Ethics and Public Service Laws and Principles Presented by Keith F. Collins, Jones & Mayer (714) 446-1400

Ethics Laws Law = Minimum standards What we *must* do Ethics is what we *onght* to do Above and beyond law's minimum requirements

Transparency Laws

Principles:

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



Brown Act (Gov't Code §54950)

- Requires that public agency actions "be taken openly and that their deliberations be conducted openly."
- all "meetings" of a "legislative body" must be open and public.

Who is Subject to the Brown Act?

"Legislative Body" includes:

- Governing body of a local agency -City Council
- Governing bodies of other entities created by state or federal statute – RDA Successor Agencies, or JPAs
- Any Commissions, Committee or Boards Created by formal action of the Governing Body
 Planning commission, personnel board, access appeals board
- A <u>private corporation</u> if either:

 Created by local agency to exercise authority of local agency; or
 Receives funds from City and has city council member on board

What constitutes a "Meeting?"

- A Meeting Is: Any congregation of a majority of the members of the legislative body in the same time and place to hear, discuss or deliberate upon any item within their jurisdiction.
- Watch out for:
 - Informal discussions
 - Telephone conversations for purpose of discussing decisions in advance
 - Serial Meetings
 - E-mails, texts, blogs, social networking sites

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A Meeting is NOT: Individual contacts or conversations Attendance by majority at certain conferences or social events, so long as majority does not discuss issues within their jurisdiction Attendance at meeting of other legislative bodies, so long as majority does not discuss issues within their jurisdiction E-mails ■ It is easy to violate the Brown Act by simply hitting the "Reply All" button. ■ Caution is needed. ■ Potential Public Records Act Problems: Using your own email/device to discuss City business will subject personal emails/texts to disclosure. City of San Jose v. Superior Court (Recent Cal. Supreme Court ruling) Recommend use of City email address **Texting** Similar problems as with e-mail. Can be easily used to hold a serial meeting before or during a meeting (cell phones). Avoid Sending or Receiving Texts/Emails: To/From the public during a meeting To/From members of the body during a meeting. If you have declared conflict.

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Plagging	
Blogging	
■ Short for "Web-Log". A "frequently	
updated website, normally with dated	
entries, commonly used to post opinions."	
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□Very popular with public officials.	
☐ Includes sites such as Facebook and Twitter.	
☐ Has not yet been formally addressed by	
FPPC.	
□ Potential serial meeting if a majority gets	
involved	1
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Posting Requirements	
■ Post agenda at least 72 hours before a	
"regular" meeting	
24 hours for "special meetings."	
Special Meeting not permitted for discussion	
on Agency Executive compensation or perks	
■ Specify time/location	
 Include brief general description of each item 	
Includes closed session items	
a includes closed session items	
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Posting Requirements (cont'd)	
 No action on any item not appearing on the posted 	
agenda	
Limited Exceptions:	
Statutorily defined "Emergency"	
Need for Immediate Action – requires a 2/3 vote that there is an immediate need, and need arose after the agenda	
was posted	
Brief responses to questions comments from public	
Brief reports by board members and staff	
Request to agendize an item for a future meeting	

Best Practices

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

Group 1: Laws Relating to Personal Financial Gain

■ Principle: Public servants should not benefit personally from their positions



B. Political Reform Act Conflicts

- General Rule

 No public official may make, participate in making, or attempt to use her official position to influence a governmental decision when she knows or has reason to know she has a disqualifying financial interest.
- includes financial interests of spouses and dependents
- · impact can be either positive or negative



If You Are Disqualified

- Don't discuss or influence
- Identify nature of conflict in writing to City Administration
- Leave room if issue arises at meeting
 - Exception: matter on consent calendar and no one requests
- Limited exception for personal financial interests



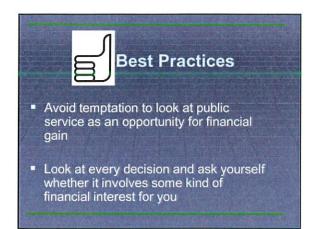
Penalties

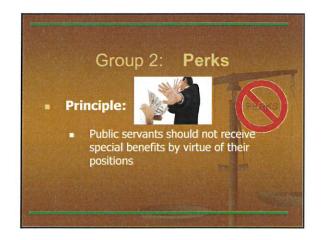
- Invalidate decision
- Misdemeanor
 - Fines (up to \$1,000 per violation); or 3 times the amount not reported; or the amount received in excess of the allowable amount (whichever is greater)
 Imprisonment (of not more than 6 months)
- Attorneys fees
- Embarrassment (personal/political)



C. Special Rule for Contracts (Government Code §1090)

- General Rule: City officers and employees prohibited from having financial interests in contracts made by them or by any body/board of which they are a member.
 - Applies to both direct and indirect interests
- Abstention generally not enough
 - If official's body needs to approve contract, city prohibited from executing contract altogether
 Otherwise just can't "participate" in the decision





	Six Common Areas
A.	Gift Limitations
	Honoraria Ban
	Misuse of Public Funds
	Gifts of Public Funds Prohibited
	Mass Mailings
	Prohibition On Free Or Discounted Travel
	



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

