, with differing standards and presumptions or tests for each.

- 500 feet or less: presumed to be a conflict unless rebutted.
- 500 - 1,000: No presumption—complicated set of factors!
- Over 1,000 feet: feet: presumed *not* a conflict, unless evidence to the contrary.



What Kinds of Interests?

GIFTS: \$50/\$590 Rule



- Giving or receiving gifts can create an economic interest
- Complicated rules



San Marino:

Failure to Recuse and Disclose

- Simon Lee was an alternate commissioner on the City of San Marino Planning Commission from July 2014 to January 2015.
- Prior to that, he was also on the City's Design Review Committee for 4 years.
- While on Design Review Committee, Lee twice voted in favor of applications submitted by clients of his architectural firm.
- Lee also failed to disclose sources of income on the Statements of Economic Interests.
- **Result? \$10,000 fine.**





“Public Generally” Exception

A reasonably foreseeable material effect on a financial interest **does not** create a conflict under the Act if the effect on the official’s interest is indistinguishable from its effect on the public generally.

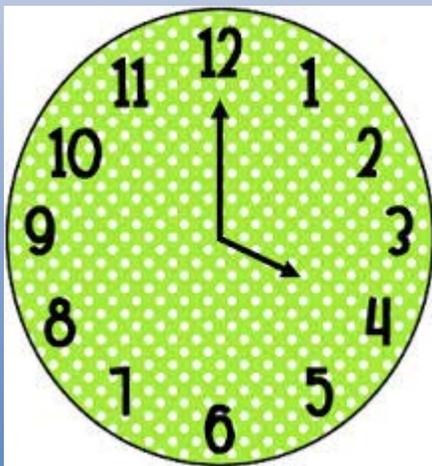
The effect is indistinguishable from the effect on the public generally if the official establishes:

1. Significant segment of the public (**at least 15% - 25%**) is affected; and
2. The effect on his or her financial interest is not unique.



For how long?

Relevant time period for determining conflict = 12 months

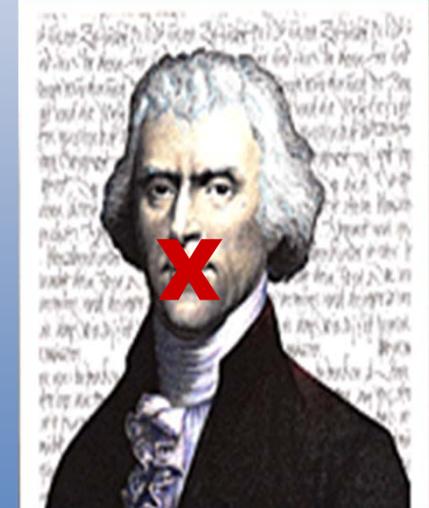


- 12 months *before the decision in question*
- NOT the calendar year



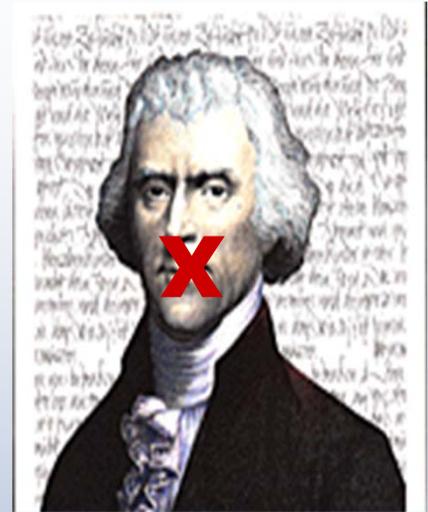
If You Are Disqualified

- Don't discuss or influence (staff or colleagues)
- Identify nature of conflict at meeting
- Leave room (unless on consent)
- No voting *or discussing* the matter
- NOTE: You do not count towards a quorum!!



“Leave the Room” Rule

- Reflects broader FPPC restriction prohibiting voting *or discussing* the matter
- Limited exceptions
 - Owned property
 - Owned/controlled business
- If official *leaves meeting in advance of agenda item* in which he/she disqualified, official must publicly identify agenda item and financial interest *prior to leaving*
- Official *first joining a meeting after the consideration of an agency item* in which official is disqualified must publicly identify agenda item and financial interest immediately *upon joining the meeting.*



“Few men have the virtue to withstand the highest bidder.”
- *George Washington*

PENALTIES



- Invalidate decision
- Loss of office (+ disqualification for future)
- Misdemeanor (jail time and penalties)
- Fines (\$5,000 to \$10,000 per violation)
- Attorney's fees
- Embarrassment (personal and political)

Warning!



Special Rules for Contracts

(Government Code § 1090)



- Disqualification may not be enough
 - Direct or indirect interest
 - Limited exceptions
- May have to refund money paid
- Felony: \$1,000 fine, imprisonment & loss of office



Case Study: *Thomson v. Call*

California Supreme Court 1985

- Developer purchased land from city councilman, then sold to city for park (high rise project approval)
- Purchase price (\$258,000) was fair market
- Call abstained from some votes, only voted when city attorney told him it was legal
- Court ruled unlawful contract - City kept the land, and Call had to pay city \$258,000!



Future Employment Issues

- Revolving door prohibition
 - Elected officials and top managers
 - Cannot represent people for pay for a year after leaving their agency
 - Gov. Code § 87406

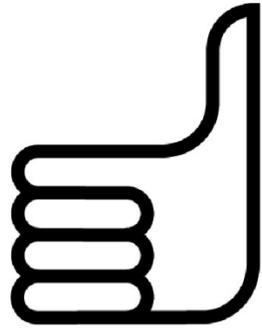
- No participation in decisions involving future employers



New Laws on Campaign Contributions

- SB 1439 (2023) Potential/actual campaign contributions of more than \$250, from a party who seeks (or received) a decision for a license, permit or entitlement, will generally trigger the new law, if received within the 12 months before, or the 12 months after, that Council decision.





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

Group 2: Perks

Key Principle:

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



Two Kinds of Perk Rules

1. Perks that others offer you
2. Perks that you give yourself/use-of-public-resources issues



Perks Others Offer

- Report \$50 and up (over a year)
- Limit \$590/year (2023-2024)
- Exceptions for some kinds of travel, informational materials
- May also be a disqualifying interest (over \$590 in prior 12 months)



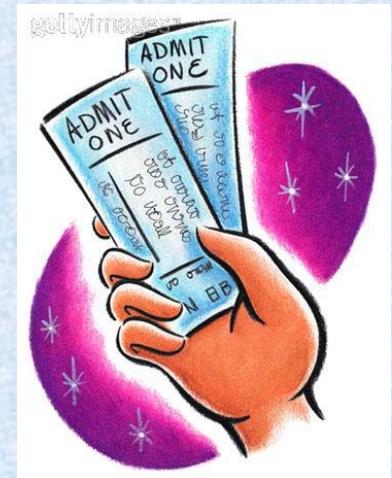
Gifts Don't Always Have Bows

- Meals, food and drink (including receptions)
- Entertainment (concerts & sporting events)
- Certain kinds of travel and lodging



Gifts: Tickets

- Tickets or passes defined by FPPC as “admission to a facility, event, show, or performance for an entertainment, amusement, recreational or similar purpose.”
- “Free” tickets from City (usually donated to City) generally are gifts subject to gift limits, prohibitions, and normally applicable Form 700 reporting requirements.
- However, “free” tickets from City often NOT a gift if reported on FPPC Form 802 and either:
 1. Report as income on taxes; or
 2. Ceremonial role (present award, cut ribbon); or
 3. Return, pay or donate to government agency or 501(c)(3) without taking tax deduction; or
 4. Meet strict requirements of an adopted gift ticket policy when tickets from outside source



Gifts: Family Fun

“Gift” definition

- Presumptively include gifts to his/her family
- Includes “free tuition” loophole (but not scholarships)



Raffles & Gift Exchanges

- City raffle item from private donor, ***and*** raffle not open to the public
- Report it! It's a gift and must be treated as such if you are a Form 700 filer
- If “bona fide” competition open to public, then treat as income



Other Perks Others Offer

- No free transportation from transportation carriers



- No honoraria (fees) for writing or speaking



2017 Case Study: Contra Costa County D.A. Resigns; Pleads No Contest to Felony Perjury

- January, 2017: FPPC ruled Contra Costa County D.A. Mark Peterson violated PRA 9 times using campaign funds for 600 personal expenditures (including groceries, jewelry and movie tickets); he was fined \$45,000.



- June, 2017 the State Attorney General's Office charged Peterson with 12 counts of felony perjury and a single count of felony grand theft for allegedly lying on campaign disclosure forms from 2012-2015.
- Peterson pled no contest to felony perjury charges and resigned.
- Peterson sentenced to three years' informal probation and ordered to serve 250 hours of community service.

2014 Case Study: Stone & Youngberg Scandal



- California regulators cracked down on hundreds of public officials who accepted meals, baseball tickets, brownies & other gifts from a bond finance company and failed to disclose them
- Stone and Youngberg – underwriter that has issued millions of dollars in bonds across California – gave unreported gifts to Poway school officials
- FPPC launched a statewide investigation

Penalties for Political Reform Act Violations

- Up to \$5,000 per violation
- Own attorney's fees (\$3,000-\$30,000)
- Others' attorney's fees (for private actions to enforce law)



Use of Public Resources Issues

- Personal use of public resources (including staff time and agency equipment) prohibited
 - Limited exception for “incidental and minimal use”
- Political use of public resources also prohibited



Example:

Expense Reimbursement

- Familiarize yourself with your agency's policies/limits
 - What kinds of expenses
 - What rates for food, lodging and transportation
 - The importance of documentation
- Note: Spouse/partner expenses NOT reimbursable



Consequences of Violations

- Civil penalties: \$1,000/day fine + 3X value of resource used
- Criminal penalties: 2-4 years prison term + disqualification from office
- Can also have income tax implications



Case Study: *Sacramento Suburban Water District*

- Staff and directors misusing public resources
- Investigative report by *Sacramento Bee*
 - Use of agency credit card for personal purposes
 - Misreporting of income
 - Double-dipping on expense reimbursements
- Legislative response: AB 1234



2014 Example – L.A. Councilmember

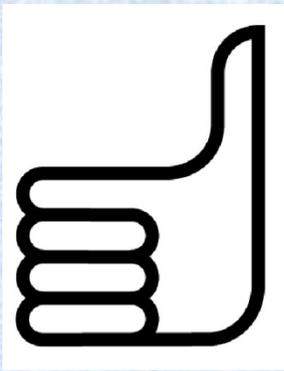


Oct. 14, 2014: LA Councilmember Richard Alarcon was sentenced to 120 days in prison and banned for life from holding public office for his conviction on charges of perjury and voter fraud.

Political Use of Public Resources

- By individuals or agency itself (support of ballot measures)
- Mass mailing restrictions
 - Goal: restrict incumbents' advantages
- Gifts of public funds





Best Practices

Avoid perks *and* the temptation to rationalize taking them

- Legally risky
- Public relations headache



When to ask for help?

- Whenever you have doubts!
- Do NOT wait for the meeting



Group 3: Transparency Laws

Key Principles:

- It's the public's business.
- The public trusts a process it can see.



Transparency Rules

PUBLIC RECORDS ACT – Allows public inspection of records

BROWN ACT – Open meeting laws

- Conduct business in open and publicized meetings.
- Allow public to participate in meetings.

INSTITUTE for LOCAL GOVERNMENT

Celebrating 50 years of service to local officials
www.ilsg.org

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.

Public Records

- Agendas and meeting materials
- Other writings prepared, owned, used or retained by agency (including electronic)
- Penalties: Adverse media attention + costs and fees if litigated



Public Records – “Personal” Email

- **“Personal” Email** - Generally, when a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the CPRA. ***City of San Jose v. Superior Court (2017)***
- To qualify as a public record, a writing must contain in some substantive way information relating to the conduct of the public's business because it is necessary or convenient to the discharge of an official's duty.

Financial Interest Disclosure

Transparency includes obligation for high level public servants to disclose financial interests

- Assuming office
- Annually while in office
- Upon leaving office
- SOS parallel campaign finance requirements



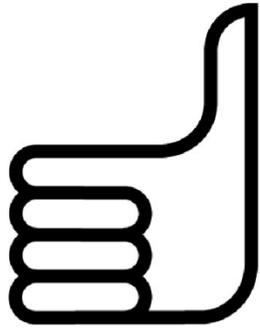
Charitable Fundraising



- Rule applies to elected officials.
- Disclose \$5,000 or more from single source.
- Charitable, legislative or governmental purpose.

“A politician would do well to remember that he has to live with his conscience longer than he does with his constituent.”

— Melvin R. Laird, 20th Century American Secretary of Defense



Best Practices

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



THE BROWN ACT:

AKA: The Open Meeting Laws

“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.”

(Gov. Code § 54953)



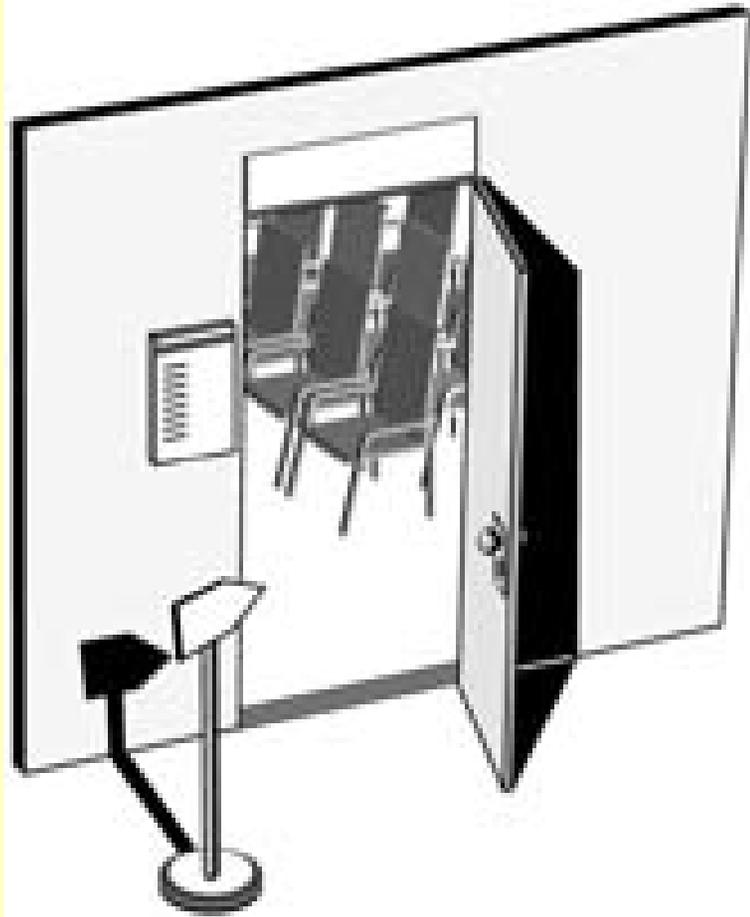
Conducting Business at Open Meetings

- A majority may not consult outside a properly noticed meeting open to public.



- Key concept: what constitutes a meeting
 - Example: Serial communications.
- Exceptions for certain kinds of events
 - As long as a majority does not consult among themselves on City business.

WHAT IS A MEETING?



Definition: "Meeting" includes any gathering of a *majority* of the members of a legislative body to *hear, discuss, or deliberate* upon any item which is within *its subject matter jurisdiction*.

WHAT IS A MEETING?

Means of Communication: A meeting includes *any use of direct communication, personal intermediaries, or technological devices* which are employed by a *majority* of the members of the legislative body *to develop a collective concurrence* on action to be taken by members of the legislative body.

(§ 54952.2)



WHAT IS A MEETING?



- ❖ Meetings take place if quorum receives information on, discusses, or deliberates on any item on which the body may legally act.
- ❖ Must be within the boundaries of the agency.
- ❖ Applies to “legislative” and advisory bodies.
- ❖ Meetings called by Mayor or majority – agenda posting needed.
- ❖ Serial and rotating meetings or polling prohibited, but social gatherings are permitted.

SERIAL MEETINGS

❖ Examples of serial meetings:

- ❖ Chain: If member A contacts member B to express his/her opinion on a City-related issue, and B contacts member C and shares the opinions of members A and B, a “serial meeting” may result in violation of the Brown Act.
- ❖ Hub and spoke: An intermediary, such as staff member, contacts at least a quorum of the members to develop a collective concurrence on action to be taken by the legislative body



SERIAL MEETINGS - AB 992

New rule in 2020: A legislative body member 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.

Take away: Members should avoid commenting on or even liking or posting emojis or other responsive remarks on the social media post of another Council member so as to avoid the possibility that a majority of the body is deemed to be engaged in a communication.

WHAT IS NOT A MEETING?

If a quorum does not receive information on, discuss, or deliberate on City business, on which the body may legally act, then the following generally are NOT meetings:

- Individual contact
- Public conferences
- Other local agency meetings
- Community meetings
- Social gatherings



SPECIAL COVID-19 MEETING RULES

Governor's Emergency Executive Order N-29-20 (March 2020) in response to COVID-19, temporarily relaxed teleconferencing rules for holding public meetings under Brown Act.

- AB 361 (October 2021), allows continued remote teleconference meetings without traditional Brown Act compliance, provided certain findings can be made related to the ongoing state of emergency.
- AB 361 requires adoption of a new resolution making the required findings every 30 days.
- BUT! It should be noted that Governor Newsom has indicated that the COVID-19 State of Emergency will likely be lifted effective February 28, 2023. If the state of emergency ends, the AB 361 remote participation provisions will cease to be effective as of March 1, 2023.
 - **Go back to old rules, or new “hybrid rules” per AB 2449**

AB 2449 TELECONFERENCING

- “Just Cause” or “Emergency Circumstances”
- Only less than a quorum may use these new rules at the same meeting.

The member who is participating remotely must: 1) publicly disclose, at the meeting before any action is taken, whether any other individuals 18+ years of age are present in the room at the member’s remote location, and the general nature of the member’s relationship with such individuals; and, 2) the member must participate through both audio and visual technology.

AB 2449 TELECONFERENCING

- **“Just Cause”** includes: (i) caregiving (ii) contagious illness, (ii) physical or mental disability that is not otherwise accommodated; or (iv) traveling on official business of the local agency
- two such remote meetings per calendar year.
- notify the legislative body at the earliest opportunity possible, including start of a regular meeting, of need to participate remotely for “just cause,” including a general description of the circumstances relating to the member’s need to appear remotely at the given meeting.

AB 2449 TELECONFERENCING

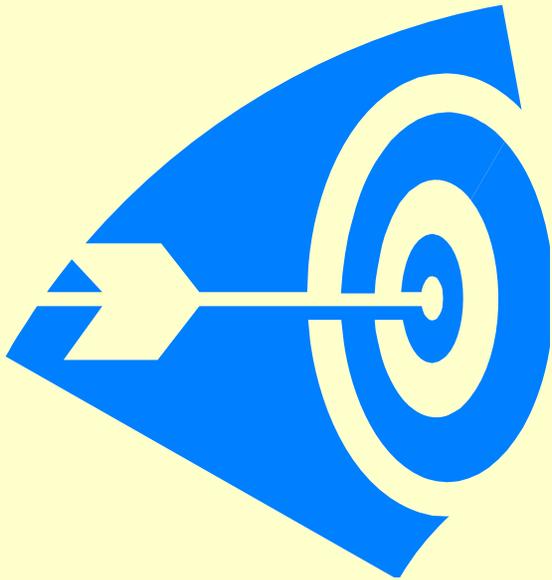
- **“Emergency circumstances”** - physical or family medical emergency that prevents a member from attending in person.
- No more than 3 months out of the year, or 20% of the annual meetings.
- The member requests the legislative body to allow the member to participate remotely due to “emergency circumstances,” and the legislative body takes action to approve the request.

Agenda Requirements

- A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body.
- Action or discussion on any item not appearing on the posted agenda is generally prohibited



Stay On Point!



- All matters to be transacted or discussed.
- Must include reasonable period of time for public comment before or during consideration.
- Actual Emergencies.
- To add a new matter body must find: (1) matter arose after agenda was posted, and (2) there must be a 2/3 vote of membership— unanimous vote if less than 2/3 present!

Agenda Requirements: Exceptions

No discussion of any item not on agenda

... *Except:*

- ❖ Brief responses.
- ❖ Statements or questions.
- ❖ Questions for clarification.
- ❖ Reference to staff or other resources for factual information.
- ❖ Request staff to report at a subsequent meeting.



Public Participation in Meetings

- Anyone can attend open meetings.
- Cannot require names, questionnaires, or conditions to attendance.
- Public may record proceedings by video, film or audiotape.
- If meeting willfully interrupted or order cannot be restored by removing only the disrupting individuals, body may order room cleared.



Public Participation in Meetings

- Public has the right to talk about anything they want that's not on the agenda if relate generally to City jurisdiction.
- Members of the public get opportunity to speak on each and every item before deliberations have been made



CLOSED SESSIONS

FOUR GROUNDS FOR CLOSED SESSION:

- **Real Property Negotiations**
- **Pending/Anticipated Litigation**
- **Labor Negotiations**
- **Personnel Matters**
- ✓ **Must give employee 24 hr written notice of right to have charges heard in open session**



CLOSED SESSIONS

- ❖ Confidentiality applies!
- ❖ Cannot discuss funds, funding priorities, or budget, salaries, contract negotiations (unless labor negotiations). . .
- ❖ Must reconvene in open session and make any required disclosure



The Brown Act

PENALTIES: Failing to Comply

- ❖ Nullification of decision
- ❖ Criminal Misdemeanor – for intentional violations (up to 6 months in jail/\$1000 fine)
- ❖ Injunction, Mandamus & Declaratory Relief
- ❖ Challenger **must** demand corrective action within 90 days of action -- or 30 days if agenda issue
- ❖ 30 days to correct action before suit
- ❖ Intense adverse media attention



Group 4: Fair Process Laws

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



- ❖ Quasi-Judicial Hat, versus
- ❖ Legislative Hat?



Due Process = Fair Process

- *City of Fairfield v. Superior Court* (1975)

“A councilman has a right to state his views on matters of community policy, and his vote may not be impeached because he does so.”
- *Clark v. City of Hermosa Beach* (1996)
- *Nasha v. City of Los Angeles* (2004)

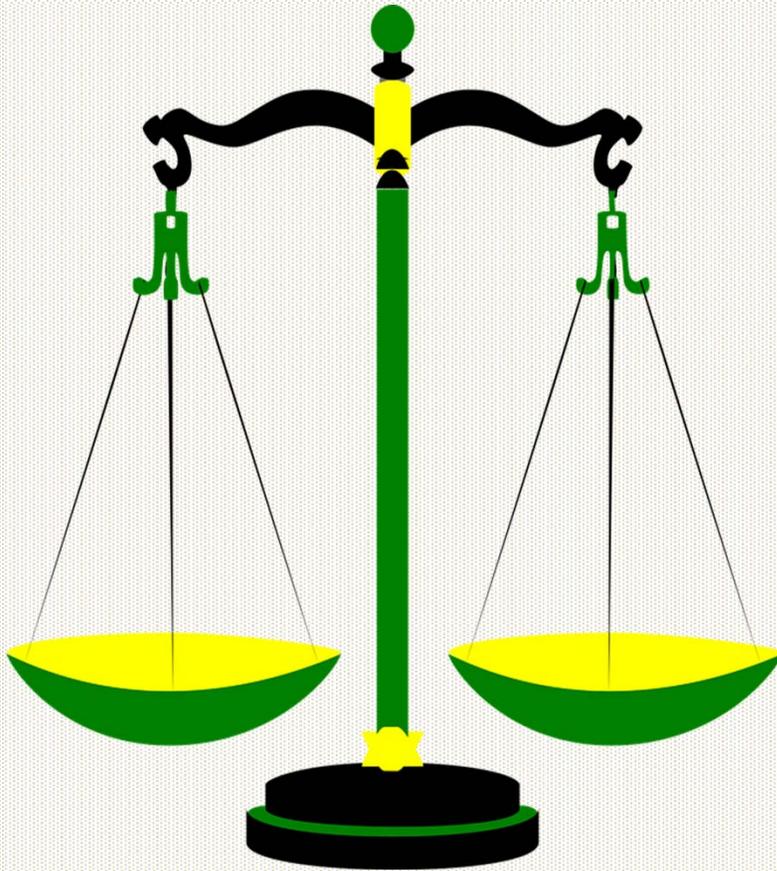
Fair Process Laws: Incompatible Office Prohibitions

Offices incompatible if:

- Clash of duties/loyalties.
- Dual office improper for public policy reasons.
- One office supervises the other.



Fair Process Laws, continued

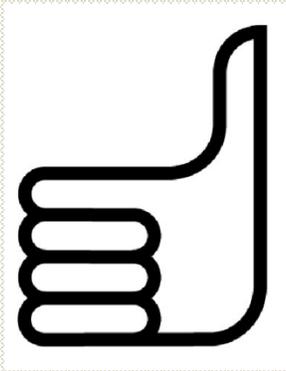


- **Disqualification requirements if decision involves family members.**
- **Campaign contribution restrictions**
- **Soliciting campaign contributions from employees.**

Fair Process Laws: Competitive Bidding Requirements

- **Competitive bidding requirements**
 - State law defines when and how.
 - Also, local requirements/practices.
 - Principles:
 - Everyone has a right to compete for agency's business.
 - That competition produces the best price for taxpayers.

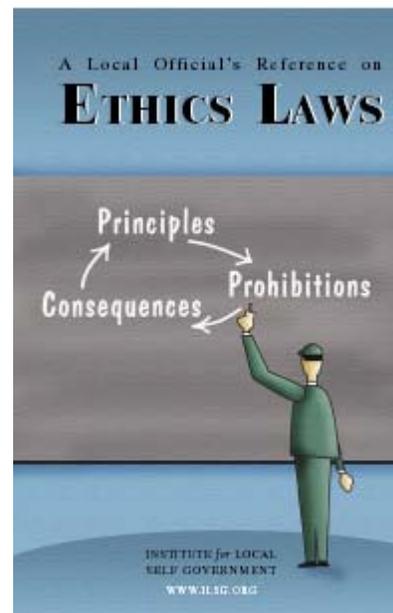




Best Practices

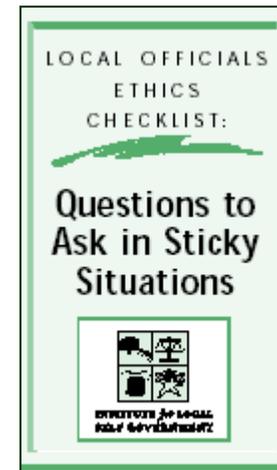
- Think fairness and merit-based decision-making in your decisions.
- Keep politics separate from relationships with agency staff.
- Avoid committing/commenting before the public hearing.

Resource for Further Reading



Questions to Ask

- What would make the public feel best/inspire public confidence?
- What would you want to read about on the front page?
- How do you want to be remembered?



Other Ethics Resources:



FPPC – free advice
(866) ASK-FPPC
(866)-275-3772
advice@fppc.ca.gov

Institute for Local Government

City Attorney

Key Lessons

- The law sets minimum standards for ethical behavior
 - Violations of ethics laws carry stiff penalties
 - When in doubt, ask and ask early
- It's your choice how high you want to set your sights above the minimum requirements of the law

AB 1234 Compliance

- Proof of participation certificate
- Provide to clerk as public record
- Consider going beyond the minimum in terms of education
- *Don't forget your certificate!*

Questions?



Ethics Law Principles for Public Servants:

➔ KEY THINGS TO KNOW

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

PERSONAL FINANCIAL GAIN

Generally speaking, public officials:

- Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- Must disclose their financial interests to the public.
- Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests in a material way.
- Cannot have a financial interest in a contract made by their agency.
- Cannot be involved in agency decisions affecting a potential future employer once the official and employer each have expressed an interest in a professional relationship.
- Cannot receive compensation to lobby their agency for one year following their departure from the agency.

PERK ISSUES: INCLUDING COMPENSATION, USE OF PUBLIC RESOURCES AND GIFTS

Generally speaking, public officials:

- Receive limited compensation for their service to the public.
- Cannot receive compensation for speaking, writing an article or attending a conference.
- May be reimbursed for only those activities and necessary expenses allowed in the agency's expense reimbursement policies.
- Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political supplies or purposes.



- Cannot send or be featured in mass mailings at public expense.
- Cannot make gifts of public resources or funds.
- Must disclose gifts they receive from each single source that has given gifts worth \$50 or more in a single calendar year through the Form 700 process.
- May not receive gifts worth a total of \$520 (2021-22 amount) from a single source in a single calendar year. *Note: this amount changes every two years.*
- May only accept free trips and travel expenses under limited circumstances.
- May not accept free or discounted transportation from transportation companies.
- May not use campaign funds for personal benefits not directly related to a political, legislative or governmental purpose.

TRANSPARENCY

Generally speaking, public officials must:

- Disclose their economic interests when they take office, annually while they are in office and when they leave office. These economic interests can include: sources of income, property ownership, investments, certain family members' interests, business interests, loans, contracts and gifts received.
- Disclose information about who has agreed to donate significant resources (\$5,000 or more) to legislative, governmental or charitable purposes at an elected official's request.
- Disclose campaign contributions and abide by applicable limits.
- Conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- Allow the public to participate in meetings and listen to the public's views before making decisions.
- Allow public inspection of documents and records generated, owned, used or retained by public agencies, except when non-disclosure is specifically authorized by law.
- Disclose gifts given to the public agency and how they are ultimately used.

FAIR PROCESS AND MERIT-BASED DECISION-MAKING

Generally speaking, public officials:

- Cannot receive loans from other staff, officials or contractors, and must disclose and comply with certain requirements for loans from others.
- Cannot engage in vote-trading.
- Have a responsibility to ensure fair and competitive agency contracting processes.
- Cannot participate in quasi-judicial proceedings in which they have a bias with respect to the parties or facts.
- Must conduct public hearings in accordance with fair process principles.
- Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner and dependent children).



- Cannot simultaneously hold certain other public offices or engage in other outside activities that would subject them to conflicting loyalties.
- Cannot participate in entitlement proceedings—such as those regarding land use permits—involving campaign contributors (does not apply to elected bodies).
- Cannot solicit campaign contributions of more than \$250 from permit applicants while an application is pending and for three months after a decision (if sitting on an appointed body).
- Cannot directly solicit agency employees for political support or donations for their political causes.
- Cannot retaliate against whistleblowers who report improper government activities.

KEY CONCEPTS

A public agency's decision should be based solely on what best serves the public's interests.

The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.

Having a conflict of interest does not imply that a public official has done anything wrong; it just means that the official has financial or other disqualifying interests.

Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials, and may lead to proceedings to remove the official from office. Don't take that risk.



BASIC RULE

A public official may not participate in a decision — including trying to influence a decision — if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. A public official should talk with agency counsel early and often and when an action by the public agency may affect (positively or negatively) any of the following:

Income. Any source of income of \$500 or more (including promised income) during the prior 12 months to the official or official's spouse/domestic partner.

Immediate Family. The official's spouse/domestic partner and dependent children.

Business Management or Employment. An entity for which the official serves as a director, officer, partner, trustee, employee or manager.

Real Property. A direct or indirect interest in real property of \$2,000 or more that the official or official's immediate family has, including such interests as ownership, leaseholds (but not month-to-month tenancies) and options to purchase.

Gift Giver. A giver of one or more gifts worth a total of \$520 (2021-22) or more to the official in the prior 12 months, including promised gifts.

Lender/Guarantor. A source or guarantor of a loan to the official.

Personal Finances. The official or official's immediate family's personal expenses, income, assets or liabilities.

Contract. A contract that the agency is considering entering into, in which the official or a member of the official's immediate family may have an interest (direct or indirect).

Business Investment. An interest in a business that the official or the official's immediate family have a direct or indirect investment worth \$2,000 or more.

Related Business Entity. An interest in a business that is the parent, subsidiary, or is otherwise related to a business in which the official:

- Has a direct or indirect investment worth \$2,000 or more; or
- Is a director, officer, partner, trustee, employee or manager.

Business Entity Owning Property. Real property owned by a business entity or trust of the official.

Campaign Contributor. A campaign contributor of the official (applies to appointed decision-making bodies only).

Other Personal Interests and Biases. The official has important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could cast doubt on the official's ability to make a fair decision.

WHAT WILL HAPPEN NEXT?

Agency counsel will advise the official whether 1) the official may participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the California Attorney General's Office regarding their opinion about the potential conflict.

EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Officials should ask themselves whether members of the public will question whether the officials are acting solely in the public's interest. If even a perceived conflict exists, officials should consider excusing themselves voluntarily from that particular decision-making process.



BEYOND THE LAW:

Ethics and Values

- Ethics is what one *ought* to do in a given situation. It's the kind of conduct that would make the world a better place if everyone engaged in it.
- The law provides only minimum standards for ethical conduct. Just because a course of action is legal doesn't mean it is right.
- What one ought to do is typically tied to a series of values:
 - » Trustworthiness
 - » Respect
 - » Responsibility
 - » Compassion
 - » Loyalty
 - » Fairness

ILG developed a Good Governance Checklist to help local officials identify ways they can go above and beyond legal requirements to promote public trust and confidence. To access the checklist visit: www.ca-ilg.org/goodgovernance.

AB 1234 TRAININGS

California law requires local officials to periodically receive training on public service ethics laws and principles (AB 1234). ILG offers trainings and self-test options to help local officials comply with this law.

ILG offers two, one-hour self-study exercises as an option for local officials to satisfy AB 1234 requirements. Find out more at: www.ca-ilg.org/ab1234selfstudy.

ILG can also come to your community to train your local officials and staff. Contact ILG at ethicsmailbox@ca-ilg.org for more information on how to schedule an ethics workshop.

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Its mission is to promote good government at the local level.

ILG's current program areas include:

- Leadership and Governance
- Public Engagement
- Sustainable and Resilient Communities
- Workforce and Civics Education

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