

COMMISSIONER'S GUIDEBOOK

CITY OF ATWATER

MISSION STATEMENT

Mission statements are also known as purpose statements. They define the character and reason for existence of the organization, and result from a vision of what the organization should be like. They clarify who is served, why they are served and what services are offered.

MISSION STATEMENT OF THE CITY OF ATWATER

The Mission for the City of Atwater is to provide innovative, sustained high quality public services to the community through each employee using their maximum capabilities.

BACKGROUND

There are approximately 100,000 legitimate independent governmental agencies operating in the United States. The vast majority of these rely upon advisory bodies to help them analyze issues, develop policy or oversee a particular function.

The City of Atwater has seven (7) commissions and committees which meet regularly and advise the elected City Council members on the special areas for which they are appointed to review. Commissioners and committee members, having voluntarily offered to serve, are appointed by the City Council to serve four (4) year terms (less, if they are appointed to fill an unexpired vacancy). Commissioners serve at the pleasure of the Council.

The commissions in the City of Atwater are:

Planning	Parks and Recreation
Traffic	

The committees are:

Public Works	Audit and Finance
Public Safety	Redevelopment Advisory

Commissions and committees normally meet once each month.

ROLES AND RESPONSIBILITIES

THE ADVISORY ROLE

Local governments create advisory groups for many different reasons. They are established to:

- ✓ Fulfill local or state statutes.
- ✓ Implement a federal or state grant condition.
- ✓ Obtain advice on a specific subject.
- ✓ Build a community consensus for a project or program.
- ✓ Investigate an activity, problem or event.
- ✓ Buffer the elected body.
- ✓ Guide or regulate programs.

Ad hoc committees are formed for a specific purpose and dissolve after completing their mission. Blue ribbon committees are an example of this type. Others, such as planning commissions, become an integral part of the governmental structure.

If the organization is to function effectively, there must be clarity, understanding and acceptance of the roles assigned to the elected body, commissions and staff. If advisory board members stray from their original charge and get into areas that rightfully belong to the staff or elected officials, confusion, inaction or destructive conflict can result.

STAFF-COMMISSION RELATIONSHIPS

The interaction between the staff liaison(s) and the commission is continuous. Some of the issues to clarify are:

- ✓ What are the reporting relationships? Does the staff member report directly to the commission or to the City Manager? ***In the City of Atwater, staff is directly responsible to the City Manager.***
- ✓ How is direction given? Can the commission direct staff to undertake a study or must this be done through a request to the City Manager or City Council? ***In the City of Atwater staff is primarily directed by the City Manager, but is also expected to respond to direction from the City Council as well as the commissions or committees which they advise.***
- ✓ How are staff proposals and recommendations handled? ***A critical staff responsibility is to give the commission or committee the benefit of the staff's best professional judgement. The commission then has the latitude to accept or reject the proposal.***
- ✓ How are commission and committee recommendations presented to the City Council (elected body)? ***In the City of Atwater, when directed to do so by the commission or committee, the staff presents the commission's recommendations to the City Council in a formal report which is most often part of an item on the City Council***

meeting agenda for action by the Council.

- ✓ How are disputes between commissioners and staff handled? What if a commissioner has a complaint about staff work? ***Clarifying beforehand what is the proper procedure to follow when problems occur will help keep communication lines open and hopefully, forestall major eruptions. Complaints should be directed to the department head or to the City Manager.***

STAFF RESPONSIBILITIES

Here is a list of actions that administrators frequently mention as important staff responsibilities.

- ✓ Actively listening to commissioners.
- ✓ Being informed about the latest developments in their field.
- ✓ Providing background and expressing views to commissions/committees on important issues.
- ✓ Sticking to a professional position if warranted despite political pressure.
- ✓ Making a professional recommendation on virtually every issue.
- ✓ Keeping the commission/committee on track and focused.
- ✓ Interpreting elected official and administrator actions and policies.
- ✓ Exercising good support skills.
- ✓ Alerting commission/committee members of possible detrimental actions.
- ✓ Making sure the intent of the commission/committee is not lost after a decision.
- ✓ Developing a rapport with the chairperson and commission/committee members.
- ✓ Coaching and helping commission/committee members develop their skills.

Some of these actions can create friction with commission/committee members. In these cases, commissioners should remember that conflicts are a normal part of the process. Staff members should also be mindful that they adhere to their professional responsibility, as opposed to personal preference or political agenda.

ELECTED OFFICIAL RELATIONS

Commissioners and committee members are the eyes and ears of the community, serving voluntarily to provide additional information to the City Council as it makes important decisions. They serve at the pleasure of the City Council.

In this relationship, commissioners need to remember they were not appointed to relieve the elected officials of making political decisions. Commissioners should also avoid trying to predict actions or votes of elected officials.

Commission/committee members should also recognize that the elected body's area of concern is much broader and at times the commission recommendation will not be sustained. This should not be interpreted as a rebuke but an inevitable part of the process.

PUBLIC PARTICIPATION

People presenting an issue to the commission/committee may have never appeared before a public body. The experience can be intimidating. Anxiety may be displayed through aggressiveness or forgetfulness.

You can help people by:

- ✓ Calming and reassuring them.
- ✓ Explaining meeting procedures.
- ✓ Actively listening to what they are saying. Pay attention!
- ✓ Avoid using the third degree questioning technique.
- ✓ Avoid baiting and lecturing, but don't let this stop you from tactfully expressing the reasoning behind your vote if you disagree.

TEN THINGS THE AUDIENCE NOTICES

Commissions develop a personality that is quite observable by audience members. Some are characterized as being warm and friendly, while others are known as formal and distant. Both verbal and non-verbal actions help define this group personality. Things noticed include whether:

- ✓ The commission comes across as fair and impartial, and is respectful of the audience.
- ✓ The chairperson effectively manages the meeting.
- ✓ The commission is decisive.
- ✓ The individual commissioners have prepared for the meeting.
- ✓ The commission reaches out rather than intimidates the audience.
- ✓ The commission members really listen to audience concerns.
- ✓ Commissioners explain technical terms and jargon.
- ✓ The commission sticks to the agenda and doesn't drift.
- ✓ The commission keeps the audience informed of procedures.

MEDIA RELATIONS

Recognize that local government is a major source of news for the media and their perspective is one of suspicion. So:

- ✓ Consider all public statements in light of how they will look in the newspaper.
- ✓ Going off the record is risky business. Even if you are not quoted, someone else will be confronted with the information.
- ✓ If you still insist upon going "off the record" make sure to establish that fact before saying anything.
- ✓ Remember that you are viewed as a spokesperson for the agency.
- ✓ Consider responding to letters to the editor very carefully. What is the potential for escalating a controversy?
- ✓ Avoid saying "no comment". Indicate why you cannot comment at this time or that you will be able to comment after the meeting.

When dealing with a newspaper it is good to know the key players, their policy for altering quotes, and their criteria for selecting a story. Remember to respect their deadlines and provide information in a format they can use.

MEETING FRAMEWORK

To be effective, a commission/committee needs a strong support system. Here are the seven critical elements in this support system.

- ✓ An agenda that provides order and information.
- ✓ Staff reports that are clear, concise and informative.
- ✓ Minutes that are timely, clear and not too burdensome.
- ✓ Operating procedures that help rather than hinder the group process.
- ✓ Subcommittees that extend the expertise and capability of the commission.
- ✓ Meetings that begin on time, adjourn at a reasonable hour and result in action taken.
- ✓ A chairperson skilled in facilitating decision making with a diverse group.

THE AGENDA

The agenda is one of the most important tools of the commission. It is defined as a list, outline or plan of things to be considered. It focuses the discussion at a meeting by specifying topics and the order in which they will be taken up.

The agenda provides legitimacy and power to those who prepare, review and administer it. The power of the agenda includes:

- ✓ Whether an item will be considered.
- ✓ When the item will be heard.
- ✓ The context within which it will be heard.

STAFF ORAL PRESENTATIONS

Many agenda reports are presented orally by staff members. Often staff will summarize rather than read the report. The quality of these reports is enhanced when they are presented effectively and with confidence, professionally, accurately and unbiased.

The City of Atwater staff prepares agenda packets for most meetings of commissions and committees. These packets include staff reports for prior review by commissioners and committee members. On rare occasions it is necessary to provide additional information the day of the meeting. It is intended that information needed for agenda items which require a commission/committee action be provided in advance; that there be no surprises.

STAFF REPORTS

Well written staff reports are an indispensable part of the commission process. They are used to:

- ✓ Frame issues and provide focus.
- ✓ Provide chronologies.
- ✓ Identify alternatives.
- ✓ Present the professional position.
- ✓ Make a recommendation.

MINUTE ISSUES

The minutes represent an official record of the advisory group actions. They are used to record voted upon actions, communicate background to the elected officials, provide perspective on issues, and provide an historic record of the proceedings.

There are three (3) ways minutes are prepared.

- ✓ Action: Reflects the motion, the maker and the second.
- ✓ Summary: Reflects the above actions plus a summary of the discussion.
- ✓ Detailed: Reflects actions plus a record of the entire discussion.

PREPARING MOTIONS

Commission/committee meetings are usually conducted according to parliamentary procedure. The City of Atwater follows procedures established in Roberts Rules of Order. The chairperson directs the meeting, and his/her rulings must be followed unless they are overruled by the body.

When a member wishes to propose an idea for the commission to consider, the member makes a motion, which goes through the following steps:

- ✓ The member asks to be recognized by the chair.
- ✓ After being recognized, the member makes the motion. *“I move that we . . . “*
- ✓ Another member is needed to second the motion. If there is no second, the motion dies for lack of a second, and discussion is ended for that motion. After further discussion of the issue the motion can be rephrased. If that motion is seconded a vote can be taken.
- ✓ The chair states the motion and asks for discussion.
- ✓ When the chair feels there has been sufficient discussion to consider all aspects of the issue, the debate will be closed.
“Are you ready for the question?” or . . .
“Is there any further discussion?”
- ✓ If no one asks for permission to speak the chair calls for the question.
“All those in favor say aye. Those opposed say nay.”
- ✓ After the vote, the decision is announced.
“The motion carried.” or . . .
“The motion failed.”

REGULAR MEETINGS

Official business can only be transacted at commission meetings. This is where discussions are held and decisions are made. In order to legally make decisions, a quorum must be present at the meeting. A majority of the members of the commission/committee constitutes a quorum.

Important elements for effective meetings include:

- ✓ They start on time.
- ✓ They end at a reasonable hour.
- ✓ They move at a comfortable pace.
- ✓ The commission/committee sticks to the agenda.
- ✓ All members actively participate in the meeting.
- ✓ The public is encouraged to participate.
- ✓ The commission/committee does not attempt to engineer “how-to” details at the meeting.
- ✓ No one tends to dominate the discussion.
- ✓ Members do not engage in distracting side conversations during the meeting.
- ✓ Members actively listen to each other and members of the public who address the commission/committee.
- ✓ Members do their homework before the meeting.

PUBLIC HEARINGS

Commissions/committees use both formal and informal public hearings.

A Formal Public Hearing is one that must be conducted according to state law or local ordinance. An example is a Planning Commission hearing on a variance. The order of procedure is usually spelled out in the statute. Prior public notice, usually published in the local newspaper, is required.

An Informal Public Hearing is one which is not required by law but is called to permit the public a chance to comment on critical issues.

CHAIRPERSON RESPONSIBILITIES

The chair is the key to the effectiveness of the group process and can be likened to the team captain. The chair provides group direction and sets the tone for meetings.

The chair must balance being strong enough to move the meeting along and democratic enough to involve all members in the meeting process. To be effective the chair needs the support of the members. Trust is built by even handedness and fairness to all the participants. It also means that the chair does not use powers of the chair unfairly to win a point or argument.

PREPARING FOR MEETINGS

There are various approaches for preparing for meetings. Here are some suggestions.

- Step 1 The three most important things are to prepare, prepare, and prepare. This involves budgeting enough time to thoroughly review the entire agenda packet.
- Step 2 When the packet is delivered, examine the agenda to get an idea of the number of items, controversial issues, difficult procedural items, and issues you know little about.
- Step 3 Thumb through the agenda packet and focus on the unusual items. There is no need to study at this point.
- Step 4 Start a list of questions for the staff to clarify issues, get their perspectives on volatile issues and get historical background on issues.
- Step 5 Begin your study of the individual agenda items. While some people prefer to review the agenda in the listed order, another approach is to study the most important items first.
- Step 6 Visit any sites or facilities that will help you deal with the issue.
- Step 7 After completing your review of the agenda and your question list, meet with the staff liaison to go over them.
- Step 8 Go through a practice session on the agenda, handling each item as you will at the meeting.

TEAMWORK

TEAMS

In order to get anything accomplished, advisory board members must learn to cooperate. While seemingly simple, this is one the most challenging aspects of serving on an advisory board.

The City Council usually selects people with diverse backgrounds and experiences. Moreover, the appointees usually have different values and agendas. As a result, there is built-in conflict even before the group ever comes together.

To be effective, an individual must learn to cooperate with at least a majority of the members of the board. Otherwise, she or he cannot muster the votes to do anything. At a minimum, this means learning to compromise, give-and-take and sort out common goals.

The highest level of cooperation is represented by a team. People learn to appreciate differences. They discover that the power of teamwork is infinitely superior to individual contributions.

TWELVE COMMISSION PITFALLS

1. Inertia: Failing to accomplish tasks.
2. Politically Reactive: Submitting to undue elected official pressure.
3. Factionalism: Permitting cliques to flourish.

4. Staff Clashes: Failing to work with and/or utilize staff.
5. Member Dominance: Abrogating control to one person or subgroup.
6. Destructive Conflict: Failing to manage conflict.
7. Unequal Participation: Failing to involve all members and tap group potential.
8. Special Interest Dominance: Falling under the sway of powerful groups.
9. Staff Dominance: Rubber stamping staff proposals.
10. Loss of Interest: Becoming bored or disinterested.
11. Aloofness: Becoming alienated with or disrespectful of the public.
12. Groupthink: Permitting group consensus-seeking to overrule individual judgement.

BRAINSTORMING

Brainstorming is a powerful technique used to tap a group's collective creative energy. When used properly it can result in surprising new ideas and different solutions to old problems.

Brainstorming, to be most effective, requires a facilitator who focuses on the process rather than the substance of the issue. The facilitator helps participants express and summarize thoughts but does not judge them.

The atmosphere is one of free-flow thinking consisting of suggesting, listening and building on ideas.

It requires:

- ✓ Everyone participate.
- ✓ Ideas must be recorded and displayed on a blackboard or flip chart for everyone to see. Visual display leads to new ideas.
- ✓ The group generates as many ideas as possible. The quality of the idea is not important at this time.
- ✓ No criticism or judgement should be allowed while ideas are being generated. Brainstorming does not work when this rule is forgotten.
- ✓ This phase should be continued until all ideas are exhausted or when a predetermined time limit has been reached.
- ✓ The group should then evaluate and express judgement about the items together.
- ✓ Priorities can then be established along with a discussion of an action plan.

LISTENING SKILLS

Effective commissioners/committee members have refined their listening skills. Listening and hearing are not the same. Hearing is a passive condition and takes very little energy. Listening is an active condition and requires energy and personal discipline. When people listen, their heart speeds up blood circulates faster and temperature goes up.

Good listeners signal attention both verbally and non-verbally. Verbal signals include providing feedback, asking for clarification and summarizing. Non-verbal signals include head nodding, eye contact, body movements and positions. The classic non-verbal negative signal is folded arms across the chest.

In public meetings, commissioners/committee members are on stage and the audience is forming impressions more from body language than verbal statements. Think about what kinds of messages are sent by side conversations, reading and paper shuffling. When verbal and non-verbal messages contrast, the observer tends to favor the non-verbal message. **The greatest influence on trust and believability is what is seen, not what is heard.**

MAKING TOUGH DECISIONS

When confronted with a tough problem, here are some questions to consider to help you think through a pending decision. Not all will apply in every situation.

- ✓ Are ethical issues involved?
- ✓ Is it permitted or prohibited by law?
- ✓ Is this a matter of public safety?
- ✓ What is the probability of a successful lawsuit?
- ✓ Can I live with my proposed decision?
- ✓ Is the fight for or against the issue really worth it?
- ✓ What is the impact on the budget?
- ✓ Who will be hurt by the proposed action? Who will benefit?
- ✓ Am I reacting politically?
- ✓ How will it look in the newspapers?
- ✓ Do I have a conflict of interest in this matter?
- ✓ Do others who are involved have a conflict of interest?
- ✓ How will the community view the decision?
- ✓ Do I have enough information to make a decision?
- ✓ Is the proposed action consistent with my agency's vision and philosophy?
- ✓ Are we dealing with symptoms and not the actual problem?
- ✓ What past practices related to this issue?
- ✓ Will it really matter five years from now?
- ✓ If the decision is made, and it turns out wrong, can it be reversed?
- ✓ If I am hesitating - why?

CODE OF ETHICS

FOR MEMBERS OF ELECTED AND APPOINTED OFFICE

PREAMBLE

The citizens and businesses of a local community are entitled to have fair, ethical and accountable local government which has earned the public's full confidence for integrity. In keeping with the effective functioning of democratic government, it therefore requires that:

- ✓ Public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government;
- ✓ Public officials be independent, impartial and fair in their judgement and actions;

- ✓ Public office be for the public good, not for personal gain; and,
- ✓ Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, it is recommended that the Code of Ethics for Members of Elected and Appointed Office be individually considered and embraced by the elected and appointed officials of the community to assure public confidence in the integrity of local government and its effective and fair operation.

ETHICAL VALUES IN THE DISCHARGE OF PUBLIC DUTIES

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of their community and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before them.

2. Comply with the Law

Members shall comply with the laws of the nation, the State of California and their City or County in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; laws pertaining to conflict of interest, election campaigns, financial disclosures, employer responsibilities and the open processes of government and City ordinances, policies procedures and rules and regulations.

3. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of elected or appointed office, staff or public.

4. Respect for Process

Members shall perform their duties in accordance with the processes and rules of order established for their elected or appointed office governing the deliberation of public policy issues, meaningful involvement of the public and implementation of policy decisions of those in elected office by staff.

5. Conduct of Public Meetings

Members shall prepare themselves for public issues; listen courteously and attentively to all

public discussions before the body and focus on the business at hand. They shall refrain from interrupting other speakers, making personal comments not germane to the business of the body or otherwise interfering with the orderly conduct of meetings.

6. **Decisions Based on Merit**

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. **Communication**

Members shall publicly share substantive information that is relevant to a matter under consideration by the elected or appointed body, which they may have received from sources outside of the public decision-making process.

8. **Conflict of Interest**

In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material interest or where they have an organizational responsibility or personal relationship which may give the appearance of a conflict of interest.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts and they shall abstain from participating in deliberations and decision-making where conflicts may exist.

9. **Gifts and Favors**

Members shall not take any special advantage of services or opportunities for personal gain by virtue of their public office that are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgement or action or give the appearance of being compromised.

10. **Confidential Information**

Members shall respect the confidentiality of information concerning the property, personal matters or affairs of the City. They shall neither disclose confidential information without proper legal authorization nor use such information to advance their personal, financial or other private interests.

11. **Use of Public Resources**

Members shall not use public resources not available to the public in general, such as City staff time, equipment, supplies or facilities for private gain or personal purposes.

12. **Representation of Private Interests**

In keeping with their roles as stewards of the public interest, members of elected or appointed office shall not appear on behalf of private interests of third parties before their body or proceeding of the City, nor shall members appear before their own bodies on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

13. **Advocacy**

Members shall represent the official policies or positions of their elected or appointed bodies to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state that they do not represent their body or governmental entity nor will they allow the inference that they do.

14. **Policy Role of Members**

Members shall respect and adhere to the designated structure of their local government as outlined in State and local laws and local ordinances. Typically, in such structure, the elected governing body determines the policies for the community with the advice, information and analysis provided by the public, appointed officials and staff of the local governing entity.

Except as provided by law, members therefore shall not interfere with the administrative functions of the local government or the professional duties of staff of the governing agency, nor shall they impair the ability of said staff to implement local government policy decisions.

15. **Independence of Appointed Officials**

Because of the value of the independent advise which may be received from appointed officials who may serve on local boards and commissions in the public decision-making process, elected officials shall refrain from using their position to unduly influence the deliberations or outcomes of board and commission proceedings.

16. **Positive Work Place Environment**

Members shall support the maintenance of a positive and constructive work place environment for local government agency employees and for citizens and businesses dealing with the local government agency. Members shall recognize their special role in dealings with local agency staff and employees to in no way create the perception of inappropriate direction to said staff and employees.

17. **Implementation**

As an expression of the standards of conduct for members expected by virtue of holding their office or position, the Code of Ethics for Members of Elected and Appointed Office is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards should always be included as a part of a regular orientation for candidates for elected and appointed office as well as newly elected and appointed officials. Members entering office should sign a statement affirming they read and understood the Code of Ethics for Members of Elected and Appointed Office. In addition, such Code of Ethics should be considered for formal adoption by the local governing Board or Council and, once adopted, reviewed and updated as necessary.

18. **Compliance and Enforcement**

The Code of Ethics for Members of Elected and Appointed Office expresses a standard of ethical conduct expected for persons who occupy such office and/or position. Members themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of government.

The elected and appointed leaders of local government bodies have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics for Members of Elected and Appointed Office are brought to their attention.

The local government body may impose sanctions on members whose conduct does not comply with the local governing body's ethical standards, such as a reprimand, formal censure, loss of seniority or committee assignment, or budget restriction. Under local ordinance, governing elected officials may also remove appointed officials from office.

A violation of the Code of Ethics for Members of Elected and Appointed Office shall not be considered a basis for challenging the validity of any decision of a local governing body, board or commission.

RULES OF OFFICIAL CONDUCT

LEGAL LIABILITY OF PUBLIC OFFICIALS

The law imposes a wide variety of mandatory duties on city officials, whether they are city council members, commission or committee members, or staff. Failure to comply with legal requirements can cause the city to be liable for damages and for attorney fees. Generally speaking, however, individual city officials are not personally liable.

Where state law imposes public liability for actions resulting in damage, the city must provide its officials with a defense if they are sued and pay any judgment that might be entered against them.

There are some exceptions to this general rule:

- ✓ When one acts out of fraud, corruption or malice;
- ✓ When one violates the conflict of interest rules; or
- ✓ When one is not acting within the scope of official authority.

In addition to state law, a possible source of public liability exists for violation of constitutional rights under 42 U.S.C. section 1983, a federal civil rights statute. There are two possible defenses available to an individual under this statute:

1. Absolute immunity where one is taking a legislative action, *Kuzinich v. Santa Clara*, 689 F.2d 1345 (9th Cir. 1982); and
2. Qualified immunity for good faith actions; that is, those taken on the basis of a sincere and reasonable belief the conduct is constitutional.

Although an individual city official may be immune from liability in section 1983 actions, the city is not.

CONFLICTS OF INTEREST

The goal of conflict of interest laws is to require public officials to make decisions without being influenced by personal financial interests. Toward this goal, the laws require disclosure of certain private financial interests and disqualification from decision-making under certain circumstances.

Conflict of interest laws balance two competing interests. On the one hand, decisions must be made to benefit the public, not private financial interests. At the same time, conflict of interest laws are not designed to insulate officials from difficult decisions.

Making decisions is, after all, one of the primary duties of a public official. If officials fail to participate when they do not have a genuine conflict of interest, they are not carrying out the responsibilities for which they were elected or appointed.

THE POLITICAL REFORM ACT

A number of laws define conflict of interest standards. The Political Reform Act (Gov't. Code Section 81000 and following) is the most comprehensive. It says:

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Gov't. Code section 87100.

The Fair Political Practices Commission. The Fair Political Practices Commission (FPPC) is charged with enforcing the Political Reform Act. The FPPC provides advice and opinions to officials concerning potential conflicts of interest arising under the Political Reform Act. The FPPC's telephone number is (916) 322-5660. Be aware the FPPC staff accepts telephone inquiries only at specified times and written advice can take weeks or several months.

Disclosure. The Political Reform Act requires public officials to file periodic statements disclosing their financial interests. Disclosure is made on forms called “Statements of Economic Interests.” The City Clerk ordinarily administers these requirements and should be consulted when preparing

the forms. Filed Statements of Economic Interests are available for public inspection. The statements must include sources of income, including gifts and loans, real estate holdings and investments in business entities.

Disqualification. The Political Reform Act also requires public officials to disqualify themselves on a particular issue if they have a conflict of interest. A public official or employee has a conflict of interest when all of the following occur:

- ✓ The official makes, participates in or uses his official position to influence a governmental decision;
- ✓ It is foreseeable the decision will affect a financial interest of the official;
- ✓ The effect of the decision on the official's financial interest will be material; and
- ✓ The effect of the decision on the official's financial interest will be distinguishable from its effect on the public generally.

All of these factors are subject to detailed FPPC regulations, opinions and case law that cannot be easily summarized.

Financial interests that may require disqualification include:

- ✓ A business entity in which the official has an investment of \$1,000 or more;
- ✓ Real property in which the official has an interest of \$1,000 or more;
- ✓ A person or business entity from which the official has received, in the past 12 months, the sum of \$250 or more, or the official's spouse has received the sum of \$500 or more in the past 12 months.
- ✓ A business entity in which the official is a director, officer, partner or trustee, employee or holds a position of management; and
- ✓ A donor, or an agent or intermediary for a donor of gifts worth \$300 or more that were received by the official within 12 months prior to the decision.

These provisions apply to financial interests owned by the spouse or dependent children of public officials, or by business entities or trusts in which the official, official's spouse or dependent children own a 10 percent or greater interest. Gov't. Code section 87103.

When in Doubt. The Political Reform Act is quite complex. In practical terms, when officials have an interest in a business, a piece of real property, a source of income, or have recently received a contribution of \$250 or more related to a matter coming before the commission or committee, they should consult with the city attorney or with the FPPC before acting, so any potential conflicts can be avoided. Moreover, such consultation should occur as early as possible (in other words, not five minutes before the vote on the matter in question).

Effect of Disqualification. When an official has a conflict, the official must not only disqualify himself or herself from voting, but must also refrain from participating in any debate on the matter. *The disqualification must be made on the record.* Commissioners and committee members participate in the making of governmental decisions when they make recommendations, prepare

reports or letters, and otherwise give advice to the city council or other decision-makers.

Public officials illegally use their position to influence a governmental decision if they appear before their own agency, or contact any member or employee of the agency. Thus, a member of a planning commission who also is an architect or attorney, is prohibited from representing a client before the commission.

A commission member may prepare architectural or engineering drawings, but only if the member does not have direct oral or written contact with the agency, except staff contact necessary to review the drawings. The FPPC has adopted regulations that allow commission members who are sole practitioners to present architectural drawings in certain limited circumstances. 2 Cal. Code of Regulations section 18700.1(b)(5).

Gift Limits. Commissioners and committee members should also be aware the Political Reform Act creates a strict gift limit. With certain limited exceptions, officials may not accept gifts, including gifts of travel, from a single source in a given year when the value of such gifts exceeds \$300. The limit is adjusted with the Consumer Price Index. Inheritances and gifts from family members are not subject to the limit, provided that the family member is not acting as an intermediary for another person.

Campaign Contributions Issues. One section of the Political Reform Act, Gov't. Code section 84308, is of particular importance to commissioners or committee members who are running for office or active in political campaigns. It prohibits elected or appointed officers, alternates or candidates who serve on quasi-judicial boards or commissions from receiving, soliciting or directing campaign contributions of \$250 or more coming from applicants or others with a financial interest in a pending matter.

The prohibition is in effect while the application is pending and for three months after the decision is rendered. The officers of such agencies must disclose any such contributions received within 12 months preceding the date of the application. City councils, however, while acting as a body, are exempt from section 84308.

If members of a commission have been involved in any way in soliciting or receiving campaign contributions, or have run for office and received contributions from an applicant, they should check with the FPPC or city attorney.

Penalties. The Political Reform Act provides both civil and criminal penalties, with the district attorney responsible for enforcing local violations. The FPPC also enforces provisions of the act through administrative proceedings and recently has expanded its enforcement staff to substantially increase its activities at the local level. In addition, any person residing in the jurisdiction may file a citizen's action.

Persons who violate the conflict of interest laws may be liable for fines of up to three times the value of an economic benefit realized as a result of the violation. In addition, any person convicted of a criminal violation is prohibited from running for office for four years following the date of conviction.

The court also has authority to set aside an official action in which a conflict of interest occurred.

ILLEGAL CONTRACTS

Problems also may arise when a local government contracts for goods, services, public works projects or other activities involving expenditures of public funds. Gov't. Code section 1090 prohibits city officers and employees from holding financial interest in any contract made by them in their official capacity, or made by any body or board of which they are member. This law is intended to ensure that a public officer is guided solely by the public interest when dealing with contracts in an official capacity.

Section 1090 prohibits city officers and employees from being "purchasers at any sale or vendors at any purchase made by them in their official capacity." In the case of city contracts, it is not enough to disqualify themselves from the decision-making process. The law forbids the local government body from even entering into a contract with a firm in which a member of that body has a financial interest.

A contract in violation of section 1090 is void. Any city officer who violates this section may be subject to civil sanctions and criminal prosecution.

INCOMPATIBLE ACTIVITIES

Local agencies, officers and employees may not engage in any employment activity or enterprise for compensation that is inconsistent or incompatible with their official duties. Gov't. Code section 1126. Officers and employees are prohibited from performing work for compensation if the decision to contract for such work is subject to approval by any other officer, employee, board or commission of the public entity, unless otherwise approved in the manner prescribed by the statute.

The appointing power or agency may determine that outside activities conflict with appointed duties and may adopt rules regarding the provision of notice to employees for engaging in prohibited activities, disciplinary action and appeals regarding determinations of conflict. *See Mazzola v. City and County of San Francisco*, 112 Cal. App. 3d 141 (1980).

There is also a common law prohibition against incompatible activities which prevent a public official from holding another official position incompatible with the first office. This issue arises when a public official holds two public offices with overlapping functions or responsibilities.

LOCAL REGULATIONS

Some city charters and ordinances also contain conflict of interest provisions. Sometimes these provisions are more comprehensive or more rigid than state law, and they should be thoroughly understood.

To avoid the pitfalls of conflict of interest law, officials should be mindful of circumstances in which private interests are affected by public decisions. Whenever an official suspects he or she may have a conflict of interest, the official should consult with the city attorney. It is important to remember

public officials can be removed from office for misconduct. Gov't. Code sections 3060, 3074.

(Additional reading on Conflicts of Interest, refer to Conflicts of Interest, 1998. Published by and available from the Office of the Attorney General; call (916) 322-3360.

THE BROWN ACT

Meetings and deliberations of local legislative bodies, including commissions and committees, must be open and public and are subject to the Ralph M. Brown Act, Gov't. Code section 54950 and following. This open meeting law is commonly referred to as the Brown Act.

The Brown Act begins with a clear statement of intent:

“In enacting this chapter, the Legislature finds and declares that the 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.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

The courts have consistently interpreted the Brown Act broadly to ensure open deliberation and open decision making so the public can be fully informed and retain such control.

Several provisions of the Brown Act are particularly important for public servants to understand.

MEETINGS

The following are defined as “meetings” in Gov't. Code section 54952.2 and are, therefore, subject to the Brown Act requirements:

- ✓ **Any congregation of a majority of members** of the commission at the same time and place to hear, discuss or deliberate upon any matter within the commission’s jurisdiction.
- ✓ **Use of direct communication, personnel intermediaries or technological devices** (such as telephone, e-mail and FAX machines) **by a majority** of the commissioners to develop a collective concurrence as to action to be taken (this is also know as “seriatim” or rotating meetings). “Action taken” is defined broadly to mean a collective decision, commitment or promise, or an actual vote on a motion when sitting as a body. Gov't. Code section 54952.6.

The following are NOT considered to be meetings:

- ✓ **Individual contacts or conversations** of a commissioner with any other person;
- ✓ Attendance of a majority of the commission at a **conference or similar gathering** open to the public involving a discussion of public issues or issues of interest to public agencies of the type represented by the commission – provided that a majority of the commissioners do not discuss among themselves, other than as part of the scheduled program, specific business within the commission’s jurisdiction. A meeting is “open to the public” even if the conference organizers charge a fee for attendance;
- ✓ Attendance of a majority of the members of the commission at an open and publicized **meeting organized to address a topic of local community concern** by a person or organization other than the local agency, provided a majority of the commissioners do not discuss among themselves, other than as part of the scheduled meeting, specific business within the commission’s jurisdiction; and
- ✓ Attendance of a majority of the members of the commission at a **purely social or ceremonial event**, provided a majority of the commissioners do not discuss among themselves specific business within the commission’s jurisdiction.

What constitutes a meeting sometimes may present a difficult question. Of course, all special and regular meetings of a legislative body, including commissions and committees, are meetings and must be noticed in advance and open to the public. Sometimes questions arise concerning informal meetings of a majority of the members of a board. However, **a meeting is any gathering of a quorum of a legislative body where business is transacted or discussed**, no matter how informal and whether or not any action is contemplated.

In addition, a series of meetings or conversations, each of which technically involves less than a quorum of the agency’s membership, but which taken as a whole involves a majority of the agency’s members, is considered to be a meeting. For example, a series of telephone conversations, each between a member of the governing body of the local agency and its attorney, for the commonly agreed purpose of obtaining a collective commitment by the majority of that body concerning public business, constitutes a meeting within the purview of the Brown Act. *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton*, 171 Cal.App.3d 95 (1985)

MEETING NOTICE AND AGENDA REQUIREMENTS

The time for regular meetings is established by the commission or committee, with approval by the City Council. Subject to specific limited exceptions, meetings must be held within the city boundaries. Gov’t. Code section 54954.

Any person may request a mailed copy of the agenda and agenda packet for every meeting; the city may establish a fee for the costs of providing such notice. Gov’t. Code section 54954.1.

The agenda for each regular meeting must be publicly posted at least 72 hours prior to the meeting. The agenda must specify the time and location of the meeting and shall be posted in a location that is freely accessible to the public. The agenda for all regular and special meetings must contain a

brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

The commission or committee may only discuss and act on items included in the posted agenda, except that commissioners or committee members or staff may briefly respond to statements made or questions posed by persons exercising their public comment rights. Items may be added to the agenda only if they involve an emergency or if the need to take action arose after the agenda was posted and action is needed before the body meets again. Gov't. Code section 54954.2.

A regular meeting may be adjourned to a time and place specified in the order of adjournment. The resulting continued meeting is considered a regular meeting for all purposes. Gov't. Code section 54955.

SPECIAL AND EMERGENCY MEETINGS

The chairperson or a majority of the commissioners or committee members may call a special meeting, but an agenda must be posted 24 hours in advance and 24-hour written notice must be given to each member of the body and each newspaper, radio or television station requesting notice of meetings. Any member of the body may waive the written notice by filing a written waiver of notice with the clerk or merely by attending the special meeting. Gov't. Code section 54956.

The commission may meet in certain defined emergencies without complying with the 24-hour notice requirement. Gov't. Code section 54956.5.

CLOSED SESSIONS

A legislative body may meet in closed or nonpublic session under limited circumstances, but it is important to note that the courts have consistently construed this authorization for closed sessions narrowly.

Most of the exceptions to the open meeting requirement do not apply to a commissions. However, commissions may meet in closed session to confer with or receive advice from legal counsel regarding pending or reasonably anticipated litigation. Prior to holding a closed session, commissions must disclose in an open meeting the reasons for holding the closed session, including the title of the case if an action has been filed. Gov't. Code section 54956.9.

Closed session agenda descriptions should be drafted in accordance with the guidelines contained in Gov't. Code section 54954.5. Certain actions taken in closed session must be reported to the public in open session at the meeting during which the closed session is held. Gov't. Code section 54957.1.

SECRET BALLOTS

Secret ballots may not be used for preliminary or final action. Gov't. Code section 54953.

AUDIO- AND VIDEOTAPING MEETINGS

Anyone attending an open commission or committee meeting may record it with an audio- or videotape recorder or still or motion picture camera, unless the commission makes a reasonable finding that the noise, illumination or obstruction of view will persistently disrupt the meeting. If the agency makes a tape or film record of an open session for any purpose, the tape or film becomes a public record which may not be destroyed for 30 days and must be available to the public for viewing or listening on an agency recorder without a charge. Gov't. Code section 54953.5

THE PUBLIC'S RIGHT TO SPEAK

Every regular meeting agenda must provide an opportunity for the public to directly address the commission on items of public interest within the commission's jurisdiction. Generally speaking, no action may be taken unless the item is on the agenda.

All regular and special meetings must include an opportunity for members of the public to directly address the commission or committee concerning any item that appears on the agenda for the meeting before or during consideration of that item. Commissions may adopt reasonable regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. However, it may not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the commission. Gov't. Code section 54953.3.

SIGN-IN REQUIREMENTS

Members of the public cannot be required to register their name or fulfill any other condition for attendance at a meeting. If an attendance list is used, it shall clearly state that registration is voluntary. Gov't. Code section 54953.3.

DISRUPTIVE BEHAVIOR

In the event a meeting is willfully interrupted by a group and cannot be continued, and order cannot be restored by removal of the individuals who are willfully interrupting the meeting, the room may be cleared and the session may continue. Members of the press shall be allowed to remain and the legislative body may consider only those matters on the agenda. Gov't. Code section 54957.9.

DISTRIBUTION OF WRITTEN MATERIALS TO COMMISSIONERS

All written materials, including agendas, distributed to all or a majority of commission members by any person in connection with a matter subject to discussion or consideration at a public meeting of the commission are considered to be public records under the California Public Records Act and must be made available to the public "without delay." The law does not, however, require public access to documents that are exempt from public disclosure by various provisions of the California Public Records Act.

If a disclosable public record document is distributed to the commission during a public session of

the commission meeting, it must be made available for public inspection at that meeting, if it was prepared by the agency or a commission member. If it was prepared by some other person, it must be made available for public inspection after the meeting. Gov't. Code section 54957.5

EFFECT OF BROWN ACT VIOLATION

Any member of a commission who attends a meeting of that body where action is taken in violation of any provision of the Brown Act, with intent to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act, is guilty of a misdemeanor. Gov't. Code section 59459.

In addition, the district attorney or any interested person may sue to obtain a judgment that certain actions are null and void or to seek to stop continued violations of the Act. Gov't. Code sections 54960, 54960.1.

FOR FURTHER READING ON THE BROWN ACT

The Brown Act: Open Meetings for Local Legislative Bodies, 1994, published by and available from the California Attorney General's Office. Although out of print, the pamphlet may be printed from the Attorney General's Internet website at <http://www.caag.state.ca.us/>. The 1997 and 1998 supplements are not posted on the website, but copies may be ordered by calling (916) 322-3360.

CALIFORNIA PUBLIC RECORDS ACT

The California Public Records Act, Gov't. Code section 6250 and following, was enacted in 1968. It states that access to public records is a "fundamental and necessary" right of every person.

The central presumption is that public records are available for inspection or copying during the normal working hours of the agency unless there is a specific statute that exempts the records from disclosure. Members of the public are entitled to inspect public records free of charge and may obtain a copy of records following the payment of fees representing the "direct cost of duplication or a statutory fee."

The definition of public record is very broad and generally includes any writing that contains information concerning the people's business. The term "writing" includes, among other things, handwriting, typewriting, printing, photographing, mapping or the means by which any form of communication is represented.

Upon request, an exact copy of a public record shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

Public agencies governed by the act include every state and local agency, with the exception of the courts and the state Legislature. Other statutes govern public access to records of the courts and the state Legislature.

Some exceptions from disclosure requirements are set forth in specific provisions of the act. Additional exemptions are incorporated by reference from other statutes. There is a balancing test by which an agency may withhold records from disclosure if it can establish that the public interest served by not making a record public clearly outweighs the public interest served by disclosure.

If a record contains exempt information, the agency has the duty to segregate the exempt material from the record and disclose the remainder of the record. If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney fees.