



INSTITUTE *for* LOCAL  
SELF GOVERNMENT

## Establishing A Public Service Ethic<sup>\*</sup>

As a local elected official, you wield considerable power over a number of important community matters. With this power comes the expectation that you will hold yourself to the highest ethical standards. This means exercising your power in the *public's* interests, as opposed to personal self-interest or other narrow, private interests. The chart on page 4 highlights some of the ethical values associated with public service and what they mean in terms of your duties as a local elected official.

### Sources of Guidance

There are a number of sources of guidance on your ethical obligations as a local elected official. One is the law. California has a complex array of laws relating to ethics that are summarized in this section. The law, however, merely sets a minimum standard for ethical conduct. Just because an action is *legal* doesn't mean that it is *ethical*. For example, it may be legal for you to vote on your best friend's project application. However, if everyone in the community knows how close the two of you are, will you be able to put aside your personal loyalties and assess the merits of the project objectively? Will the community believe that you have done so?

Another source of guidance may be your agency's own code of ethics, if it has one. Many local agencies have adopted codes of ethics to affirm their commitment to ethical behavior and decision-making in public service.<sup>1</sup>

### Types of Ethical Dilemmas

At some point in your service as a local elected official, you will likely face two common types of ethical dilemmas. The first involves situations in which doing the right thing will come at a significant personal cost to you or your public agency. In these situations, the answer is relatively

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<sup>\*</sup> Prepared by the Institute for Local Self Government's Public Confidence Project (see [www.ilsg.org](http://www.ilsg.org)) for the League of California Cities orientation program for newly elected city council members. The Institute is the nonprofit research arm of the League of California Cities. For more information on ethics in public service, see the "Local Official Ethics Resource Center" at [www.ilsg.org/trust](http://www.ilsg.org/trust).

<sup>1</sup> For more information about codes of ethics, see *Developing a Local Agency Ethics Code: A Process-Oriented Guide* published by the Institute for Local Self Government [www.ilsg.org/trust](http://www.ilsg.org/trust)

simple. *The bottom line is that being ethical means doing the right thing for the entire community regardless of personal costs.*

The second type of ethical dilemma involves those situations in which there are two conflicting sets of “right” values. In these instances, drawing the ethical bottom line is more difficult. If you find yourself faced with a “*right versus right*” decision, the following questions may help you come to an answer:

- Which ethical values are in conflict (for example, trustworthiness, compassion, loyalty, responsibility fairness, or respect)?
- What are the facts? What are the benefits to be achieved or the harm to be avoided by a particular decision? Is there a decision that does more good than harm?
- What are your options? Is there a course of action that would be consistent with both sets of values?
- Is one course of action more consistent with a value that is particularly important to you (for example, promise-keeping or trustworthiness)?
- What decision best reflects your responsibility as an officeholder to serve the interests of the community as a whole?
- What decision will best promote public confidence in the agency and your leadership?

### Case Example: Making Exceptions from Agency Policies

For example, as a local elected official, you may be asked to make exceptions to your jurisdiction's planning laws. An example is when a developer asks for a general plan amendment to enable a project to be approved. The developer is likely to point to numerous benefits that will flow to the community as the result of the amendment.

In coming to a decision in such a situation, the first step is to consider what ethical values are at stake. One might be fairness to those property owners who developed their properties in accordance with the policies expressed in the general plan. Another might be fairness or compassion for the developer seeking the amendment: if it is not economically feasible to develop the property as envisioned by the general plan, perhaps an amendment is in order.

The next step is to weigh the competing costs and benefits. Although the developer has identified the benefits to the community associated with approving the amendment, what are the benefits of adhering to the general plan? Will an amendment in this situation open the door for other amendment requests? How might the agency fairly evaluate those requests while still maintaining the overall integrity of the general plan? Are there options that might enable the community to reap some of the benefits described by the developer while still being consistent with the general plan as written?

Finally, consider which approach will best promote the public's confidence in the planning process. Will the public's confidence be undermined if the agency doesn't enforce the plan? Or will the result look so rigid and unfair to the applicant that it will undermine the public's faith in the agency as a decision-making body? What decision will best reflect on the agency's stewardship over the community's growth and development?

The answers to the questions listed above will vary with each situation and will likely not always be clear-cut or obvious. However, asking difficult questions and thoroughly evaluating the answers can go a long way in helping you make consistently ethical decisions that further the public's interests.

# Public Service Values for Local Elected Officials

## Fairness

- I make decisions based on the merits of the issues.
- I honor the law's and the public's expectation that agency policies will be applied consistently.
- I support the public's right to know and promote meaningful public involvement.
- I am impartial and do not favor those who are in a position to help me.
- I promote equality and treat all people equitably.

## Compassion

- I recognize government's responsibilities to society's less fortunate.
- I consider exceptions to the agency's policies when there are unintended consequences or undue burdens.
- I realize that some people are intimidated by the public process and try to make their interactions as stress-free as possible.
- I convey the agency's care for and commitment to its community members.
- I am attuned to, and care about, the needs of the public, officials, and staff.

## Respect for Others

- I treat fellow officials, staff and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personalities, character or motivations.
- I gain value from diverse opinions and build consensus.
- I follow through on commitments, keep others informed, and make timely responses.
- I am approachable and open-minded, and I convey this to others.
- I listen carefully and ask questions that add value to discussions.
- I am engaged and responsive.
- I involve staff in all meetings that affect agency decisions.

## Responsibility

- I come to meetings prepared.
- I do not disclose confidential information without proper legal authorization.
- I represent the official positions of the agency to the best of my ability when authorized to do so.
- I explicitly state that my personal opinions do not represent the agency's position and do not allow the inference that they do.
- I refrain from any action that might appear to compromise my independent judgment.
- I take responsibility for my own actions, even when it is uncomfortable to do so.
- I do not use information that I acquire in my public capacity for personal advantage.
- I do not represent third parties' interest before my agency or neighboring agencies.

## Integrity

- I am truthful with my fellow elected officials, the public and others.
- I do not promise that which I have reason to believe is unrealistic.
- I am prepared to make unpopular decisions to further the public's interest.
- I credit others' contributions in moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I disclose suspected instances of impropriety to the appropriate authorities.

## Public Trust

- I remember that my role is to serve the community.
- I consider the interests of the entire community in reaching my decisions.
- I support merit-based processes for the award of public employment and public contracts.
- I promote the efficient use of the agency's resources.
- I do not accept gifts or other special considerations because of my public position.
- I do not use my position for personal gain.

## Vision

- I work to improve the quality of life in my community.
- I am proactive and innovative when setting goals and considering policies.
- I maintain consistent standards, but am sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms.
- I promote intelligent innovation to forward the agency's policies and services.
- I consider the broader regional and statewide implications of the agency's decisions and issues.

## Ethics Laws <sup>\*</sup>

California's ethics laws generally fall into three general categories:

- (1) **Financial Gain.** The possibility of personal financial gain or loss cannot be a factor in your decisions as a public official.
- (2) **Personal Advantages and Perks.** The use of your office and your status as an office-holder cannot be a basis for you to receive personal advantages and perks; and
- (3) **Fair, Open and Impartial Decision-Making.** As an office-holder, you are a steward of a democratically-based decision-making process.

Each of these categories relates back to the overarching goal of assuring the public that governmental decisions are made based on what best serves the public's interests.

Within each of these categories, the law promotes ethics in two ways:

- By requiring public disclosure and/or
- By prohibiting certain actions.

The financial statements that you (and many public officials) must file with the Fair Political Practices Commission (FPPC) are an example of a *disclosure* rule. In essence, the law allows the public to scrutinize the relationships between your personal finances and public decision-making. Disclosure laws allow the public (typically with the assistance of the media) to assess whether there may be too close of a relationship between your economic interests and the decisions you make as a public official.

In other instances, the law goes a step further and *prohibits* certain actions. For example, an official must disqualify him or herself from participating in a decision that will affect his or her financial interests. *This does not necessarily mean the disqualified official has done anything illegal or corrupt.* It simply means that the public's interests are better served by removing any question as to the official's decision-making motivations (a concept sometimes known as avoiding even the appearance of impropriety). This is achieved by not having the official participate in a particular decision under such circumstances.

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<sup>\*</sup> Prepared by the Institute for Local Self Government's Public Confidence Project (see [www.ilsg.org](http://www.ilsg.org)). The Institute is the nonprofit research arm of the League of California Cities. For more information on ethics laws applicable in public service, see the "Local Official Ethics Resource Center" at [www.ilsg.org/trust](http://www.ilsg.org/trust).

## Financial Gain

The notion behind financial gain laws is that the public has a right to know about public officials' financial situation and that officeholders should not even *appear* to be influenced by the effect of their decisions on their personal finances. Financial gain laws include:

- ***Disclosure of Financial Interests.*** Public officials must periodically disclose their financial interests—such as interests in real property, investments, business positions, and sources of income and gifts—to the public.<sup>2</sup> This disclosure is made on a form called “Statement of Economic Interests,” also known as “Form 700.”
- ***Disqualification Based on Financial Interests.*** A public official cannot make or attempt to influence a governmental decision if it is reasonably foreseeable that the decision could have a “material financial effect” on his or her financial interests.<sup>3</sup> The FPPC has developed a series of questions (known as the “eight step process”) to determine whether an official must be disqualified from participating in a decision. If you are worried that an upcoming decision will have an effect—positive or negative—on one or more of your financial interests, talk with your agency’s attorney as soon as possible. A list of types of financial interests that should precipitate this conversation is presented in the table on page 8.
- ***Interests in Contracts Prohibited.*** A public official may not have a financial interest in any contract made by the board or body of which the official is a member.<sup>4</sup> The law is very strict on this point. Such contracts are void.<sup>5</sup> Under most circumstances, the prohibition cannot be avoided by disqualifying oneself from participating in the decision on the contract. Again, consult with your agency’s attorney immediately if there is a contract before the agency in which you may have an interest.
- ***Bribery.*** Requesting, receiving, or agreeing to receive money in exchange for an official action is a crime. In addition to criminal penalties, an individual convicted of bribery forfeits his or her office and is disqualified from holding public office in the future.<sup>6</sup> Similarly, receiving payments for appointments to public office is a criminal offense.<sup>7</sup>

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<sup>2</sup> See Cal. Gov’t Code §§ 87200 and following.

<sup>3</sup> See Cal. Gov’t Code §§ 87100 and following.

<sup>4</sup> Cal. Gov’t Code § 1090.

<sup>5</sup> Cal. Gov’t Code § 1092.

<sup>6</sup> Cal. Penal Code §§ 68, 98.

<sup>7</sup> Cal. Penal Code § 74.

- ***Helping Prospective Employers.*** A public official may not influence agency decisions when the interests of a prospective employer are at stake.<sup>8</sup> The situation arises when someone is negotiating or has “any arrangement” concerning prospective employment with someone with business before the city.
- ***Prohibition Against Property Acquisition in Redevelopment Areas.*** Generally speaking, public officials who have input into redevelopment project areas may not acquire property in those areas.<sup>9</sup> Any existing interests must also be disclosed.<sup>10</sup>

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<sup>8</sup> Cal. Gov’t Code § 87407.

<sup>9</sup> See Cal. Health & Safety Code § 33130.

<sup>10</sup> Cal. Health & Safety Code § 33130(a).

## When to Seek an Attorney's Advice

Talk with your agency attorney when 1) an action by your public agency 2) may affect (positively *or* negatively) 3) any of the following:

- Income.** Any source of income of \$500 or more (including promised income) during the prior 12 months for you or your immediate family (spouse and dependent children).
- Real Property.** A direct or indirect interest in real property of \$2000 or more that you or your immediate family (spouse and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase, especially when any of these are located within 500 feet of the subject of your decision.
- Personal Finances.** Your or your immediate family's (spouse and dependent children) personal expenses, income, assets, or liabilities.
- Gift Giver.** A giver of a gift of \$340 or more to you in the prior 12 months to you, including promised gifts.
- Lender/Guarantor.** A source of a loan (including a loan guarantor) to you.
- Contract.** You or a member of your family would have an interest (direct or indirect) in a contract with the agency.
- Business Management or Employment.** An entity for which you serve as a director, officer, partner, trustee, employee, or manager.
- Business Investment:** An interest in a business that you or your immediate family (spouse and dependent children) has a direct or indirect investment worth \$2000 or more.
- Related Business Entity.** An interest a business that is the parent, subsidiary or is otherwise related to a business that you:
  - Have a direct or indirect investment worth \$2000 or more; or
  - Are a director, officer, partner, trustee, employee, or manager.
- Business Entity Owning Property.** A direct or indirect ownership interest in a business entity or trust of yours that owns real property.
- Campaign Contributor.** A campaign contributor of yours (if you sitting on an appointed decision-making body).
- Other Personal Interests and Biases.** You have important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could prevent you from making a fair decision.

**What Will Happen Next?** Agency counsel will advise you whether 1) you can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in. *Keep in mind the attorney's duty is to promote compliance with the ethics laws, not try to find ways around them.*

*Caveat:* These laws are very complex. Consult with your agency attorney early and often if you believe you may have one of the above interests.



## Personal Advantages and Perks

The law strictly limits the degree to which an officeholder can receive benefits relating (or appearing to relate) to his or her status as an officeholder:

- **Gifts.** With certain exceptions, a public official must disclose most gifts over \$50 on his or her Statement of Economic Interests and may not receive gifts from any one source that totals over \$340 in a single year.<sup>11</sup> Gifts include meals, certain kinds of travel payments, and rebates or discounts to public officials not offered to others in the usual course of business.<sup>12</sup> The law is particularly strict about free transportation passes (not including frequent flier awards offered to everyone); acceptance of such passes results in immediate loss of office.<sup>13</sup>
- **Speaking Fees or Honoraria.** Public officials may not receive payments for giving a speech, writing an article, or attending a conference or meeting. Limited exceptions apply. For example, free conference admission, lodging, and meals provided directly in connection with speeches within California, are not considered prohibited honoraria and need not be reported.<sup>14</sup>
- **Use of Public Resources.** It is a felony to misuse public funds, which can include such things as submitting inaccurate or inflated expense reports from traveling on agency business. Public resources (including staff time and office supplies) may not be used for either personal or political purposes.<sup>15</sup> Similarly, public officials may not send mass mailings to constituents at public expense.<sup>16</sup>
- **Decisions that Affect Personal Interests.** The law also frowns on officials participating in a decision in which significant personal interests are at stake, even if those interests are not financial. This is a concept known as “common law bias.” Common law bias is sufficient to disqualify a public official from participating in a decision, particularly if the official is sitting in a quasi-judicial capacity. For example, one court found a council member biased on a proposed addition to a home in his neighborhood because the addition would block the council member’s view of the ocean.<sup>17</sup>

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<sup>11</sup> Cal. Gov’t Code §§ 87200, 87207, 89503; 2 Cal. Code of Regs. § 18940.2 (\$340 amount valid through 2004).

<sup>12</sup> Cal. Gov’t Code § 82028(a).

<sup>13</sup> Cal. Const. art. XII, § 7.

<sup>14</sup> Cal. Gov’t Code §§ 89501, 89502; 2 Cal. Code of Regs. § 18950.3.

<sup>15</sup> Cal. Penal Code § 424. *See, e.g., People v. Battin*, 77 Cal. App. 3d 635, (1978). *See also* Cal. Gov’t Code § 8314.

<sup>16</sup> Cal. Gov’t Code §§ 84305, 82041.5; 2 Cal. Code of Regs. 18901.

<sup>17</sup> *See Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996).

- ***Receiving Gratuities or Rewards.*** It is a crime to receive any kind of gratuity or reward for performing one’s duties.<sup>18</sup>

## Fairness/Impartiality/Transparency

This area of ethics laws relates to the ethical value of fairness; the notion is that officeholders should make decisions without regard to who is affected by those decisions. Key laws that local elected officials need to be aware of include:

- ***Effect of Decisions on Family Members’ Financial Interests.*** A public official must disqualify him or herself from participating in a decision that would reasonably have a foreseeable material financial effect on a member of the official’s immediate family (spouse and dependent children) different from the effect on the public generally.
- ***Party or Factual Bias.*** A strong personal animosity towards a project applicant or the receipt of information about a project may constitute a disqualifying source of bias when a decision-making body is sitting in a quasi-judicial capacity.<sup>19</sup> This is a variation of the “*ex parte* communications” doctrine (which is Latin for “from one side only”), which suggests that, in quasi-judicial matters, all communications to you about the merits (or demerits) of the proposed use should occur in the course of a public hearing. This gives participants in the process an opportunity to respond to such communications.
- ***Dual Office Holding.*** State law prohibits public officials from holding multiple offices at the same time that subject them to conflicting loyalties.<sup>20</sup> Check with your agency counsel if you are worried that this prohibition may apply to an office you are seeking.
- ***Campaign Contributions.*** Under some limited circumstances, members of appointed bodies must disqualify themselves from license, permit or entitlement proceedings—such as land use permits—if they received campaign contributions of more than \$250 during the previous twelve months from the applicant. Moreover, candidates may not receive or solicit contributions of more than \$250 from any applicant while the application is pending and for three months afterward.<sup>21</sup>
- ***Public’s Business Must Be Conducted in Public.*** Under the state’s open meetings laws, public agency decisions must be made at an open and publicized meeting, in which the public has the opportunity to participate.<sup>22</sup> Limited exceptions apply for closed session deliberations.

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<sup>18</sup> Cal. Penal Code § 70.

<sup>19</sup> See *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1234 n.23 (2000).

<sup>20</sup> *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636, 644, 107 P.2d 388 (1940).

<sup>21</sup> Cal. Gov’t Code § 84308.

<sup>22</sup> Cal. Gov’t Code § 54950 and following.

- **Public Records Open to Inspection.** Documents and records, including emails, also must be open to public inspection and duplication.<sup>23</sup> Limited exceptions apply.
- **Doing the Job.** The voters elected each local elected official to represent them. It is a crime to permit anyone to exercise the responsibilities of one's office.<sup>24</sup> Moreover, unexcused absences from meetings will result in one's office being deemed vacant.<sup>25</sup>

In addition to these state ethics law requirements, cities and counties may have local restrictions and requirements.

### General Prohibition Against Willful or Corrupt Misconduct in Office

The law contains a general prohibition against willful or corrupt misconduct in office.<sup>26</sup> The penalty is forfeiture from office. Interestingly, the mechanism is proceedings based upon a grand jury accusation. The Legislature has not defined what constitutes willful or corrupt misconduct. Some examples include committing a crime in connection with one's public office, willful or corrupt failure or refusal to carry out a lawfully prescribed duty and just generally falling below the standard of decency rightfully expected of public officials.<sup>27</sup>

### Summary and Conclusion

A key point to remember is that the law sets only minimum standards. Just because a particular course of action is legal, doesn't mean it is ethical. Remember, good ethics is good politics.

### For Further Information on This Topic

For further information on ethics issues, visit the Local Official's Ethics Resource Center at [www.ilsg.org/trust](http://www.ilsg.org/trust).



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<sup>23</sup> Cal. Gov't Code § 6520 and following.

<sup>24</sup> Cal. Penal Code § 74.

<sup>25</sup> Cal. Gov't Code § §1770(a), 36513.

<sup>26</sup> Cal. Gov't Code §§ 3060-74.

<sup>27</sup> *People v. Hale*, 232 Cal. App. 2d 112, 119, 42 Cal. Rptr. 533 (1965).