

Meetings & Liaisons for City Council, Commissions & Committees

<i>Committee/Commission</i>	<i>Meeting Day</i>	<i>Time</i>	<i>Location</i>	<i>Staff Liaison</i>	<i>Department</i>
Arcata Foundation	Call of the Chair	TBA		Janet Luzzi	Finance
Boards of Permit & Handicapped Appeals	As Necessary	TBA		Doby Class	Engineering
City Council	1st and 3rd Wednesday	6:00 p.m.	Council Chamber	Karen Diemer	City Manager's Office
Economic Development Committee	1st Thursday	5:00 p.m.	Council Chamber	Joe Mateer	Community Development
Energy Committee	3rd Monday	5:30 p.m.	Council Chamber	Emily Benvie	Environmental Services
Forest Management Committee	2nd Thursday	7:00 a.m.	Council Chamber	Mark Andre	Environmental Services
Historic Landmarks Committee	3rd Thursday	4:00 p.m.	Council Chamber	Alyson Hunter	Community Development
Open Space & Ag Committee	2nd Monday	6:00 p.m.	Council Chamber	Mark Andre	Environmental Services
Parks & Recreation Committee	2nd Wednesday	6:00 p.m.	Council Chamber	Julie Neander	Environmental Services
Planning Commission	2nd and 4th Tuesday	6:00 p.m.	Council Chamber	Alyson Hunter	Community Development
Public Safety Task Force	4 th Wednesday	6:00 p.m.	Council Chamber	Tom Chapman	Police Department
Transactions & Use Tax Committee	Call of Chair	TBA		Janet Luzzi	Finance
Transportation Safety Committee	3rd Tuesday	4:30 p.m.	Council Chamber	Netra Khatri	Engineering
Wetlands and Creeks Committee	3rd Tuesday	6:00 p.m.	Arcata Marsh Interpretive Center	Emily Benvie	Environmental Services

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

by Dave Rosenberg

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that hasn't always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules, *Robert's Rules of Order*, which are embodied in a small but complex book. Virtually no one I know has actually read this book cover to cover.

Worse yet, the book was written for another time and purpose. If you are running the British Parliament, *Robert's Rules of Order* is a dandy and quite useful handbook. On the other hand, if you're running a meeting of a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order. Hence, the birth of "Rosenberg's Rules of Order."

This publication covers the rules of parliamentary procedure based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified and slimmed down for 21st century meetings, yet they retain the basic tenets of order to which we are accustomed.

"Rosenberg's Rules of Order" are supported by the following four principles:

1. **Rules should establish order.** The first purpose of the rules of parliamentary procedure is to establish a

framework for the orderly conduct of meetings.

2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate and those who do not fully understand and do not fully participate.
3. **Rules should be user-friendly.** That is, the rules must be simple enough that citizens feel they have been able to participate in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of the rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, the majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

The Chairperson Should Take a Back Seat During Discussions

While all members of the governing body should know and understand the rules of parliamentary procedure, it is the chairperson (chair) who is charged with applying the rules of conduct. The chair should be well versed in those

rules, because the chair, for all intents and purposes, makes the final ruling on the rules. In fact, all decisions by the chair are final unless overruled by the governing body itself.

Because the chair conducts the meeting, it is common courtesy for the chair to take a less active role than other members of the body in debates and discussions. This does *not* mean that the chair should not participate in the debate or discussion. On the contrary, as a member of the body, the chair has full rights to participate in debates, discussions and decision-making. The chair should, however, strive to be the last to speak at the discussion and debate stage, and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, published agenda; informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon road map for the meeting. And each agenda item can be handled by the chair in the following basic format.

First, the chair should clearly announce the agenda item number and should clearly state what the subject is. The chair should then announce the format that will be followed.

Second, following that agenda format, the chair should invite the appropriate people to report on the item, including any recommendation they might have. The appropriate person may be the chair, a member of the governing body,

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire to move on.

a staff person, or a committee chair charged with providing information about the agenda item.

Third, the chair should ask members of the body if they have any technical questions for clarification. At this point, members of the governing body may ask clarifying questions to the people who reported on the item, and they should be given time to respond.

Fourth, the chair should invite public comments or, if appropriate at a formal meeting, open the meeting to public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of each public speaker. At the conclusion of the public comments, the chair should announce that public input has concluded (or that the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion from the governing body members. The chair should announce the name of the member who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member who seconds the motion. It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and a vote on the motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion. This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the members of the governing body. If there is no desired discussion or the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or a very brief discussion, the vote should proceed immediately, and there is no need to repeat the motion. If there has been substantial discussion, it is normally best to make sure everyone understands the motion by repeating it.

Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Ninth, the chair takes a vote. Simply asking for the "ayes" and then the "nays" is normally sufficient. If members of the body do not vote, then they "abstain." Unless the rules of the body provide otherwise or unless a super-majority is required (as delineated later in these rules), a simple majority determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days' notice for all future meetings of this governing body."

Motions in General

Motions are the vehicles for decision-making. It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus on the motion before them.

Motions are made in a simple two-step process. First, the chair recognizes the member. Second, the member makes a motion by preceding the member's desired approach with the words: "I move ..." A typical motion might be: "I move that we give 10 days' notice in the future for all our meetings."

The chair usually initiates the motion by:

1. Inviting the members to make a motion: "A motion at this time would be in order."
2. Suggesting a motion to the members: "A motion would be in order that we give 10-days' notice in the future for all our meetings."
3. Making the motion.

As noted, the chair has every right as a member of the body to make a motion, but normally should do so only if he or she wishes a motion to be made but no other member seems willing to do so.

The Three Basic Motions

Three motions are the most common:

1. **The basic motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."
2. **The motion to amend.** If a member wants to change a basic motion that is under discussion, he or she would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

3. **The substitute motion.** If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would "move a substitute motion." A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.

A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

The decision as to whether a motion is really a motion to amend or a substitute motion is left to the chair. So that if a member makes what that member calls a motion to amend, but the chair determines it is really a substitute motion, the chair's designation governs.

When Multiple Motions Are Before The Governing Body

Up to three motions may be on the floor simultaneously. The chair may reject a fourth motion until the three that are on the floor have been resolved.

When two or three motions are on the floor (after motions and seconds) at the same time, the *first* vote should be on the *last* motion made. So, for example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee, to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows.

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passes*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be complete. No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) *failed*, the chair would proceed to consideration of the second (now the last) motion on the floor, the motion to amend.

If the substitute motion failed, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would now move to consider the main motion (the first motion) as *amended*. If the motion to amend failed, the chair would now move to consider the main motion (the first motion) in its original format, not amended.

The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee) or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are *not* debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. This motion requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess, which may range from a few minutes to an hour. It requires a simple majority vote.

A motion to fix the time to adjourn.

This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to

be placed on "hold." The motion may contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion may contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call for the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second to the motion, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body. Note that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the

the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions occur when the body is taking an action that effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super-majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," "I move the question," "I call for the question" or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body, such as the chair, nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a two-thirds vote to pass.

pend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

First is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted *in the majority* on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body may second the motion). If a member who voted *in the minority* seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

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motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item*. This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super-Majority Votes

In a democracy, decisions are made with a simple majority vote. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means

Motion to object to the consideration of a question. Normally, such a motion is unnecessary, because the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to sus-

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. And at the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every

It is usually best to have a motion before the governing body prior to discussing an agenda item, to help everyone focus.

lege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "Point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Motions to amend and substitute motions are often confused. But they are quite different, and so is their effect, if passed.

speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focus on the item and the policy in question, not on the personalities of the members of the body. Debate on policy is healthy; debate on personalities is not. The chair has the right to cut off discussion that is too personal, too loud or too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body. Can a member of the body interrupt the speaker? The general rule is no. There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "Point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privi-

relate to anything that would not be considered appropriate conduct of the meeting; for example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Special Notes About Public Input

The rules outlined here help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.


Public input is essential to a healthy democracy, and community participation in public meetings is an important element of that input. The challenge for anyone chairing a public meeting is to accommodate public input in a timely and time-sensitive way, while maintaining steady progress through the agenda items. The rules presented here for conducting a meeting are offered as tools for effective leadership and as a means of developing sound public policy. ■



MEMORANDUM

DATE: September 27, 2002

TO: Staff to City Boards, Committees and Commissions

FROM: Dan Hauser, City Manager 

SUBJECT: Boards, Committees and Commissions

At present, we have a total of 13 advisory boards, commissions and committees with a total of 81 members. Your members need to understand that the same rules that apply to Council Members apply to them.

The following is taken from the City Council Protocol Manual starting on page 7:

D. Councilmember's Role and Relationship with City Advisory Bodies

1. Because of the quasi-judicial role of the City Council, Councilmembers shall not be appointed to City Boards or Commissions concurrent with their term of office.
2. Unless specifically authorized by a majority vote of a quorum of the Council, no Councilmember shall be authorized to state or testify to the policy or position of the Council before any advisory board or commission of the City.
3. If the member is testifying in such a capacity pursuant to the above provision, it should be undertaken in order to assure public confidence in the decision-making process and avoid the appearance of bias, prejudice, or improper influence. Toward this purpose, the following protocol should be observed:
 - a. Council Members shall not testify in quasi-judicial matters pending before any advisory board or commission that will receive, or could potentially receive, future appeal or review before the City Council. Violation of this protocol may require the Council Member to disqualify themselves from participating in any appeal or review proceedings before the City Council.
 - b. Council Members, in their capacity as private citizens, should refrain from providing testimony in legislative or administrative matters pending before any advisory board that will receive, or could potentially receive, future review or other action before the Council. Where a Council Member elects to provide such testimony, the following rules shall apply:

- (i) The Council Member shall declare at the outset and upon the record that the Council Member is present in his or her private capacity as an interested citizen, and not on behalf or at the request of the City Council.
- (ii) The Council Member shall refrain from stating or implying that the Council Member's position or opinion is that of the City Council.
- (iii) The Council Member shall refrain from directing City staff or the advisory body to take any action on behalf of the Council Member.
- (iv) The Council Member shall observe any rules of procedure or protocol that apply to any other private citizen testifying before the advisory board.

The same rules, regulations and procedures apply to any member of a Board, Committee or Commission who shows up at the meeting of another Board, Committee or Commission. In particular, please note #3 a & b above. A member will be disqualified from voting on an issue if they spoke or participated in discussion of that issue at another committee or commission level.

Please remind your members that the Council only appointed them to one Board, Committee or Commission at a time.

Also, please advise me if you have members of other boards, committees or commission showing up at your meetings.

Gaynor and Diamond

Memorandum

To: Dan Hauser, City Manager
CC: Steve Tyler, Janet Luzzi, Tom Conlon, Doby Class
From: ND Nancy Diamond, City Attorney
Date: January 14, 2003
Re: Committee Member Participation at the Meetings of Other Entities

QUESTION PRESENTED

May individual members of Arcata committees participate in the meetings of other Arcata or non-Arcata public committees, task forces, or agencies concerning subject matters that will most likely come before the full committee for review and recommendation to the City Council.

DISCUSSION

There are several considerations in this question, including the Brown Act, conflict of interest law, bias and self-dealing.

The Brown Act applies to every City committee (Gov. Code § 54952(a) and (b)). Thus, any congregation of the majority of the members of the committee "at the same time and place to hear, discuss or deliberate upon any topic within the subject matter jurisdiction" of the committee is prohibited unless properly noticed as a meeting of the committee. (Gov. Code § 54952.2(a).) This would apply to four or more members of a seven member committee attending the meeting of another entity.

Bias arises from due process rights that inure to an applicant or petitioner in a quasi-judicial proceeding. In order to insure that the decision maker is fair and impartial in such proceedings, it is imperative that individual members of the decision making body have no personal interest or involvement in the outcome of a matter. Additionally, due process requires that a decision be based on the record as brought forth at the quasi-judicial proceeding. Thus, an individual member of the decision making body may not rely on ex parte information in making his or her decision. Pursuant to the Municipal Code, § 2201(c), committees are created for purposes of providing advice and recommendation to the City Council and staff. Thus committees should never be in a

January 14, 2003

situation in which they are making a quasi-judicial decision. Bias and ex parte issues should not be relevant to concerns of committee activities.

Financial conflicts of interest, however, may be relevant depending on the commission or committee. The Arcata Municipal Code expressly makes the financial conflict of interest law applicable to the Planning Commission, Design Review Commission, Nuclear Weapon Free Zone Commission and Economic Development Commission. When the financial conflict of interest regulations apply, a committee member may be required to disqualify his or her self from subsequent participation in the discussion of certain topics with the remainder of the committee. Financial conflicts of interests are best addressed on a case by case basis as specific issues arise.

Lastly, some consideration must be given to the prohibition of self dealing found at Gov. Code § 1090. Under this provision, if a member of an advisory committee has a financial interest in a contract with the city, a conflict exists if that member actually participates in the making of the contract (Frasier V. Yamor Agency, Inc. v. County of Del Norte (1999) 68 Cal.App.3d 201; 82 Cal.Op.Atty.Gen. 126 (1999)). If such a contract is made, the city may void it. California Gov. Code § 1092. This prohibition applies to all conduct of the committee member in making the contract, including preliminary discussion and negotiations. Millbrae Association For Residential Survival v. City of Millbrae (1968) 262 Cal.App.2d 222.

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MEMORANDUM

DATE: January 22, 2003

TO: All Members of Committees, Boards and Commissions

FROM: Bob Ornelas, Mayor
Dan Hauser, City Manager

SUBJECT: The Brown Act and the Internet

It has come to our attention that there may be some problems with and confusion over the Brown Act and the use of e-mail between members of City advisory bodies. We are asking that you remember and honor the spirit, intent and legal ramifications of the Brown Act – the people's business is to be conducted in public!

All e-mail communications between members on matters that may come before your body for a decision should be routed through the staff liaison for distribution to all members. Even that should be limited to distribution of information for background. If there is a chance that the communication could be shared with a majority of the body, members should refrain from communicating through e-mail, telephone or personal meetings on the issue before it is debated in a noticed public meeting of the body. To state any position on an issue upon which you will be voting may prejudice your vote and prevent you from voting or participating in the debate and/or subject you to investigation.

Recently the issue of commenting on a consultant's work using e-mail has come up. The architect hired for the downtown plan is setting up a system to allow comments on his work in progress using e-mail. If the downtown plan might come before your body for a vote, please refrain from commenting until the issue has been debated before your body in public. Even if you state that your comments are as a private citizen, having made a statement may prejudice your ability to vote once it is presented to your body.

Please refer to the Brown Act in your Committee Handbook or ask your staff liaison if you have any questions. In addition, since technology is changing so fast, your recommendations and suggestions would be appreciated. Please forward those through your staff liaison so that we can include when updating the Committee Handbook on this issue.



MEMORANDUM

DATE: December 2, 2005

TO: Department Directors and Commission & Committee Liaisons

CC: Mayor and City Councilmembers

FROM: Dan Hauser, City Manager

SUBJECT: Use of City Facilities for Commission and Committee Public Events

It has come to my attention that there has been an increased need by our Commissions and Committees for use of City facilities for public events. Council and staff encourage community meetings, as they are an excellent way to disseminate important information and encourage dialog with the citizens of Arcata. Just as a reminder, when you are planning your events and requesting use of public facilities, free of charge, the event must meet following criteria and procedures:

- Meeting subject matter must be within the direct scope and mandate of the Commission or Committee. Commissions or Committees may not sponsor use of a City facility for another group to use free of charge.
- The City Staff Liaison or a volunteer staff member must be present at the meeting to take responsibility for the facility, including checking out the key, set-up/clean-up, unlocking and locking the facility, monitoring the event and reporting any incidents or injuries immediately.
- If a Commission or Committee Liaison or staff member is not available to attend the meeting, the Commission or Committee has to option of paying a trained staff member to be present.

If you have any questions regarding these procedures for use of facilities, please feel free to contact me at 822-5953. To schedule use of facilities, please contact the Recreation Division 822-7091.

NANCY DIAMOND

Attorney at Law

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MEMORANDUM

To: City Council Members, Planning Commissioners, Design Review
Commissioners, Nuclear Weapons Free Zone and Peace Commission, Democracy
& Corporations Committee

From: Nancy Diamond, City Attorney

cc: City Manager
Department Directors
Deborah Musick, Executive Assistant to the City Manager

Subject: AB 1234 Mandatory Ethics Training Requirements; Notice of Options

Date: May 15, 2006

A new law effective January 1, 2006 requires specified local officials to receive two hours of ethics training (Cal. Gov't Code § 53235(a), (b)). For those officials who were in service as of January 1, the deadline for receiving the first round of training (two hours) is January 1, 2007 (Cal. Gov't Code § 53235.1). Thereafter, you must receive two hours of training every two years. The requirement applies to local officials who either receive compensation for their service to the city or are reimbursed for their service to the city or are reimbursed for their expenses. (Cal. Gov't Code § 53235(a).) The training must cover both ethics laws and ethics principles (Cal. Gov't Code § 53235(b)).

There are a number of options for complying with this requirement.

- I have received appropriate training by the League of California Cities Institute for Local Government to provide focused training sessions. Please contact the staff liaison to your commission or committee if interested in this option (Council members, please contact me), and we will determine an appropriate time depending on interest level.
- Liebert Cassidy Whitmore will be offering training on June 12, 2006 from 8:00 a.m. to 12:00 p.m. at the River Lodge in Fortuna. Please contact Deborah Musick by May 25, 2006 if you wish to attend that training session. This session covers more than the minimum ethics training and adds an hour each of *Brown Act* and Conflict of Interest law review. The cost is \$25.00. Please contact the staff liaison to your commission or committee to discuss the availability of training funds.

AB1234
May 15, 2006
Page 2

- Self-study materials are available at www.ca-ilg.org/ab1234compliance. The materials require that you read two articles on public service ethics laws and principles, take a self-assessment test and then submit it to the Institute for Local Government with a processing fee. The Institute will review your test, provide you the correct answers to the questions and a proof of participation certificate. Again, please contact your staff liaison regarding the availability of funds.
- Regional and statewide training opportunities include those offered by the League of California Cities at its Executive Forum on July 28, 2006 in Monterey and its Annual Conference on September 6 - 9 (specific date to be determined) in San Diego. Additional options are described at www.ca-ilg.org/ab1234compliance.

Once you receive your proof of participation in the required AB 1234 training, please make a copy of the certificate for your records and provide the original to your staff liaison (Cal. Gov't Code §§ 53235(e), 53235.2(a)). Staff liaison will ensure that the proof of compliance is filed with the City Clerk.

If you have any questions regarding these requirements, please contact my office. Note that general information about AB 1234 is also available at www.ca-ilg.org/ab1234compliance, including a frequently-asked-questions sheet.

Nancy Diamond
Attorney at Law

Memorandum

To: Arcata City Management Staff
cc: Michael Hackett, City Manager
From: Nancy Diamond, City Attorney
Date: May 15, 2006
Re: Brown Act Highlights

The following is a quick overview of the *Brown Act*. This is being provided to all staff who act as secretaries to the City's boards, commissions or committees because all of these groups fall within the *Brown Act*. It is incumbent upon the staff liaison or secretary to educate the board, commission or committee members of the *Brown Act* requirements, especially when new members are appointed.

The basic philosophy of the *Brown Act* (now embedded in the California Constitution) is one of public transparency and participation in governmental decision-making. The following outlines only the major provisions of the *Brown Act*. Please contact me if you have any questions about their application or areas that I have not covered in this brief memo.

1. A majority of the board, commission or committee may not engage in any communications on any issue that falls within the subject matter jurisdiction of the board, committee or commission unless it is at a noticed public meeting.
2. Communications include e-mail contacts. Thus, a majority of the board, commission or committee members may not e-mail among themselves on any topic that falls within the subject matter jurisdiction of the board, commission or committee. The point is that "discussions" among the members must be held in front of the public at a noticed public hearing.
3. Communications made in series, that is, from one member to another, are considered meetings under the *Brown Act*. Specifically, these are called, "serial meetings." They are prohibited. For example, one board, commission or committee member may not telephone or e-mail to another board, commission or committee member if the recipient makes an additional phone call or forwards or sends an additional e-mail to another board, commission or committee member on any topic within the subject matter jurisdiction of the board, commission or committee. The

concern is that the board, commission or committee is (whether intentionally or not) developing a collective concurrence on an issue outside the public purview.

4. A "serial meeting" can occur unintentionally through the secretary to the board, commission or committee. This would occur if the secretary, intentionally or not, indicates to individual board, commission or committee members how other individual members are presently responding to a particular issue. In general, it is always best to have the board, commission or committee members circulate all questions and information only to the secretary. The secretary can then disseminate such information to the other board, commission or committee members as appropriate. The secretary simply needs to be mindful of making the dissemination in a manner that is discreet and neutral, without conveying the intention, current thinking or concerns of the other board, commission or committee members.
5. The public has a right to participate in all meetings. In regard to regular meetings, the public has a right to provide comment on any matter within the subject matter of the board, commission or committee. In regard to special meetings, the public has a right to provide input on all matters on the agenda.
6. The chair of the board, commission or committee can impose reasonable, content-neutral restrictions on public participation to allow the board, commission or committee to complete its agenda and workload. Such restrictions include time-limit restrictions. In the event of a disruptive member of the public, the chair may have the disruptive individual removed.
7. The permissible closed sessions under the *Brown Act* are probably not applicable to boards, commissions or committees. If you feel the need for a closed session to discuss a particular topic, please contact me and we can determine if it is appropriate subject matter for a closed session.

I want to emphasize that the above is a very brief overview of the major provisions of the *Brown Act*. You may have a board, commission or committee with *Brown Act* issues not covered in this memo. If you believe so, please contact me and we can discuss.

ND/met

Brown Act/Arcata City Management Staff.cc. M.Hackett.Memo.5.9.6.doc

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The ABCs of Open Government Laws

The underlying philosophy of the open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government. Conducting government openly and transparently is an opportunity to include the public in decision-making processes and demonstrate that the agency has nothing to hide.

This concept of governmental transparency is so important to the public that some 83 percent of voters supported adding it to California's constitution.

CALIFORNIA'S TRANSPARENCY LAWS REQUIRE PUBLIC OFFICIALS TO:

- A. Conduct the public's business in open and publicized meetings, except for the limited circumstances under which the law allows closed sessions.**
- B. Allow the public to participate in meetings.**
- C. Allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.**

This pamphlet summarizes these three requirements for local officials in broad terms. For information about how these requirements apply in any given situation or more information about this area of the law in general, local officials are encouraged to consult with their agency attorneys.

The law also requires certain local officials to be transparent about their personal financial interests and relationships. For more information about these requirements, please see the Institute's bookmark entitled "Key Ethics Law Principles for Local Officials" and *A Local Official's Reference on Ethics Laws*. Both are available at www.ilsg.org/trust.

RESOURCES FOR FURTHER INFORMATION

California's open government laws are complex and extensive. Consult the following resources for more general information on these laws.

- *Open and Public III: A User's Guide to the Ralph M. Brown Act*, 2000. Available on the League of California Cities website at www.cacities.org or by calling 916.658.8257.
- *The Brown Act: Open Meetings for Local Legislative Bodies*, 2003. Available on the California Attorney General's website at www.caag.state.ca.us (click on "Publications," then click on "General Publications and Forms").
- *Public Records Act Summary*. Available on the California Attorney General's website at www.caag.state.ca.us (click on "Publications," then click on "General Publications and Forms").

For specific questions, contact your agency's attorney.

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OPEN NEXT TWO FOLDS TO
INSIDE PANELS TO CONTINUE



A. CONDUCTING THE PUBLIC'S BUSINESS IN PUBLIC

GENERAL RULES

- ✓ Public agency decision-making bodies – which include many advisory committees – must conduct their business in an open and public meeting.
- ✓ A “meeting” is any situation involving a majority of a decision-making body in which agency business is transacted or discussed. In other words, a majority of the governing body cannot talk privately about an issue before the body no matter how the conversation occurs, whether by telephone or e-mail, or at a local coffee shop.
- ✓ These are legal minimums for local governmental transparency in decision-making; local agencies can provide for greater transparency.



KEY THINGS TO KNOW

- **Committees and Advisory Bodies.** Advisory groups or committees formally created by the governing body are subject to the open meeting laws. Standing committees are subject to the open meeting laws if they have a continuing subject-matter jurisdiction or have a meeting schedule fixed by formal action of the governing body.
- **Serial Meetings.** A key thing to avoid is unintentionally creating a “serial” meeting—a series of communications that result in a majority of governing body members having conferred on an issue.

EXAMPLE

If two members of a five-member governing body consult outside of a public meeting (which is not in and of itself violation) about an issue before the body and then one of those individuals consults with a third member on the same issue and shares what the first member is thinking, a majority of the body has consulted on the same issue. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member’s polling governing body members in a way that reveals the members’ positions to one another.



- **Posting and Following the Agenda.** In general, public officials may only discuss and act on items included on the posted agenda for a meeting. However, governing body members or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items. Officials can also make requests to staff to place a matter on the agenda for a subsequent meeting. Only under extraordinary circumstances can matters be added to the agenda.
- **Permissible Gatherings.** Not every gathering of governing body members outside a posted meeting violates the meeting laws. For example, an open meeting violation would not occur if a majority of the governing body attended the same educational conference or attended a meeting not organized by the local agency as long as agency business is not discussed during the gathering. Nor is attendance at a social or ceremonial event in and of itself a violation. The basic rule to keep in mind is a majority of the governing body members cannot gather *and* discuss agency business except at an open and properly noticed meeting.
- **Closed Sessions.** The open meeting laws include provisions for closed discussions under very limited circumstances (see “typical closed sessions issues” at right). However, the reasons for holding the closed session must be noted in the agenda and different disclosure requirements apply to different types of closed sessions.
- **Disclosure of Confidential Information Prohibited.** The decision to disclose confidential information received in closed session is one that is generally made by the body as a whole, not individual members. Among the remedies for unlawful disclosure is referral to the grand jury, which has authority to remove officials for corrupt or willful misconduct in office.

Because of the complexity of the open meeting laws, close consultation with an agency’s legal advisor is necessary to ensure that no missteps occur.

(See page 5 for information about consequences of non-compliance with these rules.)

GOOD ETHICS IS GOOD POLITICS NOTE

The media is highly vigilant in monitoring compliance with open government requirements – and quick to report on perceived violations.





TYPICAL CLOSED SESSION ISSUES

Local agency open meetings laws vary in terms of what kinds of closed sessions are allowed. The following list is illustrative. Consult with agency counsel concerning 1) whether a particular type of closed session is available to your agency, 2) under what circumstances, and 3) what disclosure requirements apply before and after the closed session.

Personnel. To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints against an employee.

Litigation. To confer with or receive advice from an agency's legal counsel with respect to existing, threatened or potential litigation.

Real Estate Negotiations. To provide direction to the agency's negotiator on the price and terms under which the agency will purchase, sell, exchange or lease real property.

Labor Negotiations. To meet with the agency's labor negotiator regarding salaries and benefits and other matters within the scope of labor negotiations.

Student Disciplinary Issues. (For school districts and community college districts) To consider discipline of a student if a public hearing would result in disclosure of prohibited information, after notifying the student (or parents in the case of minor students) and if they do not request a public hearing.

Grand Jury Proceedings. To allow testimony in private before a grand jury (either individually or collectively).

License Applicants with Criminal Records. To allow an agency to determine whether a would-be licensee with a criminal record is sufficiently rehabilitated to obtain the license.

Public Security. To confer with designated law enforcement officials regarding threats to public facilities and services or the public's right to access those services and facilities.

Multi-jurisdictional Law Enforcement Agency. To discuss ongoing criminal investigations.

Hospital Peer Review and Trade Secrets. To discuss issues related to medical quality assurance or trade secrets.



B. THE PUBLIC'S RIGHT TO PARTICIPATE IN MEETINGS

GENERAL RULES

- ✓ **Democracy in Action.** The public has a right to address the governing body at any open meeting. An elected official's role is to both hear and evaluate these concerns.
- ✓ **The Public's Right to be Heard.** Generally, every agenda must provide an opportunity for the public to address the governing body on any item of interest to the public within the body's jurisdiction. If the issue of concern is one pending before the legislative body, the opportunity must be provided before or during the body's consideration of that issue.
- ✓ **Posting and Following the Agenda.** The open meeting laws require the public be informed of the time of and the issues to be addressed at each meeting. The agenda must be posted at least 72 hours in advance of a meeting and written in a way that informs people of what business will be discussed. Members of the public may request a copy of the agenda packet be mailed to them at the time the agenda is posted or upon distribution to the governing body. Many local agencies also post these materials on their websites. There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances.



KEY THINGS TO KNOW

- **Taping or Recording of Meetings Is Allowed.** Anyone attending a meeting may record it with an audio or video recorder unless the governing body makes a finding the noise, illumination, or obstruction of view will disrupt the meeting. Any tape or film made by the local agency becomes a public record that must be made available to the public for at least 30 days.
- **Sign-In Must Be Voluntary.** Members of the public cannot be required to register their name or fulfill any other condition for attendance or speaking at a meeting. If an attendance list is used, it must clearly state signing the list is voluntary.
- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.

- **Dealing with Dissent.** The chair cannot stop speakers from expressing their opinions or their criticism of the governing body. If a group willfully interrupts a meeting and order cannot be restored, the room may be cleared. Members of the media must be allowed to remain and only matters on the agenda can be discussed.
- **Other Notice and Hearing Requirements.** Other state laws may provide additional, subject-specific notice and hearing requirements.

CONSEQUENCES OF NON-COMPLIANCE

- **Nullification of Decision.** As a general matter, decisions that are not made according to the open meeting laws are voidable. After asking the agency to cure the violation, either the district attorney or any interested person may sue to have the action declared invalid. Costs and attorneys fees may be awarded to those who successfully challenge open meeting violations.
- **Criminal Sanctions.** Additionally, governing body members who intentionally violate the open meeting laws may be guilty of a misdemeanor. The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.
- **Other Measures.** Either the district attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws. Another remedy, under certain circumstances, is for a court to order that all closed sessions be tape-recorded. Costs and attorneys fees also may be awarded.
- **Potential Civil Rights Violations.** Regulations of public participation beyond those allowed by applicable statutory and constitutional law can be a civil rights violation, which can include liability for attorneys fees.

GOOD-ETHICS-IS-GOOD-POLITICS NOTE

Community relations — and the public's views of an official's responsiveness — are seriously undermined when it appears an official is not listening to the input being provided by the public. Even if you disagree with the views being offered, treat the speaker with the same respect you would like to be treated with if the roles were reversed.



C. THE PUBLIC'S RIGHT TO ACCESS AGENCY RECORDS

GENERAL RULE

- ✓ Public agencies must generally make their records available for inspection by the public.



KEY THINGS TO KNOW

- **Agenda and Meeting Materials.** Copies of the agenda materials and other non-attorney-client documents distributed to the governing body must be available to the public. Any materials distributed by the local agency, its consultants, or decision-makers must be available for public inspection at the meeting. Materials prepared and distributed by some other person must be made available after the meeting.
- **Scope of Access.** The public has the right to see any materials that are created as part of the conduct of the people's business. These materials include any writing that was prepared, owned, used, or retained by a public agency. They include documents, computer data, e-mails, facsimiles, and photographs.
- **Presumption and Exceptions.** A document is presumed to be a public record unless an exception applies. There are a number of exceptions. For example, the "pending litigation" exemption exempts documents that are prepared in support of ongoing litigation (otherwise opposing counsel could obtain all documents containing the agency's legal strategy just by asking for them).

Despite these exceptions, the safe assumption is virtually all materials involved in one's service on the governing body — including e-mails — are public records subject to disclosure.

CONSEQUENCES OF VIOLATION

Anyone can sue the agency to enforce his or her right to access public records subject to disclosure. If the agency loses or otherwise produces the records as the result of the lawsuit, it must pay costs and attorneys fees.

Doing the Right Thing:

**PUTTING ETHICS PRINCIPLES
INTO PRACTICE IN PUBLIC SERVICE**

Universal Ethical Values

Research by the Institute for Global Ethics identifies ethical values that transcend virtually all cultures and religions.³

Among them are:

- Trustworthiness
- Responsibility
- Respect
- Loyalty
- Compassion
- Fairness

About the Institute for Local Government

The Institute's mission is to develop forward-thinking resources to help local officials serve their communities.

Institute for Local Government

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In the hurly-burly, competitive world of politics, it can be easy to overlook a fundamental fact: the public expects and deserves its public servants to serve the public's interest—not private or political interests.

Values are very important to the public. The public is strongly supportive of public officials' following their sense of "what is the right thing to do" in making government decisions.¹

"...how does the conscientious public official sort through competing considerations and determine
"the right thing to do?"

The key question is: how does the conscientious public official sort through competing considerations and determine "the right thing to do?" When it comes to being a public servant, how does one put one's values into practice?

"The Right Thing to Do"

There are a number of sources of guidance. One, of course, is the law. For example, California has a complex array of laws relating to ethics in public service.

The law, however, only sets a minimum standard for ethical conduct. Just because an action is legal doesn't mean that it is ethical. Or that it reflects your or the public's values.

The key is to go to the source and think in terms of values. The chart on the next page identifies key ethical values that tend to resonate with nearly everyone--irrespective of culture, religion or national origin.²

Of course, the next question is: What do these values mean in the context of being a public servant? The chart below provides some food for thought.

PUBLIC SERVICE VALUES

When we talk about the values that ought to guide one's public service, what kinds of values do we mean? The following provides some ideas on values that can inform one's public service and suggests examples of what those values mean in practice.

Trustworthiness

- I remember that my role is first and foremost to serve the community.
- I am truthful with my fellow elected officials, the public and others.
- I avoid any actions that would cause the public to question whether my decisions are based on personal interests instead of the public's interests.
- I do not accept gifts or other special considerations because of my public position.
- I do not knowingly use false or inaccurate information to support my position.
- I do not use my public position for personal gain.
- I carefully consider any promises I make (including campaign promises), and then keep them.

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 support merit-based processes for the award of public employment and public contracts.
- I am impartial and do not favor those who either have helped me or are in a position to do so.
- I promote equality and treat all people equitably.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I credit others' contributions in moving our community's interests forward.
- I maintain consistent standards, but am sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms.

Responsibility

- I work to improve the quality of life in the community and promote the best interests of the public.
- I promote the efficient use of agency resources.
- I do not use agency resources for personal or political benefit.
- 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 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 promise that which I have reason to believe is unrealistic.
- I disclose suspected instances of impropriety to the appropriate authorities, but I never make false charges or charges for political advantage.
- I do not disclose confidential information without proper legal authorization.
- I am proactive and innovative when setting goals and considering policies.
- I consider the broader regional and statewide implications of the agency's decisions and issues.
- I promote intelligent innovation to move forward the agency's policies and services.

Respect

- I treat fellow officials, staff and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personality traits or other issues that might distract me from focusing on what is best for the community.
- 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 involve all appropriate stakeholders in meetings affecting agency decisions.

- I come to meetings and I come to them prepared.
- I work to improve the quality of life in my community.

Compassion

- 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 and concerns of the public, officials, and staff.
- I recognize my responsibility to society's less fortunate.
- I consider appropriate exceptions to policies when there are unintended consequences or undue burdens.

Loyalty

- I safeguard confidential information.
- I avoid employment, contracts and other financial, political and personal interests that can conflict with my public duties.
- I prioritize competing issues based on objective benefits and burdens to the public interest, not to myself, my family, friends or business associates.
- I don't oppose final decisions once they have been made by the decision makers, except through internal lines of communication.
- I put loyalty to the public's interests above personal and political loyalties.

The Importance of Public Perception

The interesting – and somewhat unique – aspect of public service ethics is that it is not exclusively an introspective process. A public official can be absolutely confident that he or she is able to put personal interests or relationships aside, but the public may still question whether indeed that is so.

Public perception, therefore, matters a great deal in one's analysis of what the "right thing to do" is in public service. This is because, as public servants, public officials are stewards of the public's trust in the public's governing institutions.

In short, public service ethics is not only about doing the right thing, but also about the public's confidence that indeed the right thing has been

done. But not doing the right thing just because the public's perception may be negative can have its own pitfalls. To step, or at times tiptoe, along the trail toward good government, here is a simple (but not necessarily easy) process:

- **First Step:** Figure out what "the right thing" to do is.
- **Second Step:** Figure out what the public's perception of "the right thing to do" would be.
- **Third Step:** When needed, balance the first two steps and follow the path which best supports public service values.

■ Types of Ethical Dilemmas

At some point in your service as an elected official, you will likely face two common types of ethical dilemmas:

- **Personal Cost Ethical Dilemmas.** This involves situations in which doing the right thing may or will come at a significant personal cost to you or your public agency. These also can be known as “moral courage” ethical dilemmas.
- **Right-versus-Right Ethical Dilemmas.** This type of ethical dilemma involves those situations in which there are two conflicting sets of “right” values.³

Of course, some dilemmas are a combination of both: a conflict between competing sets of “right” values (right-versus-right) and a situation in which doing the right thing involves personal or political costs.

■ Personal Cost Ethical Dilemmas

With these kinds of dilemmas, the costs can be political – such as the loss of a political support or perhaps even one’s prospects for reelection.

Or, the cost can be financial, for example a missed opportunity for financial gain or material benefits. Issues relating to the proper use of public resources fall into the “personal cost” type of ethical dilemma, inasmuch as these dilemmas typically involve whether one is going to forgo a tempting political or personal benefit.

Finally, the cost can be more directly personal, as when a particular course of action may jeopardize a friendship.

- In these situations, the answer is relatively simple, but certainly not easy. The bottom line is that being ethical means doing the right thing regardless of personal costs.

■ Right-versus-Right Ethical Dilemmas

Right-versus-right ethical dilemmas can be more difficult to resolve.

One example is when a lifetime, best friend urges you to do something that conflicts with your own best sense of what will serve your community’s interests. In this dilemma, there is a conflict between your responsibility to do what is in the public’s best interest and your loyalty to your friend. Responsibility and loyalty are both bona fide ethical values.

- The key is, as a public servant, the ethical value of responsibility (and the responsibility to do what is in the public’s best interest) trumps the ethical value of loyalty. This is when thinking about the public’s perception of the right thing to do can be a useful dilemma-resolution strategy (see box at left).

Avoid the Rationalization Trap

One way public officials can get themselves sideways with both the public’s expectations and the law is when they start rationalizing or relying on situational ethics, i.e., those ethics that are sculpted to fit the facts. Many of these rationalizations can start with the fact that, as a public servant, one gives a great deal of time and energy to one’s community.

As worthy as it is, this commitment does not entitle you to:

- Benefits to your business or personal finances as a result of your public service.
- Special benefits or “perks” associated with your public office from businesses or others.
- Use public resources for personal or political purposes.
- Secure special treatment from your agency or others in regulatory or enforcement matters for yourself or others.

If you find yourself rationalizing that you deserve some special benefit, stop yourself. You are likely on the path to an ethical, or maybe even legal, misstep. You chose to run for office and are responsible for creating the possibility of the impact on your time.

As the Greek philosopher Demosthenes observed, “Nothing is so easy as to deceive oneself; for what we wish, we readily believe.”

^{**}Think about your values in public service in advance, as well as where your boundaries for ethical conduct are. This will help you avoid being tempted to cross the line in specific situations and fall prey to a dynamic of “situational ethics”—or the tendency to determine your ethical standards according to the situation.

Endnotes

¹ Meg Bostrom, *By or For the People? A Meta-Analysis of Public Opinion of Government* (January 2005) at 31.

² See Rushworth M. Kidder, *How Good People Make Tough Choices* (Simon and Schuster, 1995) at 77-92.

³ *Id.* at 13-49.

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Sorting through Ethical Dilemmas

If you find yourself faced with an ethical dilemma, the following questions may help you come to an answer:

- Which ethical values are involved in this decision (for example, trustworthiness, compassion, loyalty, responsibility, fairness, or respect)?
- Is this a situation in which ethical values are in conflict (right-versus-right dilemmas) or in which there is a significant personal cost associated with doing the right thing?
- What are the facts? What are the public benefits to be achieved or the public harm to be avoided by a particular decision? Is there a decision that does more public good than harm?
- What are your options? Is there a course of action that would be consistent with either both sets of ethical values (for right-versus-right dilemmas) or consistent with the ethical value and avoid the anticipated cost of pursuing the right course of action?
- Is one course of action more consistent with a value that is particularly important to you (for example, compassion or trustworthiness)?
- What decision best reflects your responsibility as an officeholder to serve the interests of the public as a whole?
- What decision will best promote public confidence in your agency and your leadership?

It can also be useful to think about common ethical dilemmas (or clearly improper) situations that arise for public officials and how you would handle them/what you would say.

What to Do?

Figuring out the kind of dilemma you are facing is the first step.

- **Personal Cost.** Does doing "the right thing" seem to involve a significant personal cost?
- **Right Versus Right.** Does the dilemma involve competing sets of "right" values?
- **Legal Issue.** Does the law provide an answer on what you must do? (Remember the law establishes only minimum obligations – just because something is legal doesn't mean it's ethical.)

For more information about public service ethics, visit www.ca-ilg.org/trust.

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Key Ethics Law Principles For Public Servants

Note that the following are not statements of law, but rather principles the law is designed to achieve.

The goal in providing this list is to identify the kinds of issues addressed by public service ethics laws.

If an issue arises for you under these principles, consult your agency counsel.

PERSONAL FINANCIAL GAIN

Public officials:

- ◆ Must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests (see reverse for list of types of financial interests).
- ◆ Cannot have an interest in a contract made by their agency.
- ◆ Cannot request, receive or agree to receive anything of value or other advantages in exchange for a decision.
- ◆ Cannot influence agency decisions relating to potential prospective employers.
- ◆ May not acquire interests in property within redevelopment areas over which they have decision-making influence.

PERSONAL ADVANTAGES & PERKS

Public officials:

- ◆ Must disclose all gifts received of \$50 or more and may not receive gifts aggregating to over \$360 (2006) from a single source in a given year.
- ◆ Cannot receive compensation from third parties for speaking, writing an article or attending a conference.

- ◆ Cannot use public agency resources (money, travel expenses, staff time and agency equipment) for personal or political purposes.
- ◆ May only be reimbursed for actual and necessary expenses consistent with their agency's reimbursement policy.
- ◆ Cannot participate in decisions that may affect (positively or negatively) their personal interests.
- ◆ Cannot accept free transportation from transportation companies.
- ◆ Cannot send mass mailings at public expense.
- ◆ Cannot make gifts of public resources or funds.
- ◆ Cannot receive loans over \$250 from those within the agency or those who do business with the agency.

GOVERNMENT TRANSPARENCY

Public officials:

- ◆ Must disclose their financial interests.
- ◆ Must conduct the public's business in open and publicized meetings, except for the limited circumstances when the law allows closed sessions.
- ◆ Must allow public inspection of documents and records generated by public agencies, except when non-disclosure is specifically authorized by law.
- ◆ Must disclose information about significant (\$5000 or more) fundraising activities for legislative, governmental or charitable purposes.

FAIR PROCESSES

Public officials:

- ◆ Have a responsibility to assure fair and competitive agency contracting processes.
- ◆ Cannot participate in decisions that will benefit their immediate family (spouse/domestic partner or dependent children).
- ◆ Cannot participate in quasi-judicial proceedings in which they have a strong bias with respect to the parties or facts.
- ◆ Cannot simultaneously hold certain public offices or engage in other outside activities that would subject them to conflicting loyalties.
- ◆ Cannot participate in entitlement proceedings – such as land use permits – involving campaign contributors (does not apply to elected bodies).
- ◆ Cannot solicit campaign contributions of more than \$250 from permit applicants while application is pending and for three months after a decision (does not apply to elected bodies).
- ◆ Cannot represent individuals before their agency for one year after leaving agency service.
- ◆ Must conduct public hearings in accordance with due process principles.



INSTITUTE FOR
LOCAL GOVERNMENT

A Public Official's Conflict Of Interest Checklist

KEY CONCEPTS

- ✓ A public agency's decision should be based solely on what best serves the public's interests.
- ✓ The law is aimed at the perception, as well as the reality, that a public official's personal interests may influence a decision. Even the temptation to act in one's own interest could lead to disqualification, or worse.
- ✓ Having a conflict of interest does not imply that you have done anything wrong; it just means you have financial or other disqualifying interests.
- ✓ Violating the conflict of interest laws could lead to monetary fines and criminal penalties for public officials. Don't take that risk.

BASIC RULE

A public official may not participate in a decision – including trying to influence a decision – if the official has financial or, in some cases, other strong personal interests in that decision. When an official has an interest in a contract, the official's agency may be prevented from even making the contract.

WHEN TO SEEK ADVICE FROM AGENCY COUNSEL

The rules are very complex. Talk with your agency counsel 1) early and often 2) when an action by your public agency 3) may affect (positively or negatively) 4) 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 spouse/domestic partner.
- ✓ **Business Management or Employment.** An entity for which you serve as a director, officer, partner, trustee, employee, or manager.
- ✓ **Real Property.** A direct or indirect interest in real property of \$2000 or more that you or your immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies), and options to purchase. Be especially alert when any of these are located within 500 feet of the subject of your decision.
- ✓ **Personal Finances.** Your or your immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.

- ✓ **Gift Giver.** A giver of a gift of \$360 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 Investment.** An interest in a business that you or your immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth \$2000 or more.
- ✓ **Related Business Entity.** An interest in a business that is the parent, subsidiary or is otherwise related to a business where 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 (applies to appointed decision-making bodies only).
- ✓ **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 cast doubt on your ability to make 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.

EVEN IF IT'S LEGAL, IS IT ETHICAL?

The law sets only minimum standards. Ask yourself whether members of the public whose opinion you value will question whether you can act solely in the public's interest. If they might, consider excusing yourself voluntarily from that particular decision-making process.

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