

Ethics Training for Public Meetings

**Presented to the San Francisco County Transportation Authority
Community Advisory Committee**

July 26, 2023

Presented by Amber Maltbie

Goals for this Training

- Spot issues/Know when to ask questions
- Avoid actual or the appearance of conflicts
- Process for voting or not voting if a conflict exists

Why Are You Here?

- Not a “public official” under the Political Reform Act (no AB 1234 required and no Form 700 disclosure), but;
- Steward of public trust (i.e. subject to ethics principles and legal ethics in public contracts) *and*
- Could become a public official.

Trap for the Unwary – CAC Members May Become Public Officials

“Public official” – Salaried or unsalaried members of boards with “decision-making authority.”

- Makes final government decisions
- May compel a government decision
- Makes substantive recommendations that, over time, are regularly approved without significant amendment or modification by another public official or government agency

Fair Political Practices Commission Guidance



“You are cautioned that if, over time, recommendations by the advisory committee are essentially rubberstamped by the government agency (i.e., regularly approved without significant amendment or modification), a new analysis should be constructed to determine whether the members have become public officials.”

Source: FPPC Kenny Advice Letter (1993) A-93-087.



OVERVIEW OF ETHICS PRINCIPLES

Ethics vs. The Law



- Ethics – What we ought to do
- The Law – What we must do
- The law is a floor for behavior

Big Picture – Responsibility to the Public

Responsibility – Fairness – Trustworthiness - Respect

- Government decisions must be made based on merits, not personal biases or loyalties
- Decision-making criteria should focus only on what's in the public's best interest
- The public needs to trust that its interests are indeed being placed first and foremost in governmental decision-making
- Public officials are expected to be careful stewards of taxpayer resources
- Level playing field – no taking political or personal advantage of public resources

What is a Conflict of Interest?



Personal interests vs. public interests

- Financial
- Personal
- Prejudicial

What is a Conflict of Interest (Con't)

If a governmental decision may have a financial impact or effect on any of the public official's financial interests, the official is disqualified from participating in the governmental decision if the following two conditions are met:

- The financial impact or effect is foreseeable, and
- The financial impact or effect is significant enough to be considered material.
- ***Caveat***: Sometimes recusal is appropriate to avoid the appearance of a conflict of interest.

Some Conflicts are Obvious...

Former L.A. City Councilman Mitch Englander Ordered to Serve 14 Months in Federal Prison for Scheming to Obstruct Corruption Probe

Englander, while serving as a city councilmember and a reserve officer with the Los Angeles Police Department, “illicitly cashed in on his status as a purported public servant in casino bathrooms and through VIP bottle service, luxury dinners, and behind hotel room doors...”

At a golf tournament in Palm Springs, Englander accepted an envelope containing \$5,000 in cash from Businessperson A. Shortly after the trips, Englander arranged for Businessperson A to pitch his business to a friend of Englander’s who was a developer.

US DOJ Press Release, January 25, 2021

Financial Interests

- **Business Entity.** A business entity in which the official has an investment of \$2,000 or more in which they are a director, officer, partner, trustee, employee, or manager.
 - Example: Comcast stock of \$2k or more
 - Example: Owner of an LLC (even if no income derived)
- **Real Property.** Real property in which the official has an interest of \$2,000 or more including leaseholds. (However, month-to-month leases are not considered real property interests.)
 - Only includes property in the District and within 2 miles of District boundary.
- **Income.** An individual or an entity from whom the official has received income or promised income aggregating to \$500 or more in the previous 12 months, including the official's community property interest in the income of their spouse or registered domestic partner.

Financial Interests

- **Gifts.** An individual or an entity from whom the official has received gifts aggregating to \$590 or more in the previous 12 months.
- **Personal Finances.** The official's personal finances including their expenses, income, assets, or liabilities, as well as those of their immediate family.

Materiality Standards

- Governmental decision's effect on a financial interest must be material
- Materiality standards differ for each type of financial interest
 - **Example:** Real Property
 - Within 500 feet = material
 - More than 500 feet but less than 1000 feet **and** the decision would change the parcel's: development potential; income producing potential; highest and best use; character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or market value = material
 - More than 1,000 feet = not material (rebuttable presumption overcome by clear and convincing evidence).

Scenario #1

Committee member Jones routinely works as a consultant to transportation consulting firms for specific projects.

- If Jones' recommended firm is selected by the SFCTA, Jones knows it is likely that they will be hired to assist with the project.
- One firm has offered to pay Jones a "finder's fee" if the SFCTA selects it.

Now that you've identified a potential conflict....

Recommended Procedure:

- Notify Elijah Saunders at least 24 hours prior to relevant vote
- After the item is read, state that you will be recusing yourself from the discussion and vote due to conflict of interest
- Do not participate in the agenda item discussion
- If you will recuse yourself from participating in the vote, state “abstain” when the vote is called

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Gifts - Best Practices

- Not expressly prohibited
- Avoid gifts from persons or entities seeking business/contracts with SFCTA
- Pay own cost for lavish meals (i.e. \$100 or more) with persons or entities seeking business/contracts with SFCTA
- Gifts unrelated to position on SFCTA may be ok (long term personal friendship, private business relationship, wedding gifts)

Brown Act Overview

- Basic rule: Meetings of the public body and of any of its standing subcommittees are subject to the Brown Act
 - “Meeting” includes a quorum of the legislative body – not just “filled” seats
- A “meeting” covers more territory than you might think
 - o Regular public meetings
 - o An informal gathering of a majority of members
 - o Conference call of a majority of members to discuss public business
 - o Email exchanges between a majority on a matter of public business
- What is NOT a meeting: individual meetings between two members; attending an educational conference on general issues; purely social or ceremonial gatherings (do not discuss public business)
 - o Ad hoc committees of less than a majority: not subject to the Brown Act

Trap for the unwary! “Serial meetings”



Open Meeting Requirements

- Can only discuss items on the agenda at meetings
- Can only take action if the item is phrased as an action item
 - Exception: emergency as determined by body (subject to strict interpretation, not common)
- Have to notice meetings
 - Regular meetings: 72 hour notice
 - Special meetings: 24 hour notice
- Meetings must be open to the public, and the public must be given opportunity to speak
- Meeting must generally be held within jurisdiction of agency

Brown Act and Social Media

- AB 992 (2020) provides direction on the social media interactions of public officials that do and do not constitute an impermissible meeting.
- Members may post on an “internet-based social media platform” provided a majority do not “discuss among themselves” business of legislative body.
 - E.g., Answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body.
- Members may not respond directly to postings by another member.
 - Includes digital icons that express reactions

Sanctions for Non-compliance

- Criminal
- Civil
 - Injunction by public or District Attorney against future violations
 - Invalidation of action taken in violation of Brown Act
 - Attorney's fees to prevailing plaintiff