

1 JOSEPH LAWRENCE (SBN 99039)
Interim City Attorney
2 joseph.lawrence@santamonica.gov
3 KIRSTEN R. GALLER (SBN 227171)
Deputy City Attorney
4 kirsten.galler@santamonica.gov
5 BRANDON D. WARD (SBN 259375)
Deputy City Attorney
6 brandon.ward@santamonica.gov
7 1685 Main Street, Room 310
Santa Monica, California 90401
8 Telephone: (310) 458-8336
Facsimile: (310) 395-6727

9 CAROL M. SILBERBERG (SBN 217658)
ROBERT P. BERRY (SBN 220271)
10 BERRY SILBERBERG STOKES PC
csilberberg@berrysilberberg.com
11 155 North Lake Avenue, Suite 800
Pasadena, CA 91101
12 Telephone: (213) 986-2688
Facsimile: (213) 986-2677

13 Attorneys for Defendant
14 CITY OF SANTA MONICA

*Exempt from filing fee pursuant to
Government Code § 6103*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 OSCAR DE LA TORRE and ELIAS SERNA,

CASE NO.: 21STCV08597

18 Plaintiffs,

Assigned to Hon. Richard L. Fruin

19 v.

**DECLARATION OF FRANK V.
ZERUNYAN IN SUPPORT OF
20 DEFENDANT CITY OF SANTA
21 MONICA'S OPPOSITION TO
22 PLAINTIFFS' MOTION FOR SUMMARY
23 JUDGMENT OR, IN THE ALTERNATIVE,
FOR SUMMARY ADJUDICATION**

24 CITY OF SANTA MONICA,
and DOES 1 through 10, inclusive

25 Defendants.

Hearing Date: May 6, 2022
Hearing Time: 9:15 a.m.
Department: 15

Action Filed: March 4, 2021
Trial Date: June 13, 2022

1 I, Frank V. Zerunyan, declare as follows:

2 1. The following matters are based upon my personal knowledge and if called to testify
3 to such facts, I could and would do so competently.

4 2. I am a Professor of the Practice of Governance at the University of Southern
5 California Sol Price School of Public Policy and Director of Executive Education at USC Price
6 Bedrosian Center on Governance. My areas of expertise include, but are not limited to, governance
7 and civic and ethical leadership, and I have published numerous articles and books about these topics.
8 I have designed curricula and taught in various countries around the world as part of being an expert
9 for the United Nations in public administration, which includes governance and ethics, such as at the
10 Rennes School of Business in Rennes, France, American University in Armenia, Yerevan State
11 University, and the Vazgen Sargsyan Military University in Armenia. I also teach for the U.S. Navy
12 at the U.S. Naval Service Training Command, Naval Air Station, Pensacola, Florida.

13 3. I earned my J.D. from Western State College of Law and my Bachelor of Arts from
14 California State University Long Beach. I completed my advanced legal education in Corporate
15 Taxation at the University of Southern California Law Center (USC Gould).

16 4. I am also a graduate of the League of California Cities' Civic Leadership Institute. I
17 was also awarded an LL.D. Doctor of Laws – Honoris Causa by the Public Administration Academy
18 of the Republic of Armenia.

19 5. From 1999 to 2003, I was on the Planning Commission for the City of Rolling Hills
20 Estates. Since 2003, I have also served as a councilmember for the City of Rolling Hills Estates,
21 including four terms as mayor. I was also a gubernatorial appointee to the Medical Board of
22 California and served on that board from 2006 through 2011. In 2008, I was elected president of the
23 California Contract Cities Association, which is a consortium of 75 cities across Los Angeles,
24 Riverside, and several other counties.

25 6. Based on my experience as a public official over the last 23 years, I have been subject
26 to the requirements of Ralph M. Brown Act (the "Brown Act"), the Bagley-Keene Open Meeting
27 Act, and ethical principles and laws applicable to public officials.
28

1 7. Further background and qualifications are set forth in my curriculum vitae, a true and
2 correct copy of which is attached hereto as Exhibit A.

3 8. I have reviewed various documents in this action, including, but not limited to, the
4 pleadings, Plaintiffs' summary judgment motion, and the deposition transcripts and exhibits in this
5 action.

6 9. Based on my experience, research, and expertise, a councilmember is a nonpartisan
7 elected office to serve the public and should govern without the divisions imposed by political
8 interest and even the media. Therefore, partisan ideology, trying to represent only a particular group,
9 or to win by all means necessary is antithetical to local governance. This is one significant way local
10 government differs from federal government or state legislatures.

11 10. Where city councilmembers are elected at large, such as in Rolling Hills Estates or
12 Santa Monica, a councilmember is elected to represent everyone. As such, a councilmember must
13 listen to all views and owes a duty of loyalty to the public, which is like a fiduciary duty.

14 11. City councils, as local democratic institutions, act by majority (or sometimes a super
15 majority), and the entity is larger than any individual councilmember. The city council is the final
16 arbiter of the issues before it. If people do not like the actions taken by the city council, then people
17 have the power to vote councilmembers out of office or petition for a recall. That is democracy in
18 action. Alternatively, and where appropriate, a person can also file a writ of mandamus to challenge
19 council action. But in my nearly twenty years as a Rolling Hills Estates city councilmember, such
20 writs are few and far between and the courts cannot and must not second guess the city council's
21 decision. I view this to be a constitutional separation of powers issue to allow the local governance to
22 be the closest to the people who are governed.

23 12. At the local level, the public trust is paramount. Thus, California, like many other
24 states, has created a framework of ethics laws, which are designed to preserve the public trust in
25 public servants and public institutions. Under California law, that ethical framework is expressed
26 through the common law conflicts doctrine (also sometimes referred to as the common law bias
27 doctrine), the Political Reform Act, and Government Code Section 1090. Adhering to the ethical
28 framework in these laws is akin to the minimum standard of care for public officials. The rules and

1 principles that arise from these laws and doctrines are based on the ethical principles of autonomy,
2 veracity, undivided loyalty, disinterested zeal, and the public interest.

3 13. AB1234, enacting Government Code Sections 53234 et seq., requires that elected and
4 appointed officials take two hours of ethics training every two years. The ethics training includes
5 training on “[l]aws relating to personal financial gain by public servants, including, but not limited to,
6 laws prohibiting bribery and conflict-of-interest laws,” as well as “[l]aws relating to fair processes,
7 including, but not limited to, common law bias prohibitions, due process requirements, incompatible
8 offices, competitive bidding requirements for public contracts, and disqualification from participating
9 in decisions affecting family members.” (Gov. Code, § 53234.) I have taken such trainings
10 numerous times during my time as a public official and they generally cover all three parts of this
11 framework – common law conflicts (or bias), the Political Reform Act, and Government Code
12 Section 1090. An example of such training materials similar to ones I have received is attached at
13 Exhibit B.

14 14. In light of this framework and responsibility as a locally elected official, public
15 officials must want to practice these ethics, not just learn them. Therefore, in my experience,
16 councilmembers disqualify themselves for various reasons, including ethical conflicts that inevitably
17 arise. Disqualification, whether by city council vote or by self-recusal, is not undemocratic at all – it
18 is ethical. And democracy has to be ethical.

19 15. The doctrine of common law conflicts, which are sometimes referred to as common
20 law bias, requires public officials to act without personal interest and for the benefit of the public,
21 regardless of whether specific financial interests are at stake. These are the same ethical
22 considerations of undivided loyalty, disinterested skill, and fairness that also apply where financial
23 interests are also at stake. In my experience, common law conflicts still arise and the absence of a
24 financial conflict does not mean that a common law conflict does not exist. Instead, when assessing
25 whether a conflict of interest exists, a public official should look collectively at the three main
26 sources of law – common law conflicts, the Political Reform Act, and Government Code Section
27 1090 – and always have in mind the public interest.

1 16. Furthermore, much like financial conflicts, these ethical considerations not only
2 include whether an actual conflict exists, but also includes whether there is a perception of such
3 common law conflict. That is why, in my experience, most councilmembers when presented with
4 any type of potential conflict issue, whether common law or otherwise, will recuse themselves out of
5 an abundance of caution and to preserve public integrity and safeguard the institution of the
6 respective city council.

7 17. Common law conflicts can arise where there are decisions involving close familial
8 relations, whether that person receives compensation or not or whether that spouse received direct
9 relief or not. In my experience, it is presumed that a close familial relationship can and likely
10 impacts one’s judgment, raises such ethical issues such as autonomy, undivided loyalties, fairness
11 and disinterested skill, and gives rise to a common law conflict of interest. There are similar conflict
12 rules that other professions employ, such as the legal and medical professions.

13 18. Beyond close familial relationships, other close relationships and connections to other
14 people may raise similar ethical concerns. Participation in decisions involving close friends, business
15 partners and/or professional relationships can lead to the appearance of preferential treatment, divided
16 loyalties and/or compromise the appearance of fairness, all of which undermine public confidence.

17 19. Common law conflicts can also arise when a public official crosses the line to being
18 partisan, closed minded, and becoming embroiled in the underlying decision before the public
19 official.

20 20. While it is my opinion based on my experience and expertise that Mr. De la Torre is
21 entitled to advocate for his position to effectuate the policy change with regard to district-based
22 elections, such as during public comment or 13 items – and I defend his right to do so – but based on
23 the facts I have seen, he improperly seeks to participate in closed sessions regarding the litigation on
24 the California Voting Rights Act (“CVRA”) despite his admitted bias, despite his lack of autonomy,
25 and despite his relationship with his wife, the plaintiff in that litigation, and his ongoing relationship
26 with Kevin Shenkman, one of the attorneys for the plaintiffs in the CVRA litigation. As one
27 example, Mr. De la Torre creating an adversarial setting in the city council meeting on January 26,
28 2021 when his disqualification was before the council demonstrates that he is not disinterested and

1 that he has divided loyalties. Furthermore, a significant distinction exists between using the
2 democratic process to collaboratively govern and win sufficient votes and trying to utilize the judicial
3 system to subvert and overrule that democratic process.

4 21. A reasonable councilmember in Mr. De la Torre's position would have recused
5 themselves from the closed session discussions of the CVRA litigation due to the conflict of interest
6 posed by relationships and his advocacy before and after he became a councilmember. Even though
7 the CVRA litigation only seeks equitable relief, that does not change that the named plaintiff is Mr.
8 De la Torre's wife. His direct advocacy on her behalf demonstrates divided loyalties, a lack of
9 disinterested skill, and bias.

10 22. In fact, neither I, nor would I expect my colleagues, would insist on participating in
11 such closed sessions where such conflicts existed. It actually surprises me that Councilmember De la
12 Torre has taken such positions here because his actions undermine public confidence and trust. If it
13 were me in these circumstances, I would have taken affirmative actions to ensure that I had no
14 connection to discussions concerning the underlying CVRA litigation to ensure that public
15 confidence and trust remained.

16 23. Additionally, Mr. De la Torre asserts that the city council lacks authority to disqualify
17 a city council member. In my experience, and based on the doctrine of home rule that applies to
18 charter cities, the city council decides its organizational and democratic structure. The city council
19 can and must be able to act to preserve itself and ensure that it acts in compliance with the law.

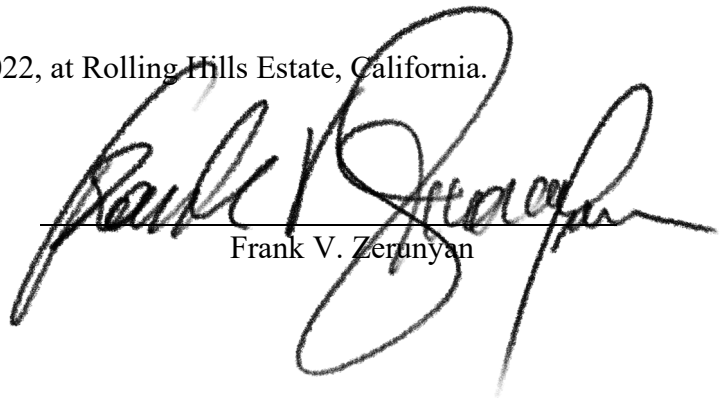
20 24. I understand that the Plaintiffs here have asserted that the Brown Act was somehow
21 implicated by Mr. De la Torre's exclusion at a closed session regarding the CVRA litigation based
22 upon his conflict of interest. However, the Brown Act was not enacted to ensure that all city council
23 members are present at city council meetings. Rather, the Brown Act is a sunshine law. Its purpose
24 is to ensure that, subject to certain specific statutory exceptions where there is a demonstrated need
25 for confidentiality, local legislative bodies like city councils conduct their business in open and public
26 meetings so that the local decision-making process is observable by the public.

27 25. Plaintiffs' interpretation of the Brown Act, as requiring all members to attend any
28 closed session, is untenable. It would mean that city councils would be unable to conduct business or

1 go into a closed session if not everyone is there. In fact, in my experience, it is common for closed
2 sessions to have to proceed without all members of the city council and to proceed where only a
3 quorum is present. This may happen due to a conflict of interest, an absence due to illness, or an
4 absence due to other issues. But requiring all members to attend every meeting would grind the
5 council's business to a halt. If all members of a legislative body had a right to attend closed sessions,
6 it would also effectively mean that conflict of interest laws have no application when legislative
7 bodies are meeting to discuss litigation or other proper closed session topics, which makes no sense.
8 Of course, it is my desire that all my colleagues are present when discussing an important issue (so
9 long as they do not have a disqualifying conflict), but only a quorum is required.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct.

12 Executed this 9th day of March 2022, at Rolling Hills Estate, California.

13
14 A handwritten signature in black ink, appearing to read 'Frank V. Zerunyan', written over a horizontal line. The signature is stylized and cursive.

15 Frank V. Zerunyan
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Frank V. Zerunyan, J.D. LL.D. (hc)

Professor of the Practice of Governance

[USC Sol Price School of Public Policy](#)

Director of Executive Education

USC Price Bedrosian Center on Governance

Director and University Liaison to USC Reserve Officer Training Corp (ROTC) Programs

University of Southern California



[University of Southern California](#)

650 Childs Way

Ralph and Goldy Lewis Hall 200

Los Angeles, California 90089-0626

frank.zerunyan@usc.edu

Office: (213) 740-0036

Mobile: (310) 971-5219



[My USC Price Faculty Blog Page](#)



CAREER HIGHLIGHTS

Professor, Author, Mayor, Council Member, Gubernatorial Appointee, Lawyer, Judge Pro Tem, Director, Board Member

EDUCATION

University of Southern California Law Center (USC Gould)

Advanced Legal Education Certificate in Corporate Taxation 1988

Western State University College of Law

Doctor of Law (J.D.) 1985

California State University Long Beach

Bachelor of Arts, Humanities/Languages 1982

California League of Cities Civic Leadership Institute

Advanced Leadership Certificate 2006

College Samuel Moorat, Paris, France

French Baccalaureate Social Studies 1978 (Part I)

TEACHING/ACADEMIC EXPERIENCE

University of Southern California Sol Price School of Public Policy (USC Price)

Professor of the Practice of Governance (2011-Present)

USC Price Bedrosian Center for Governance

Director of Executive Education Forum (2011-Present)

USC Marshall USC Viterbi USC Price Interdisciplinary Center (DECIDE)

Director of Executive Education (2017-2020)

University of Southern California School of Policy Planning and Development

Adjunct Associate Professor (2008-2011)

Western State University College of Law

Guest Lecturer in Administrative Law (2007-2011)

California League of Cities Institute for Local Government

Lecturer in Land Use and Findings Law (2002)

National Business Institute

Lecturer in Real Estate Law (1997-2000)

GLOBAL ACADEMIC SERVICE

Universidad Anahuac Veracruz/Xalapa

Board of Councilors of the Law School (2020-Present)

Rennes School of Business, Rennes and Paris, France

Visiting Professor (2019-Present)

Yerevan State University, Armenia

Public Policy Curriculum Committee (2018-Present)

American University in Armenia

Visiting Professor Executive Education (2015-Present)

Public Administration Scientific Journal for the Republic of Armenia

Editorial Council Member (2015-Present)

Yerevan State University, Armenia

Visiting Professor (2017-Present)

Republic of Armenia Ministry of Defense Military University Lecturer/Academic Advisor

(Hon. Rank: Colonel and Medal of Assistance to the Military Education of the Armed Forces of the RA) (2017-Present)

Fundação Getulio Vargas, Rio de Janeiro, Brazil

Visiting Professor – Lecturer (2011-2015)

GRADUATE COURSES TAUGHT

Intersectoral Leadership PPD 500 USC Sol Price School of Public Policy

Business and Public Policy PPD 688 USC Sol Price School of Public Policy

International Laboratory PPD 613 USC Sol Price School of Public Policy

Newqotiation, International Issues in Public Policy PPD 572 USC Sol Price School of Public Policy

Place, Institutions and Governance PLUS 652

Applied International Policy Analysis and Management: Masters Project PPD 569

International Laboratory PPD 613 USC Sol Price School of Public Policy

CURRENTLY TEACHING

Collaborative Governance PPD 672 USC Sol Price School of Public Policy

City as a Place PLUS 671 USC Sol Price School of Public Policy

Public Policy and Law PPD 314 USC Sol Price School of Public Policy

INTERNATIONAL SPEAKING ENGAGEMENTS/PRESENTATIONS AND TEACHING

"Local Resilience in Sustainability" (October 2021) UN DESA, Astana Civil Service and Academy of Public Admin. Nursultan, Kazakhstan

"Innovations Driving Local Resilience" (July 2021) UN DESA and IASIA, Bela-Bela, South Africa

"Leading Across Sectors – Collaborative Governance" (November 2020) Rennes School of Business, France

"Governance, the Law and Leadership" (February 2020) Universidad Anahuac Xalapa, Mexico

"Leading Across Sectors – Collaborative Governance" (November 2019) Rennes School of Business, France

"Creating public and private value through collaborative governance" (June 2019) Yerevan State University, Armenia

"Governance and Writing Workshop" (June 2019) Public Administration (PA) Academy of the Republic of Armenia

"Governance, Ethics, Newqotiation, and Leadership" (June 2019) American University in Armenia, Yerevan, Armenia

"Army Core Values and Leadership" (June 2019) Republic of Armenia Vazgen Sargsyan Military University

"Strategic Planning and Tactical Approaches" (July 2018) Republic of Armenia Vazgen Sargsyan Military University

"Creating public and Private value; Newqotiation" (June 2018) PA Academy of the Republic of Armenia

"Governance, Ethics, Newqotiation, and Leadership" (June 2018) American University in Armenia, Yerevan, Armenia

"Governance, Ethics, Newqotiation and Leadership" (June 2017) American University in Armenia, Yerevan, Armenia

"Leading by Example and Integrity" (June 2017) RA Ministry of Defense and V. Sargsyan Military University

"Creating public and private value through collaborative governance" (June 2017) Yerevan State University, Armenia

"Public Private Partnerships" (April 2017) IV Encontro Dos Municipios Com O Desenvolvimento Sustentavel, Brasilia, BR

"Collaboration in Governance, "Newqotiation" and Civic Leadership" (May 2017) Alphaville Urbanismo, Sao Paulo, Brazil

"Governance, Ethics, Newqotiation and Leadership" (June 2016) American University in Armenia, Yerevan, Armenia

"USC on the Rhine; Local Governance in the United States and Mayor's Round Table" (May 2016) Speyer, Germany

"Creating public and private value; Collaboration" (September 2015) Seminario Forum Global, Belo Horizonte, Brazil

"Governance. International Lessons Learned to apply in Bao'an District." (August 2015) Shenzhen, China

"Collaboration in Governance, "Newqotiation" and Civic Leadership" (June 2015) American University in Armenia

"Governance, Newqotiation and Leadership" (June 2015) PA Academy of the Republic of Armenia, Yerevan, Armenia

"Collaborative Governance and Newqotiation" (June 2015) Ministry of the Diaspora for the Republic of Armenia,

"Leadership in Governance; Collaboration, Role of Ethical Civic Leadership" United Nations NISPA Cee (May 2015) Tbilisi, Georgia

"Leadership in Governance, Collaboration, Role of Ethical Civic Leadership" (May 2015) City of Tshwane, South Africa

"Governance and Leadership" (October 2014) United Nations High Level Workshop, Yerevan, Armenia

"Civic Leadership" (June 2014) United Nations Public Service Forum, Seoul, Korea

"Governance and Leadership" (March 2014) United Nations High Level Workshop, Addis Ababa, Ethiopia

"Collaborative Governance and Civic Leadership" (June 2013) United Nations, Manama, The Kingdom of Bahrain

"International Laboratory, Porto Maravilha Transportation" (May 2013) Fundação Getulio Vargas, Rio De Janeiro, Brazil

"International Laboratory, Porto Maravilha Public Private Partnerships" (May 2012) Fundação Getulio Vargas, Brazil

"Governance and Leadership" (December 2012) Labor Ministry of Saudi Arabia, Riyadh, Saudi Arabia

"International Laboratory, Legacy of Olympic Games" (May 2011) Fundação Getulio Vargas, Rio De Janeiro, Brazil

NATIONAL SPEAKING ENGAGEMENTS/PRESENTATIONS ON GOVERNANCE, LAW, ETHICS AND LEADERSHIP

World Affairs Council, Conversation with General McChrystal on "Risk," Los Angeles, California (October 2021)

USC Price EXED on the Virtual Platform, Los Angeles, California (October 2020)

USC Price EXED on the Virtual Platform, Los Angeles, California (November 2020)

USC Price Talks on the Virtual Platform, Los Angeles, California (June 2020)

USC Price Talks on the Virtual Platform, Los Angeles, California (May 2020)

USC Price EXED Sustainability Summit, Palm Springs, California (February 2020)

Naval Service Training Command, Naval Air Station, Pensacola, Florida (2020)

The Neely Center for Ethical Leadership and Decisions Making, University of Southern California, Los Angeles, California (April 2019)

USC Annenberg, Public Diplomacy Conference, Los Angeles, California (November 2018)

The RAND Corporation, International Development Speaker Series, Santa Monica, California (September 2018)

California Contract Cities Association, San Diego, California (September 2018)

The Neely Center for Ethical Leadership and Decisions Making, University of Southern California, Los Angeles, California (March 2018)

The Los Angeles Police Academy, Los Angeles, California (October 2017)

Southern California Association of Governments, Los Angeles, California (March 2017)

Southern California Association of Governments, Los Angeles, California (October 2016)

League of California Cities, Long Beach, California (October 2016)

National League of Cities University, Madison, Wisconsin (September 2016)

Fordham Urban Law Journal Symposium, Fordham University School of Law, New York, New York (April 2016)

United Nations Division of Public Administration Committee of Experts on Public Administration, New York, New York (May 2015)

Orange County League of Cities and University of California, Irvine, California (2015)

National Association of Regional Councils, Santa Monica, California (2014)

United Nations Division of Public Administration Committee of Experts on Public Administration New York, New York (2014)

United Nations Division of Public Administration and Department of Economic and Social Affairs New York, New York (2014)

Conference on Infrastructure West Finance Forum and National Council for Public Private Partnerships, Redondo Beach, California (2013)

SANBAG Annual Conference, Ontario, California (2013)

IMN's California Municipal Finance Conference, San Francisco, California

Coalition for Adequate School Housing (CASH), Sacramento, California

California State Bar Conference, San Diego, California

Armenian Professional Society, Beverly Hills, California

California Contract Cities Association, Indian Wells, California

California League of Cities, San Diego, California

Armenian National Committee of America, Washington, District of Columbia

County Counsel's Association of California, Siskiyou Lake, California
Los Angeles County Bar Association, Los Angeles, California

PUBLICATIONS-BOOK OR BOOK CHAPTERS

Newgotiation For Public Administration Professionals (Vandeplas Publishing 2019)
Newgotiação Para Profissionais Do Setor Público (Alta Books, Portuguese Edition, Brazil)
La néo-gociation 4-10-10 pour les professionnels de l'administration publique (French Edition, France)
Seni Berqosiasi. Newgotiation Indonesia (Indonesian Edition, Indonesia)

Book Chapter *"Techno Innovations; the Role of Ethical Standards, Law and Regulation and the Public Interest"* (Cambridge Univ. P. 2019)
Book Chapter *"Public Infrastructures Through Well Designed Public Private Partnerships"* (Springer International 2019)
Book Chapter *"State Public Private Partnership Laws; Why are they needed?"* - Springer International. Expected Publication Spring 2021.

PUBLICATIONS-ARTICLES

"Old Glory." (USC Price Faculty Blog Post November 2021)
"Why you need a strong disaster management plan in governance." Apolitical.co (October 2021)
"My conversations with General McChrystal." (USC Price Faculty Blog Post October 2021)
"Never waste a new leadership lesson; the authentic rewards of Rappelling." (USC Price Faculty Blog Post June 2021)
"President Biden thank you! Remarkable lesson in leadership." (USC Price Faculty Blog Post April 2021)
"The Ignored but never forgotten Armenian Genocide" (USC Price Faculty Blog Post March 2021)
"Celebrating International Women's Day; Story of Survival and Resilience" (USC Price Faculty Blog Post March 2021)
"Open letter: President Joseph R. Biden, Jr." (USC Price Faculty Blog January 2021)
"Tolerate or not to tolerate, that is the question" (USC Price Faculty Blog January 2021)
"Never Again! A call to complete and effective action" (USC Price Faculty Blog January 2021)
"Time to Govern and Strategize for a better Armenia and Artsakh" (USC Price Faculty Blog December 2020)
"The Perfect Storm Devoured Artsakh" (USC Price Faculty Blog November 2020)
"A solemn week as we bury our heroes and remember" (USC Price Faculty Blog November 2020)
"Time to reflect of Artsakh and Fight on!" (USC Price Faculty Blog November 2020)
"Lasting peace in the Caucasus can only be achieved with a collaborative frame" (USC Price Faculty Blog November 2020)
"The re-birth of a failed ideology is threatening the peace in the Caucasus" (USC Price Faculty Blog November 2020)
"Don't want federal agents in your city or town? Then protect federal property" (The Conversation August 2020)
"Coronavirus: Telemedicine is great when you want to stay distant from your doctor, but older laws..." (The Conversation 2020)
"Are Hong Kong's Protests an Internal Chinese Affair?" (The Globe Post August 2019)
"The Monuments of My Ancestors" (Public Diplomacy Magazine April 2019)
"Americans Still Divided Over What Florida Shooting Signifies" (The Globe Post March 2018)
"Dreamers need a law, not an executive order" (San Francisco Daily Journal October 2017)
"Dreamers Deserve our Attention and Respect" (The Globe Post August 2017)
"The Evolution of the Municipal Corporation and the Innovations of Local Governance..." (Fordham Urban Law Journal April 2017)
"No President has offended the robe of an Article III judge like this." (San Francisco Daily Journal February 2017)
"How Trump could shock a divided nation back to life as collaborator-in-chief" (The Conversation, November 2016)
"Analysis of Select Ethical Regulations in the Public Service System for the Republic of Armenia..." (PA Scientific Journal July 2016)
"Analysis of Select Ethical Regulations in the Public Service System for the Republic of Armenia..." (Part 2 - December 2016)
"Building Public Spaces Two Leases at a Time"(Public CEO – March 2016)
"The Demise of California Redevelopment Law, and the Repackaging of Tax Increments..." (Public CEO March 2015)
"From Contract Cities to Mass Collaborative Governance" (American City and County April 2014)
"Public Private Partnerships — Coming to a Civic Building Near You" (American City and County June 2010)
"The Use of Public Private Partnership for Special Districts and All Levels of Governments" (California Special Districts June 2010)
"US House must uphold truth and justice with Armenian genocide resolution" JURIST Pittsburgh School of Law (November 2007)
"Chapter 11, the End of the Book? The Bankruptcy Process Revealed," NATOA Journal of Municipal Telecom Policy (Spring 2003)
"Landlords: Is the Security Deposit from Your Tenant Really Secure?" Business Credit, National Ass. of Credit Man. (March 2003)
"Overview of California Corporate Dissolution Law" Inland Empire Business Journal, and The Los Angeles Daily Journal (April 2000)

"Divine Deals" California Real Estate Journal (January 1999)
"Commonly Negotiated Commercial Lease Provisions" The Banking Law Journal (February 1999)
"U.S. Laws Take Priority Over U.C.C" Article 9 of the U.C.C." The National Law Journal (September 1998)
"U.S. Laws Take Priority Over U.C.C" Article 9 of the U.C.C..." The Banking Law Journal (January 1999)
"Lease Peace..." California Real Estate Journal (May 1998)
"Lease Peace" Los Angeles Daily Journal and San Francisco Daily Journal (April 1998)
"No Call Waiting" California Law Business and San Francisco Daily Journal (November 1997)

MEDIA

[Press Room a Resource for Journalists at USC](#) (University of Southern California)

[Can Relations between L.A. sheriff and critics ever recover](#) (LA Times)

[Here are the certified results for Palos Verdes Peninsula city council and school board races](#) (PV Peninsula News)

[Can L.A. County Supervisors remove Sheriff Villanueva? Experts say options are limited](#) (LA Times)

[Interview with "Newgotiation" Co-author Frank V. Zerunyan](#) (Civic Business Journal)

[California Wildfires and Private Fire Fighters](#) (CGTN News)

[First annual City managers' Summit aims to help practitioners more effectively implement policy](#) (USC Price News)

California faces tough fight against Trump immigration decision (Daily Journal November 2, 2017 – Subscription only)

[Professor establishes Armenian Scholar Program in Price School](#) (The Daily Trojan)

[California Supreme Court Allows Special Taxes with Fewer Votes](#) (CAPRADIO News)

[From Tragedy, a Dedication to Education and Service](#) (USC Price News)

[USC Professor Spotlights the Significance of Latinos to California's Future](#) (USC News)

[Zerunyan Offers Lessons in Governance, Leadership to Armenia's Defense Ministry](#) (USC Price News)

[Zerunyan Helps Shape Public Leadership from South Africa to Armenia](#) (USC Price News)

[Incumbents, challengers seek 3 Rolling Hills Estates City Council seats](#) (The Daily Breeze)

[Profs. Zerunyan, Mazmanian Lead UN Sustainability Workshops in Armenia](#) (Asbarez News)

[Zerunyan's family history feeds passion for public service](#) (PV Peninsula News)

GOVERNMENT-PUBLIC AND NOT FOR PROFIT (NGO) SERVICE

City of Rolling Hills Estates, three term Mayor (Mayor 2007-2008, 2012-2013 and 2016-2017)

City of Rolling Hills Estates , Council Member (Elected in 2003 and re-elected 2007, 2011, 2015 and 2020)

State of California Department of Consumer Affairs, Medical Board Member and Vice President

(Governor Schwarzenegger's appointee in 2006 and 2011; California Senate confirmation in May of 2007)

City of Rolling Hills Estates, Chair of Equestrian Committee (2014-2015)

City of Rolling Hills Estates, Chair of Traffic and Safety (2007-2012) (2020-2021)

City of Rolling Hills Estates, Chair of Environmental Committee (2003-2004)

City of Rolling Hills Estates, Planning Commissioner (1999-2003, Chair 2002-2003)

County of Los Angeles Sanitation District, Board Member (2007-2008 and 2012-2013 and 2016- 2017 and 2021-Present)

Palos Verdes Peninsula Transit Authority, Board Member (2006 and 2010-2013 and 2015)
 Palos Verdes Peninsula Law Enforcement Committee, Board Member and Chair (2007-2009 and 2012-2014 and 2017- 2018)
 California Contract Cities Association, Elected 52nd President (2008)
 California Contract Cities Association, Past President and Executive Board Member (2009-Present)
 Southern California Association of Governments (SCAG), Energy and Environment and Water Policy Committee (2005-2007)
 Southern California Association of Governments (SCAG), Community Economic and Human Development Comm.(2013-Present)
 South Bay Council of Governments (SBCOG), Board Member (2003-Present)
 League of California Cities, Member of Administrative Services Policy Committee (2005)
 National League of Cities, University Board Member (2016-Present)
 Business Technology Center ("BTC") of the County of Los Angeles, Advisory Board Member (2000-2015)
 Armenian Bar Association, Chairman of the Board of Governors (2006-2008)
 Superior Court of California, Judge Pro Tempore (1998-2005)
 Armenian National Committee of America, Policy Advisory Committee and Legal Counsel (1995-2005)
 Little Company of Mary Hospitals, Service Task Force Member (2003-2005)
 Daniel Freeman Hospitals Foundation, Chairman of the Board (2002)

PRIVATE SECTOR EXPERIENCE

Public-Private Community Development LLC: Principal and Founder (2006-Present)
 P3 Solutions Group, LLC: Principal (2010)
 California P3 Infrastructure Group, LLC: Principal (2009)
 Sulmeyer Kupetz, a PC: Shareholder/Principal, Lawyer (1995-2005)
 Yacoubian & Zerunyan, a PC: Shareholder/Principal, Lawyer (1989-1995)
 International Marketing Alliance, Inc.: Senior Vice President of Law and Finance (1985-1989)

LAW & CONSULTING PROFESSIONAL EXPERIENCE AND FORMER LEGAL REPRESENTATION HIGHLIGHTS

Oxnard Fire Station 8 (Public Private Partnership)
 Long Beach Court House (Public Private Partnership)
 Los Angeles County Department of Beaches and Harbors
 Los Angeles County Department of Health,
 Los Angeles County Department of Consumer Affairs
 Los Angeles County Public Guardian
 State of California Counties of Los Angeles, San Bernardino, Kern, Santa Barbara, San Luis Obispo, Tulare, Fresno, Santa Clara,
 Stanislaus, Tuolumne, Alameda, San Francisco, Siskiyou, Trinity, Sonoma (In re Pacific Gas and Electric)
 California Cities of Palm Springs, Palm Desert, Moreno Valley, Hemet and Simi Valley (In re City of Desert Hot Springs)
 Cities of Los Angeles, Beverly Hills and 14 other cities in Los Angeles County (In re Adelphia Corporation)
 County of Stanislaus and City of Modesto (In re Covanta Energy)
 Los Angeles World Airports
 Port of Los Angeles
 General Electric Capital Corporation
 Transamerica Occidental Life Insurance Company
 Peninsula Shopping Center Mall
 The Jewelers Mall of Los Angeles
 Grand Central Market Mall
 City National Bank
 Cedars Bank
 Tokai Bank



BAR MEMBERSHIPS/LICENSES TO PRACTICE LAW

Supreme Court of the State of California
United States Federal District Court (Central and Northern Districts of California)
United States Court of International Trade
District of Columbia Court of Appeals (currently inactive status)
Supreme Court of the United States

AWARDS AND HONORS

LL.D. Doctor of Laws – Honoris Causa – The Public Administration Academy of the Republic of Armenia
Medal of Assistance to the Military Education of the Armed Forces of the Republic of Armenia
Who's Who in America
Who's Who in American Law
The Legal Network, Top Lawyers in California
Los Angeles Magazine Southern California Super Lawyers
Martindale-Hubbell Peer Review Rating Distinguished Lawyer
The President's Commission on White House Fellowships Selection Panel
United States Congress Special Recognition for Public Service
California State Senate Special Recognition for Public Service
California State Assembly Special Recognition for Public Service
California League of Cities Special Recognition for Public Service
California Contract Cities Association Special Recognition "El Matador Grande" and "Roy Reynolds" Service Awards
Los Angeles County Sheriff Special Recognition for Academic and Public Service
Los Angeles County Assessor Special Recognition for Academic Service to County Elected Officials
Los Angeles County Board of Supervisors for Service as Mayor and Public Service
City of Los Angeles Special Recognition for Public Service

FLUENT LANGUAGES

English, French, Armenian and Turkish

Exhibit B



Ethics Training for Public Officials

AB 1234

Bear Valley Community Services District

February 10, 2021



1

1

Read All About It...

Mitch Englander Gets 14 Months in Jail

January 28, 2021

Former Los Angeles City Councilman Mitch Englander will serve 14 months in prison for lying to the FBI about cash payments and escort services he received from a real estate developer who was looking to increase his business with the city. The former councilman has also been ordered to pay \$15,000 in fines

Englander is the first person to be sentenced as part of a wide-ranging criminal investigation into corruption at City Hall. Ten other people have been charged so far.



2

2

Read All About It...

A former longtime member of the Baldwin Park City Council, Richard Pacheco, has pleaded guilty to taking bribes in exchange for his vote to ratify a police union's contract with the city.

In court files unsealed Tuesday, Pacheco admitted that he took \$37,900 in bribes from a Baldwin Park police officer in 2018. Pacheco was serving as the city's mayor pro tem at the time, and the officer was working undercover for the FBI.

In return for the bribes, Pacheco voted in March 2018 in favor of a three-year labor contract for the Baldwin Park Police Assn. that was approved by the council and required the city to pay officers \$4.4 million, the court papers say.



burke

3

3

“I’m Not Like Those Officials”

- Make sure your name does not show up in the FPPC’s “Hall of Shame”...

FAIR POLITICAL PRACTICES COMMISSION

Summaries of Past Enforcement Cases A-Z

www.fppc.ca.gov

The FPPC closes approximately 800 - 1,200 cases each year. Hundreds of these cases result in administrative penalties and fines imposed on the violator.

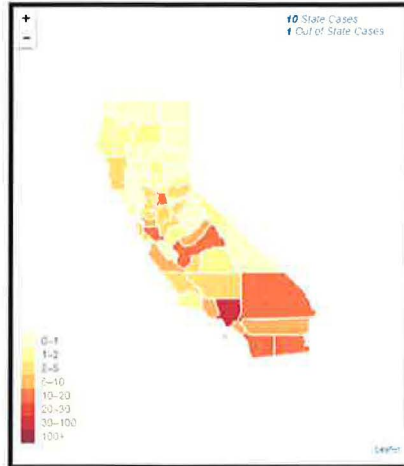
burke

4

4

FPPC “Heat Map”

- The FPPC prosecutes hundreds of cases every year and the public deserves to know where these violations occur. This map details the location of recent cases the FPPC prosecuted.



burke

5

5

FPPC Enforcement Actions

Robert S.

Conflict of Interest

Fine: \$3,000

FPPC No. 15/073

Robert S., a member of the Bakersfield City Council, and President of Smith Tech USA, attempted to use his official position to influence a governmental decision in which he had a financial interest, by speaking before the Bakersfield Planning Commission regarding the approval of SmithTech USA's application for the subdivision of two tracts of land owned by a client.

burke

6

6

FPPC Enforcement Actions

2020

Conflicts of Interest In the Matter of Leticia Perez

Leticia Perez, a member of the Kern County Board of Supervisors, participated in discussions and voted on a matter in which she knew or had reason to know had a material financial effect on a source of income.

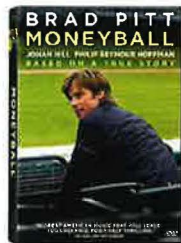
burke

7

7

Why Training?

- Remember the movie “Moneyball”?
- Think Analytics
 - On Board Percentage



burke

8

8

Agenda

1. Ethics Principles
2. Transparency Laws
3. Meeting Procedures
4. Personal Financial Interests
& Fair Processes
5. Personal Advantages
and Perks of Office



burke

9

9

Goals

That's a lot of law to digest in one session...



1. Spot the Issues
2. Ask for Help
3. Failure has Consequences
4. Ethics in Practice

burke

BE SAFE

10

10

Goals

1. **Familiarize** you with **laws** that govern your service and when to **ask questions**
2. Encourage you to **think beyond legal restrictions (outside the box)**
3. **Satisfy** your AB 1234 requirement



burke

11

11

Goals

Avoid these Headlines:



Water giant gave \$1.4 million loan to official

Associated Press

SAN FRANCISCO — A California public water district that earned a rare federal penalty over what it described as "a little Enron accounting" loaned one of its executives \$1.4 million to buy a riverfront home, and the loan remains unpaid nine years later although the official has left the agency, according to records and interviews.

Westlands Water District says its 2007 loan to its former deputy general manager — now at \$1.57 million with a 0.84 percent annual interest rate — is allowed under agency rules on salary.

burke

12

12

Attorney Advice



The sooner you speak to legal counsel the better, but remember...

- The Agency Attorney represents the Agency not you personally.
- Reliance on advice from legal counsel is not a defense if your actions result in a violation.
- Only a formal advice letter from the Fair Political Practices Commission protects you from violations of FPPC regulations.

burke

13

13

Ethics Laws

California law promotes ethics:

1. by requiring public disclosure
2. by prohibiting certain actions
3. by punishing violations



burke

14

14

Ethics Laws vs. Ethics



Law = minimum standards

What we must do
Floor - not the Ceiling

Ethics = What an official should do

burke

15

15

Ethics Laws v. Ethics

Ethical Lawful	Ethical Unlawful
Unethical Lawful	Unethical Unlawful

- Distinction between “ethics” and “law”
- Can certain conduct be unethical but legal?
- Can certain conduct be ethical but illegal?

burke

16

16

Public Perception

What would you want to read about on the front page?



- Even if you are confident about the “right thing to do” – Don’t forget about public perception.
- The public needs to believe that “the right thing has been done.”



burke

17

17

I. General Ethical Principles

Universal Ethical Values:

- Professional
- Trustworthy
- Community First
- Respect
- Fairness

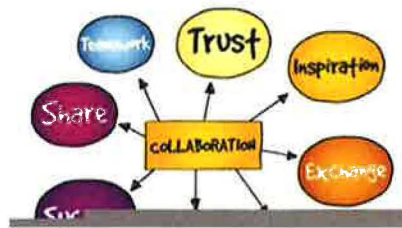


burke

18

18

Being a Professional



burke

19

19

Know Your Board Members

Team – Collection of Individuals

- General Background
- Relevant Experience
- Reason for Serving
- Personality Types
- Recognize and Respect Diversity of Styles & Perspectives
- Build on Strengths
- Project Equality of Input

burke

20

20

Know Your Duties

- What does the Board do?
- How do you exercise those duties?

Remember: Manner of governing is as important as work product.

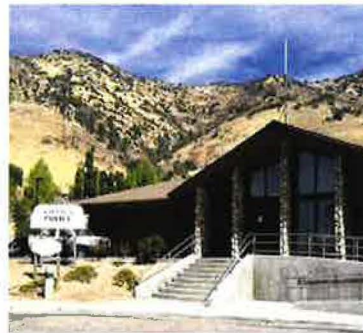
burke

21

21

Know Your Facilities & Operations

- Tour District facilities.
- Review Capital Improvement Plans.
- Become familiar with the budget.



burke

22

22

Be Prepared

- Review the agenda package early
 - Understand the item and proposed action
 - Ask or prepare questions for staff
 - Prepare comments in advance
 - Keep an open mind
 - Identify any conflicts



burke

23

23

Be Courteous With Staff

Good Boards have Good Relationships with Staff

- If you have Agenda questions, direct them to staff by email/call in advance of the meeting. (This allows time for review and response, and to incorporate the response into the presentation.)
- Communicate with staff what additional information you need to make an informed decision.
- Staff is there to help you do your job better – utilize their knowledge and experience to guide your decision making.
 - No one likes to be blindsided.

Goal: limit surprises at meetings

burke

24

24

Be Courteous With Staff



- Don't forget:
 - compliment staff where appropriate
 - everyone prefers positive feedback

burke

25

25

Recap: Being a Professional

This value looks like:

- I know my team (Board & Staff).
- I know my duties.
- I know the facilities and operations.
- I come prepared to meetings, having read and studied any materials and information provided to me.
- I try to ask important questions in advance – no surprises.
- I keep my knowledge and skills current (conferences, seminars, training).

burke

26

26

II: Transparency Laws



burke

27

27

The Brown Act

Public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. ***It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.***

Gov. Code § 54950

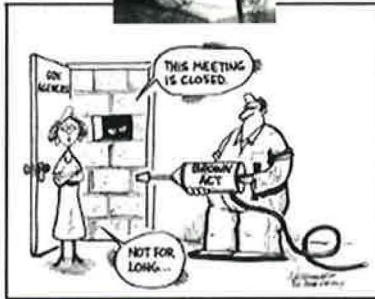


burke

28

28

The Brown Act



burke

29

- All *meetings* of the *legislative body* of a *local agency* must be *open and public*
- *All persons* must be *permitted to attend* any meeting

29

The Brown Act

- **Basic Rule:** Meetings of the Board, Standing Committees and other designated District Committees are subject to the Brown Act.



- What is a **Meeting**?
 - any gathering of a *majority of the members* of a legislative body
 - at the *same time* and location
 - to *hear, discuss, deliberate* or *take action* upon any item which is within its subject matter jurisdiction

burke

30

30



The Choice Is Yours



Three Board members run into each other at the local coffee shop and begin discussing the county's new COVID-19 restrictions. Is this a Brown Act violation?

- a) Yes.
- b) No.
- c) Only if the group discussed whether the Mulligan Room could remain open.

burke

31

31

The Brown Act

Formal Meetings:

- Regular meetings
- Special meetings
- Emergency meetings

BEAR VALLEY COMMUNITY SERVICES DISTRICT

28999 South Lower Valley Road • Tehachapi, CA 93561-7460
PHONE 661-821-4428 • FAX 661-821-0180

AGENDA
REGULAR MEETING OF THE BOARD OF DIRECTORS

burke

32

32

Board Can Only Act At A Meeting

Bear Valley District Code

1-5-7: BOARD AUTHORITY:

- A. The board is the unit of authority within the district.
- B. The primary responsibility of the board is the formulation and evaluation of policy.
- D. **The board may act only by ordinance, resolution or motion. A majority vote of the total membership of the board is required for the board to take action.**
- E. All district policies and regulations, including those of district departments, must be approved by the board in advance of implementation.
- F. **Except as expressly provided in this code or the community services district law, a director has no individual authority and may not give any direction or order to district employees or contractors, or commit the district to any act, expenditure, or policy. No individual board member may represent the district's policy unless such policy has been determined by the board.**
- G. Routine matters concerning the operational aspects of the district, including the implementation of board policies and regulations, are to be delegated to the general manager and professional staff of the district.

burke

33

33

Improper "Informal" Meetings



Caution: "A majority of the members of a legislative body **shall not...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action** on any item of business that is within the subject matter jurisdiction of the legislative body.

Gov. Code § 54952(b)(1)

burke

34

34

Improper “Serial” Meeting

- **Daisy Chain:** If Member A contacts Member B, and Member B contacts Member C, and so on, until a quorum has been involved, this type of “serial meeting” may result in a violation of the Brown Act.



burke

35

35

Improper “Serial” Meeting

- **Hub and spoke:** An intermediary contacts at least a quorum of the members to develop a collective concurrence on action to be taken by the legislative body.



burke

36

36

Improper “Technology” Meetings

- Use of e-mail or other technology/media by a majority of a legislative body to discuss, deliberate, or take action on items within the body’s jurisdiction violates the Brown Act.



burke

37

37



The Choice Is Yours



In preparing for an upcoming meeting, you draft an email to the Agency Manager stating your intent, but requesting more information. Should you:

- a) Copy the email to the entire Board.
- b) Hit “Reply All” when the Agency Manager responds to your request.
- c) Only email the Agency Manager.
- d) None of the above.

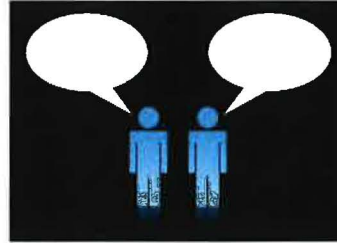
burke

38

38

Individual Meetings - OK

- A District employee or official may:
 - engage in "separate conversations or communications" outside of a meeting
 - in order to "answer questions or provide information"
 - so long as that person "does not communicate to members of the legislative body the comments or positions of any other member or members."



Gov. Code § 54952.2(b)(2).

burke

39

39

Electronic Meetings



- Take caution, e-mail, tweets and messages on social media platforms spread like wildfire.

burke

40

40

Recommendations for E-mail

- **Avoid sending e-mails to the whole body.**
 - If necessary, provide information only.
 - Do not solicit a response.
- **Be careful replying to e-mails.**
 - Do not communicate your position or make a commitment on a pending matter.
 - Do not direct a reply to a majority of the Board or a committee.
- **Think carefully before sending any e-mail.**
 - Remember, your e-mail can be forwarded by others to a majority of the Board/committee.

burke

41

41

Avoid These Headlines

Judge Rules Council Violated Brown Act

January 5, 2017 – Mercurynews.com

SAN JOSE — Nearly a decade after a Vietnamese community group took San Jose to court over claims that elected officials secretly lined up votes in naming a retail center, a judge agreed that the City Council violated open meeting laws — and ordered a fix to stop it from happening again.

The lawsuit, filed in February 2008, claims former Councilwoman Madison Nguyen privately rallied support from a majority of council members to name a shopping center "Saigon Business District." If a council member privately discusses an issue up for a vote with five of San Jose's 11 City Council members — a majority — it is considered a violation of the Ralph M. Brown Act.

burke

42

42

Brown Act Violations

CODE COMPLIANCE
NOTICE OF VIOLATION

- Request to Cure/Action Invalidated
- Civil Action to prevent future violations
- Costs and Attorney's Fees
- Criminal Charges
 - Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, **is guilty of a misdemeanor.**

Gov. Code § § 54959, 54960, 54960.1

burke

43

43



The Choice Is Yours



Here is the Agenda description:

13. Mailbox Initiative Measure

Recommendation: Provide direction to staff.

May the Board:

- Adopt a resolution calling a special election.
- Do (a) and adopt ballot arguments.
- Do (a) and (b) and accept a gift from a locking mailbox vendor to pay for the election.
- Direct staff to bring back items (a) – (c).

burke

44

44

Brown Act: Agenda Requirements



burke

- Rule: Brief description of item (20 words or less).
- Substantial compliance is the test.
- Courts will look at whether the agenda language, considered as a whole, gives the public more than a "clue."

45

45



The Choice Is Yours



During public comments on non-agendized items a Board member may:

- a) Have a 5-minute conversation with a member of the public.
- b) Accept a request from an Eagle Scout to install rustic wood-carved street signs.
- c) Request donations to his/her political campaign.
- d) None of the above.

burke

46

46

Non-Agendized Items

- Action or discussion on any item not appearing on the posted agenda is generally prohibited.
- Board Members may only:
 - Briefly respond to public statements or questions,
 - Ask a question for clarification,
 - Make a brief announcement,
 - Make a brief report on his or her activities,
 - Provide a reference to staff or other sources for factual information, or
 - Request staff to place the matter on a future agenda and report back to the legislative body in a subsequent meeting.

Gov. Code § 54954.2(a)(2)

burke

47

47

Brown Act: Public Participation

Public participation in meetings is ensured by:

- Accessible location (ADA, Non-Discrimination)
- Providing access to agendas and related documents when distributed to a majority of the legislative body.
- Allowing the public to speak on an agenda item before or during the body's consideration of the item.
- Allowing the public to record meetings



burke

48

48

Avoid These Headlines

Inglewood's Lawsuit Against Gadfly Smells Like Censorship

The city of Inglewood is suing a longtime critic of the mayor and city officials, alleging he violated copyright law by using footage of council meetings in videos blasting them for abusing their power.



burke

49

49

Thick Skin Required

- City sued longtime critic of City Council and lost and was ordered to pay resident's legal fees of \$117,741.
- City argued use of snippets of Council meetings that were critical of Council violated copyright law and caused irreparable harm.
- Court stated lawsuit was "meritless".



burke

50

50

Avoid These Headlines

OC Residents Can Now Address Their County Supervisors By Name in Public and Even Question Them

February 8, 2021

In response to a lawsuit from the ACLU, Orange County's top elected officials have now deleted their longtime ban against public commenters mentioning the officials' names or questioning them without permission.

The rule – which had been on the books for decades – required that public comments be directed at the entire Board of Supervisors and “not to any individual Board member.” ***“No question shall be asked of any Board or staff member without first obtaining permission of the Chair,”*** added the rule

burke

51

51

Closed Sessions

Closed Sessions:

- Closed sessions are an **exception** to the rule that agency meetings must be open and public.
- Only topics authorized under the Brown Act may be discussed in closed session.
- The most common closed session topics are: Litigation (Existing or Potential), Real Estate Negotiations, Personnel Matters, and Labor Negotiations.

Gov. Code § 54954.3

burke

52

52

Closed Sessions

- The disclosure of confidential information is prohibited unless the legislative body authorizes the disclosure of the information.
- “**Confidential information**” means communication made in closed session that is specifically related to the basis for the closed session meeting.

Gov. Code § 54963(a) and (b)

burke



53

53

Access to Public Records

- Access to public records is a constitutional right.



burke

54

54

Public Records

- Public Record” means:
 - 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 characteristic.



Gov. Code § 6252(e)

burke

55

55

Public Records

Rule: All of the agency’s public records must be disclosed to the public, upon request, unless there is a specific reason not to do so.



- As described by one court: “Islands of privacy floating in a sea of disclosure.”

burke

56

56

Digital mapping files are public records, state Supreme Court rules

July 08, 2013



The California Supreme Court ruled that digital mapping files known as geographic information systems must be released under the state's public records law.

The decision could make it easier for media organizations, advocacy groups and others to obtain government GIS databases,

The case stems from a 2007 letter the Sierra Club wrote to the Orange County assessor requesting copies of its OC Landbase, a GIS database of information on more than 640,000 land parcels. The group planned to use the database, which includes parcel boundaries, numbers and addresses, for environmental mapping projects, such as identifying land suitable for conservation.

The county argued that GIS files were "computer software" and exempt from disclosure under the state Public Records Act.

burke

57

57



The Choice Is Yours



Which is a public record subject to disclosure:

- a) A message about a Laker's game sent from your agency email account.
- b) A message about a Board agenda item sent from your personal email account.
- c) A text of a grocery list sent from an agency device.
- d) All of the above.

burke

58

58

Public Records

The California Supreme Court ruled in 2017 that information related to the public's business retained on private phones, computers and other personal devices and accounts of public employees and officials is a public record.



burke

59

59

Public Records

- Local officials have some discretion in terms of what records may be retained.
- Important to follow records retention schedules & policies.



burke

60

60

III. Meeting Procedures



burke

61

61

Meeting Procedures

Responsibility to other members:

- Following procedural rules allows for ALL viewpoints:
 - Majority
 - Minority
 - Individual members

burke

62

62

Meeting Procedures

The Role of the Chair:

- The chair is charged with applying the rules of conduct.
- The chair should be well versed in those rules.
- The chair, in consultation with the General Counsel/Manager, makes the final ruling on the rules unless overruled by the Board/Committee itself.
- Usual courtesy for the chair to play a less active role in the debate and discussion.
- Strive to be the last to speak at the discussion and debate stage
- The chair should not make or second a motion unless the chair is convinced that no other member of the Board/Committee will do so.

burke

63

63

Meeting Procedures

- **Basic Agenda Item Discussion**
 - Item called per agenda
 - Presentation/report
 - Members ask questions/clarification
 - Public Comments (time limits, avoid repetition, summarize)
 - Deliberation
 - Invite motion/second
 - Further discussion/debate
 - Vote (roll call)/announce

burke

64

64

Meeting Procedures

Courtesy and Decorum:

- One person at a time may speak.
- Chair has the right to cut off discussion that is too personal, too loud, or too crude.
- Chair may limit amount of time for speakers, including members of the body.
- Members of the body should address remarks through the Chair and refrain from disturbing other members during deliberations.
- Avoid extended debate with the public.
- Members should not be interrupted except for a procedural points.

burke

65

65

Crowd Control



- Dealing with difficult members of the public and disturbances.
 - Irrelevant – stay on topic
 - Impolite – out of order
 - Disruptive – out of room

burke

66

66

IV: Personal Financial Interests & Fair Processes



burke

67

67

Conflicts of Interest Rules

- **Political Reform Act**
 - Government Code § 87100 and following, and the Regulations of the Fair Political Practices Commission (FPPC)
- **Contractual Conflicts**
 - Government Code § 1090



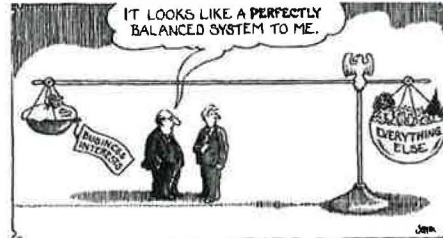
burke

68

68

Purpose of Conflict Rules

- Public officials owe paramount loyalty to the public.
- Personal or private financial interests should not be allowed to enter into the decision making process.



burke

69

69

Disclosure of Financial Interests

- Statements of Economic Interests "Form 700"
- Purpose:
 - alert officials of personal interests that might be affected
 - inform the public about potential conflicts



burke

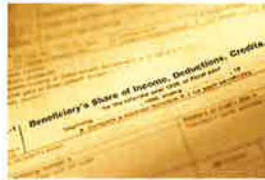
70

70

The Who, What, When and Where of Disclosure

- **Who?** All "designated" officials.
- **What?** Interests in real property, investments, business positions, sources of income and gifts.
- **When?** Upon assuming office, annually (by 4/1), and upon leaving office.
- **Where?** File with local agency, which will send it, if required, to the FPPC.

Note: The documents are public records and late filers may face fines or penalties.



burke

71

71

Form 700 Reporting

FPPC Enforcement Decisions:

Jackson W., as a **Member of the Sunshine Ordinance Task Force** for the City and County of San Francisco, failed to timely file the 2012 Annual Statement of Economic Interests covering the period January 1, 2012, through December 31, 2012, due April 1, 2013.

Fine: \$200



burke

72

72

Can I Participate?

Conflict-of-Interest Rules Political Reform Act



burke

73

73

General Rule of Disqualification

- A public official may not:
 - make/participate/influence
 - a governmental decision
 - that will have a foreseeable and material financial effect on
 - the official's economic interests

**Am I
eligible?**



burke

74

74



The Choice Is Yours



The best time to discuss a potential conflict with the Agency's Attorney is:

- a) At a meeting because it is convenient and will save money.
- b) After the action/decision so you know all the facts.
- c) As early as possible.
- d) Never, because it's not a privileged communication.

burke

75

75

Recognizing and Seeking Advice

- The conflict rules and regulations are complex.
- **Recognizing** potential conflicts is essential.
- **Talk early on** with agency counsel and consider seeking advice from the FPPC when economic interests may be affected (positively or negatively) by a decision.



burke

76

76

Potential Economic Interests

- **Sources of Income**

Any source of income of \$500 or more during the prior 12 months for you or your spouse or domestic partner.



burke

77

77

Potential Economic Interests

FPPC Enforcement Decisions:

David S., a member of the board of directors of the **Indian Valley Hospital District**, violated the conflict-of-interest provisions when he **voted in favor of a contract which benefitted a client of his oxygen supply business.**

Fine: \$2,000



burke

78

78

Potential Economic Interests

- **Business management, employment or investment**

- Any business entity in which an official is a director, officer, partner, trustee, manager or employee.
- Any business entity in which an official has a direct or indirect investment of \$2,000 or more.



burke

79

79

Potential Economic Interests

FPPC Enforcement Decisions:

Leonard E. was the **Assistant City Manager** and **Controller** of the City of West Covina. Mr. E violated the conflict of interest disclosure and disqualification provisions by **failing to disclose his interests in an Orange Julius franchise located in a shopping mall and by participating in decisions relating to a major expansion and restoration of the mall.**

Fine: \$18,000



burke

80

80

Potential Economic Interests

FPPC Enforcement Decisions:

Robert B., while a member of the **Tuolumne Utilities District Board of Directors**, made governmental decisions in which he knew, or had reason to know, he had a financial interest, by **voting to approve numerous claim summaries that included payments made to Behee Enterprises, a corporation in which he held the position of Director.**

Fine: \$12,000

PAYMENT CLAIM FORM LUSU

10/15/11

\$12,000.00

burke

81

81



The Choice Is Yours



Interests in real property are:

- a) A potential ground for a conflict of interest.
- b) Not a conflict if it is your home because of the homestead exemption.
- c) Not a problem as long as your property is more than 300 feet away.
- d) Always a conflict if the property is within the Agency's jurisdiction.

burke

82

82

Potential Economic Interests

- **Real Property**

Any real property interest worth **\$2,000** or more

- Includes leasehold interests in some instances



- **Tip:** Be alert for any projects or decisions that may affect the land use or value of the property or other nearby properties (500 to 1000 feet).



burke

83

83

Potential Economic Interests

FPPC Enforcement Decisions:

Richard F., Dorris City Councilmember, violated conflict of interest laws by voting to obtain a **\$491,520 state grant to extend a water and sewer line to an area of the city where he owned real property and operated an inn and restaurant.**

Fine: \$4,000



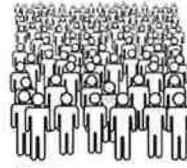
burke

84

84

Exceptions to Potential Economic Interest Conflicts

- Two exceptions to potential financial conflicts:
 - The “public generally”
 - The “legally required participation”



burke

85

85

Public Generally Exception

- Decisions that affect a **broad range of persons or interests** may be exempted: 25% of (i) all businesses, (ii) all real property, or (iii) all individuals.

Example: Water & Sewer Rate decisions



burke

86

86

Legally Required Participation Exception

- May apply if a conflict disqualifies so many officials that there is no longer a quorum to make a decision.



Note: Does not apply: (1) quorum could later be met; (2) to break a tie vote.

byurke

87

87

Conflicts Created By Future Employment



Delays on the revolving door...

- May not participate in decisions involving a **prospective** employer (includes interviews and negotiations).
- Officials and senior management may not represent parties before their former agency for **one year** after leaving office.

byurke

88

88

Conflicts Created By Future Employment

FPPC Enforcement Decisions:

Dwain S. served as a **Director on the Western Hills Water District** Board of Directors. During his tenure he voted on a matter directly relating to WW Inc., with whom he had an arrangement concerning prospective employment at the time of the vote.

Fine: \$4,000

burke



89

89

Common Law Conflict: Personal Interests or Bias

- Personal interests or biases (positive or negative) about the facts or the parties may cast doubt on your ability to make a fair decision.
- Need to exercise power with at least the appearance of **disinterested** skill, zeal, and diligence.



You Are Biased!

burke

90

90

Public Interest vs. Personal Interest

City of Fairfield v. Superior Court (1975) 14 Cal.3d 768:

"A councilman has not only a right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance. . . . **Campaign statements...do not disqualify the candidate from voting on matters which come before him after his election.**"

Nasha v. City of Los Angeles (2004) 125 Cal.App.4th 470:

Plaintiff was seeking to develop five lots in Los Angeles. While the matter was pending before the Planning Commission, one of the Commissioners authored an article attacking the Plaintiff's project. The Planning Commission voted to deny the project and, in the lawsuit filed by the Plaintiff against the City of Los Angeles, the Court found that **the Planning Commission's decision should be set aside due to an unacceptable probability of actual bias on the part of the Commissioner who authored the article.**

burke

91

91

Avoid These Headlines

San Marino mayor resigns after being censured over dog poop incident

SAN MARINO - Mayor Dennis Kneier, who set off a political firestorm when he tossed a bag of dog poop onto a neighbor's yard, resigned his post Wednesday, just 10 days after a surveillance video of the incident went viral.

I have apologized to my neighbor for my action, and I will pay a fine for littering," Kneier wrote. "These events continue to be embarrassing to me and to the city. Because of this, I have decided to step down as mayor."

burke

92

92

What Happens If Disqualified?

- If disqualified:
 - Identify the applicable interest (with specificity).
 - Step down from the dais and leave the room (unless on consent calendar).
 - Refrain from any discussion or participation.



Exception: You can participate as a member of public from the audience on matters affecting personal economic interests.

burke

93

93



The Choice Is Yours



When is it legal to enter into a contract with your agency:

- a) If you use a third-party intermediary (e.g., real estate broker).
- b) If you disclose your interest in advance to the board and abstain from voting.
- c) If you receive only a small payment or get less than fair market value.
- d) If you are the best service provider available.
- e) Never.

burke

94

94

Contractual Conflicts of Interest Government Code § 1090

Prohibition on
“Self Dealing”



burke

95

95

Contractual Conflicts of Interest Government Code § 1090

- Section 1090 prohibits **officials** and **employees** from having **financial interests in contracts made by them in their official capacities** or any board of which they are members.



burke

96

96

Contractual Conflicts of Interest

- If a public official or employee has a financial interest in a contract, **the contract is prohibited** regardless of whether the official participates in or abstains from the actual decision.



burke

97

97

Contractual Conflicts of Interest

- Term “Contract” is liberally construed
- Financial gain not required



Limited Exceptions:

- Contract existed before assuming office -- if no modifications made during tenure
- Interest is terminated prior to participation

burke

98

98

Contractual Conflicts

Berkeley councilman profited from police chief's public home loan

By Thomas Peele tppee@bayareanewsgroup.com

PHOTO COURTESY OF BAY AREA NEWS GROUP

16 COMMENTS

BERKELEY -- In a move that ethicists call fraught with conflicts and cronyism, a City Council member who voted to give Berkeley police Chief Michael Meehan a \$500,000 housing loan from public funds later worked as his real estate agent and took a commission on the chief's purchase of a home, records show.

Councilman Lawrence Capitelli said he split the nearly \$30,000 commission on the \$1.185 million sale with another



burke

99

99

Violations of § 1090

- If contract is made in violation of § 1090, the contract will be deemed **void**.
- All **monies paid** under the contract **must be returned** to the local agency.
- Willful violations may be punished by fine, imprisonment and disqualification from public office.



burke

100

100

Contractual Conflicts of Interest

- There are also exceptions for:
 - “**Remote interests**” (§ 1091)
(landlord or tenant
of contracting party)
 - “**Non-interests**” (§ 1091.5)
(non-compensated officer
of a non-profit)



 **Still must abstain from voting**

burke

101

101

V: Personal Advantages & Perks

**Legal Limitations on
Official Benefits and Perks**



benefits & perks

burke

102

102



The Choice Is Yours



Agency officials can set their salary:

- a) As high as they want (or can get away with).
- b) By ordinance or resolution.
- c) Whenever they want.
- d) None of the above.

burke

103

103

Compensation

- Generally fixed by statute.
- Cannot be acted on at a special meeting.
- Automatic increases not permitted.



burke

104

104



The Choice Is Yours



If you take your spouse on official business, you can charge the following to the Agency:

- a) Room.
- b) Spouse's meals.
- c) Mileage.
- d) Both (a) and (c).
- e) None of the above.

burke

105

105

Expense Reimbursement



General Rule: *Actual and Necessary* Expenses

Agency Policy: The Agency has a written policy specifying reimbursable activities and rates

Reporting: Timely use of report forms (with receipts documenting the expenses); oral report at subsequent meeting (only for attendance at Brown Act "meetings")

Penalty: loss of reimbursement privilege; restitution; civil penalties and 3x value of misused resources; jail; ban from public office

burke

106

106

Remember...

Your expense report forms are
PUBLIC RECORDS



burke

107

107



The Choice Is Yours



A local resident offers to give you an iPhone XII in appreciation of your excellent work. You must:

- a) Tell the General Manager.
- b) Give it to your children.
- c) Determine the value before accepting.
- d) Give it to charity and take a tax deduction.
- e) Politely refuse the offer.

burke

108

108

Gifts

• What is a Gift?

- Anything of value you receive for which you do not provide monetary or other consideration of equal or greater value.
- May include discounts and rebates if not also given to the general public.



Report - \$50 or more in a year/source

Limit - \$520/year/source.



burke

109

109



Gifts



Options when you receive a gift over \$50:

- Decide if you want to report it on your Form 700.
- If so, report it within 30 days of receipt.
- If not, then within 30 days:
 - Reimburse the donee for the fair market value,
 - Return the gift unused, or
 - Donate the gift to charity (no deductions).
- If the gift exceeds \$520, you have a duty to reject it or “buy down” the value.

burke

110

110

Disclosure of Gifts

- Must report gifts on your Form 700 if:
 - Total value of all gifts from that source during the calendar year is at least \$50.
 - Gift are reportable regardless of the location of the donor.



Tip: If the amount is unknown, you must make a good faith estimate of the item's fair market value.

burke

111

111



The Choice Is Yours



Are meals considered “gifts”?

- a) Yes, if the food is delicious.
- b) No, if the company is boring.
- c) No, if you take turns paying.
- d) Only if you go to a restaurant.

burke

112

112

Gifts

- **Are Meals Gifts?**

Yes. A meal is a gift unless:

- provided at an individual's home (existing relationship)
- Provided as part of a reciprocal exchange
- paid for by a governmental agency



burke

113

113

Gifts



FPPC Enforcement Decisions:

James L., as Mayor of Palmdale, failed to timely disclose gifts of two meals totaling \$253.39 on his Statement of Economic Interests. All gifts were from E.J. De La Rosa & Co., Inc.

Penalty: \$200.

SACRAMENTO — Spurred by an investigation by the Ventura County District Attorney's Office into the activities of Oxnard city officials, the Fair Political Practices Commission found 205 government officials across the state failed to properly report gifts from the same companies involved in the Oxnard case.

burke

114

114

Gifts

There is a rule for everything:

- Gifts through family members
- Attendance at Invitation-Only Events
- Wedding gifts
- Non-Profit fundraisers



burke

115

115

Gifts

FPPC Enforcement Decisions:

Judith V., former mayor of the City of San Bernardino, acceptance of membership dues from Arrowhead Country Club, exceeded then applicable gift limit.

Fine: \$400



burke

116

116



The Choice Is Yours



Can public officials accept “tips” for a job well done?

- a) Never.
- b) Always.
- c) Only if you do an extra good job.
- d) Yes, if you have a performance based contract.

burke

117

117

Prohibition on Gratuities or Rewards



It is a misdemeanor to receive any kind of gratuity or reward for performing one's duties.

burke

118

118

Honoraria

- Receipt of honoraria (e.g., any payment for a speech, article, attendance at a conference, event or similar gathering) is **prohibited**.
- **Exception:** Speech or article in connection with private business.



Tip: You can **return** or **donate** the honoraria within 30 days of receipt.

burke

119

119



The Choice Is Yours



Which are not permitted:

- a) Making a few personal copies on the Agency copy machine.
- b) Calling your spouse from an Agency phone.
- c) Using an Agency truck to pick up a new mattress.
- d) All of the above.

burke

120

120

Misuse of Public Resources



- **Rule:** No use of public funds or resources for personal, non-public purposes, including campaigns.
- **"Public Resources"** includes staff time, office equipment and supplies, but excludes incidental or minimal uses.



- **Penalties:** disqualification from office, jail, civil penalties up to \$1000/day plus 3x the value of the unlawful use.

Tip: Ensure that expense or use is consistent with adopted agency policy or practice.

burke

121

121

Avoid These Headlines

Top fire officials suspected of driving county vehicles while collecting \$1,000 monthly personal car allowance.

SAN BERNARDINO - San Bernardino County Fire Chief Pat D. was placed on unpaid administrative leave Wednesday after county supervisors evaluated a human resources report alleging he and Deputy Fire Chief Dan W. **improperly drove county vehicles for personal use.** D and W reportedly used a county trailer to move personal belongings from Running Springs to Yucaipa. The two may have also violated county policy by driving county vehicles while collecting a roughly \$1,000 monthly personal car allowance.



burke

122

122

Gifts of Public Funds



- Local agencies are prohibited from making a “gift” of public money or anything of value.
- Expenditures for **public purposes** are not considered gifts even if a private party incidentally benefits.

burke

123

123

Mass Mailing Prohibition

- **Rule:** No newsletter or other mass mailing may be sent at public expense.
- **Purpose:** Conserve resources, no advantages for incumbents.
- **Application:**
 - 200+ items/month
 - official “featured”
- **Penalties:** Criminal liability; restitution.



burke

124

124

Mass Mailing Prohibition

The Public Eye: Rocklin fined \$2,000 for newsletter containing prohibited photos

Richard Chang / *The Sacramento Bee*

Rocklin was fined \$2,000 by the California Fair Political Practices Commission last week for blanketing households with a newsletter that contained photos of City Council members, a violation of the Political Reform Act.

The State considers such activities a prohibited form of campaigning with taxpayer funds that gives incumbents an unfair advantage.

City officials said the inaugural newsletter, Inside Rocklin, was a well-intentioned effort to keep citizens informed and that they were unaware of the state rules.



MAYOR'S MESSAGE . . .

With one of the strongest economies in the state, Rocklin is a place to live, work, and raise your family. We hope this guide helps you enjoy the best that Rocklin has to offer. Whether you are a long time resident or new to the area, I invite you to take a look and see what's happening in Rocklin. Rocklin is a thriving city of 60,000 residents consisting of a vibrant and diverse community. family or households, unique shopping, and strong businesses that offer diverse employment. Rocklin residents and visitors alike enjoy numerous recreational activities, scenic parks and trails, open spaces, public safety, and our top schools. We are fortunate to have a highly educated population and an excellent public department on your doorstep. We hope you enjoy your time among the trees in the region. Rocklin is also a center for educational excellence, proudly home to the first public school district in the region - Rocklin Unified. State College and William Sutter Elementary stand out higher education choices. We are very proud that makes Rocklin a great

place to live, work, and raise your family. We hope this guide helps you enjoy the best that Rocklin has to offer. Whether you are a long time resident or new to the area, I invite you to take a look and see what's happening in Rocklin. Rocklin is a thriving city of 60,000 residents consisting of a vibrant and diverse community. family or households, unique shopping, and strong businesses that offer diverse employment. Rocklin residents and visitors alike enjoy numerous recreational activities, scenic parks and trails, open spaces, public safety, and our top schools. We are fortunate to have a highly educated population and an excellent public department on your doorstep. We hope you enjoy your time among the trees in the region. Rocklin is also a center for educational excellence, proudly home to the first public school district in the region - Rocklin Unified. State College and William Sutter Elementary stand out higher education choices. We are very proud that makes Rocklin a great

place to live, work, and raise your family. We hope this guide helps you enjoy the best that Rocklin has to offer. Whether you are a long time resident or new to the area, I invite you to take a look and see what's happening in Rocklin. Rocklin is a thriving city of 60,000 residents consisting of a vibrant and diverse community. family or households, unique shopping, and strong businesses that offer diverse employment. Rocklin residents and visitors alike enjoy numerous recreational activities, scenic parks and trails, open spaces, public safety, and our top schools. We are fortunate to have a highly educated population and an excellent public department on your doorstep. We hope you enjoy your time among the trees in the region. Rocklin is also a center for educational excellence, proudly home to the first public school district in the region - Rocklin Unified. State College and William Sutter Elementary stand out higher education choices. We are very proud that makes Rocklin a great



Scott Vail
Mayor, City of Rocklin



Restrictions on Loans

- Officials cannot receive loans:
 - from anyone within the official's agency or with whom the agency contracts; or
 - greater than \$500 (except in writing and with clear terms)

PERSONAL
LOANS



Exceptions: loans received by the official's campaign committee; normal bank and credit indebtedness; and loans from family members.

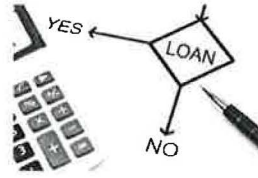


Restrictions on Loans

FPPC Enforcement Decisions:

Antoinette R., was the **Inspection Services Manager for the City of Oakland Community and Economic Development Agency**. Ms. R. violated conflict of interest laws when she approved and signed a series of contracts with a contractor, her former brother-in-law, from whom she had received a loan in the amount of \$50,000.

Fine: \$6,500



burke

127

127

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).
- Conditioning employment and compensation decisions on political support is also prohibited.



burke

128

128

Final Questions to Ask



- What would inspire public confidence?
- What decision best serve the interests of the community as a whole?

burke

129

129

Public Perception

What would you want to read about on the front page?



- Even if you are confident about the “right thing to do” – Don’t forget about public perception.
- The public needs to believe that “the right thing has been done.”



burke

130

130

Public Perception

The LA School iPad Scandal: What You Need To Know

By ANNIE GILBERTSON, NPR
August 27, 2014



A massive expansion of classroom technology has come to a grinding halt in Los Angeles.

The LA Unified School District had planned to buy some 700,000 iPads for its students and teachers. The Apple tablets would include learning software built by publishing giant Pearson. But Superintendent John Deasy announced earlier this week he is canceling the contract and restarting the bidding process.



The decision comes on the heels of an investigation by NPR member station KPCC, **which obtained emails between Deasy and tech executives that bring into question whether the initial bidding process was fair.**

burke

131

131

Final Thoughts

Don't End Your Career This Way:



burke

132

132

Resources

- FPPC: 1-866-ASK-FPPC and on the web at www.fppc.ca.gov
- Attorney General: www.ca.ag.gov
- League of California Cities: www.cacities.org
- Institute for Local Government: www.ca.ilg.org

burke

133

133

You made it!!!



burke

134

134