



KRONICK  
MOSKOVITZ  
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& GIRARD

# *THEY DID WHAT?!*

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**Ethical Obligations in Public Office & Employment**

April 19, 2024

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# Before we begin ...

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- This presentation is an *overview* of core concepts.
- Do not attempt to circumvent the rules by coming up with creative workarounds.
- If in doubt, contact us or the FPPC (1-866-ask-FPPC).

*Email [twatson@kmtg.com](mailto:twatson@kmtg.com) for AB 1234 participation certificate or MCLE credit.*

Count gnomes amidst the *following* slides & first 3 correct emailers at the end will win a prize!



# AB 1234: To Whom Does it Apply?

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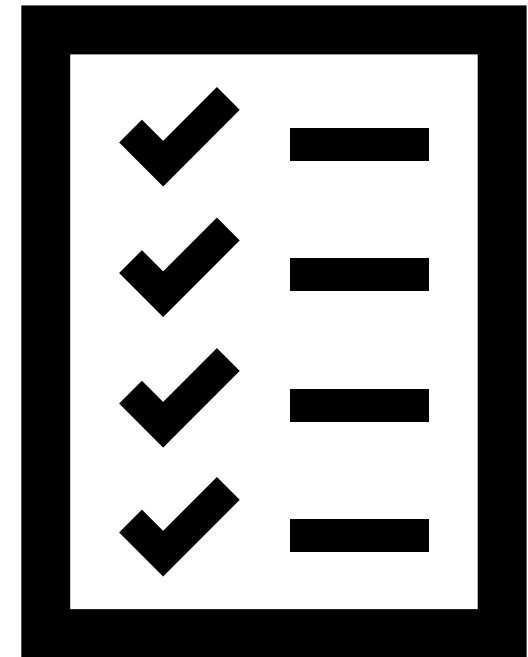
- Required for elected or appointed officials who are compensated for their service or reimbursed for their expenses.
- Trigger is whether the Agency either compensates or reimburses expenses for members of any of its Brown Act covered bodies:
  - If yes, then all elected and appointed “local agency officials” (as defined) must receive this training.
- Government Code section 53234 (c)(2) further requires any employee designated by the Agency to receive the training.



# Four Main Topics

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1. Conflicts of Interest
2. Abusing the Perks of Office
3. Government Transparency
4. Fair Processes



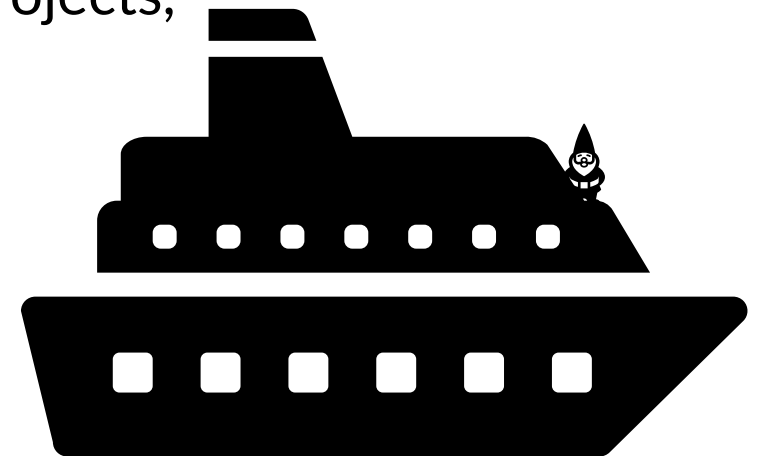
## Topic #1...

# Scenario 1

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Lindsay sits on a government planning commission involved in approving residential development. Her long-time neighbor, Buster, is a developer. Buster approaches Lindsay and tells her that he would like her and her family to accompany him on a cruise at his expense so they can all finally get to know each other better. She says yes.

- At a cruise dinner, after talking about one of Buster's projects, Buster offers Lindsay \$1,000. Any issues?
- What if after discussing the project, instead, Buster offers her husband, Tobias, a lucrative job?
- What if Lindsay is the Planning Director, not a commissioner?



# Conflicts of Interest: Bribery

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**Rule:** Officials and employees are prohibited from asking for, or taking, a bribe in exchange for influencing their decision.

- Broadly applied to mean anything of value or advantage, received in the present or future.
- Penalties – Bribery is considered a felony, regardless of the value of the bribe.
  - Prison sentence of “two, three or four years.”
  - Fines between \$2,000 and \$10,000.
  - Removal from office and lifetime ban from holding office.



# Scenario 2

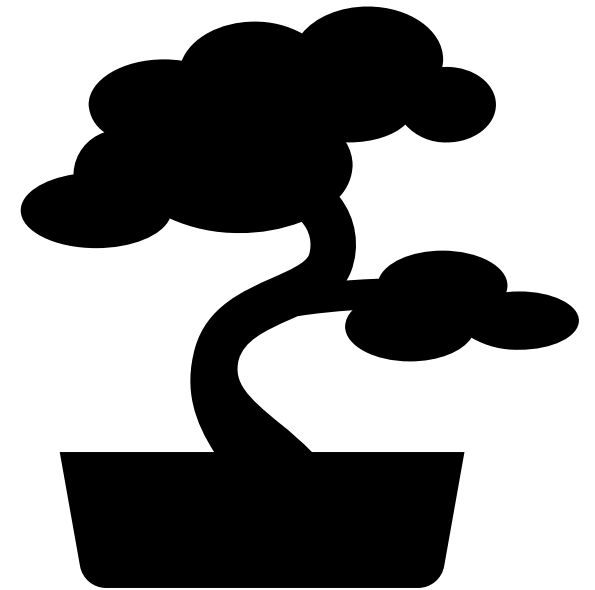
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Gregor Mendel is the co-owner of his family landscaping business, Inheritance, LLC, and sits on the city council.

Inheritance, LLC submits a proposal to the city for ongoing landscaping services, identifying the co-owner as the primary contact and project manager.

After evaluating proposals under standard and objective criteria, staff identifies Inheritance, LLC as the most responsive, cost-effective, and qualified option for the city. The contract is for \$10,000 and term is three years.

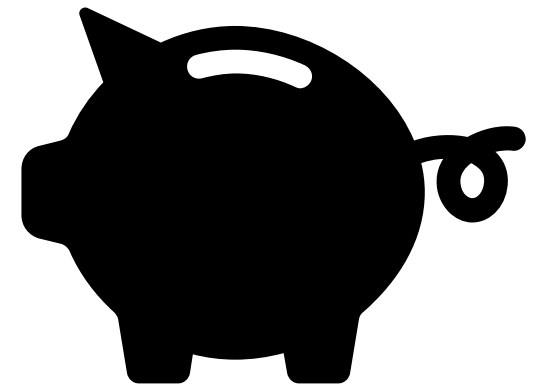
- Any issues when the contract comes before the council?
- What if the city manager is authorized and does execute the contract without council vote?
- What if Mendel is only on the locality's historic preservation commission?



# Conflicts of Interest: Political Reform Act

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**Rule:** Do not make or influence a government decision if you have a *personal financial interest* in the outcome.





# Conflicts of Interest: Political Reform Act

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*You have disqualifying conflict of interest if your decision would have a...*

- 1. Reasonably foreseeable; and,*
- 2. Material financial effect;*
- 3. On your economic interest; and,*
- 4. That effect is distinct from the public generally.*



**State it in the record, stay silent, and step out & away!**

*(\*For Zoom meetings, we recommend logging off and then entering the meeting when the item has concluded)*

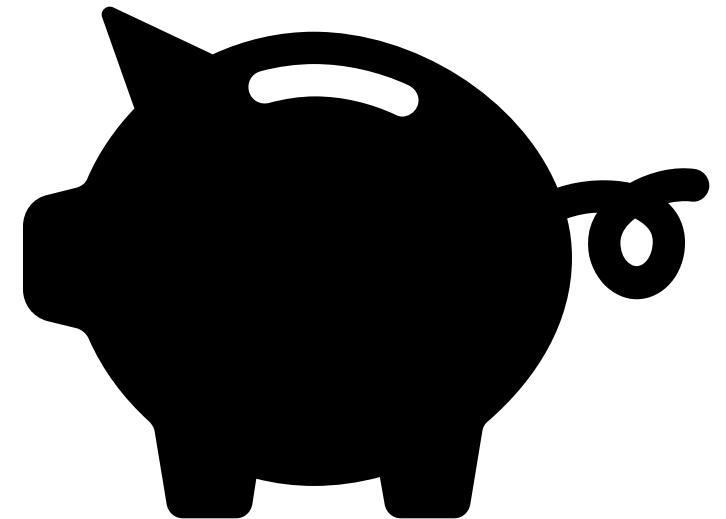


# Conflicts of Interest: Political Reform Act

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You have a *financial interest* if you, or a member of your immediate family, has a:

- a) \$2,000+ direct/indirect investment in business;
- b) You are a director, employee, etc. of business;
- c) \$2,000+ direct/indirect investment in real property;
- d) \$500+ income within 12 months; or,
- e) \$250+ in gifts received from anyone within 12 months.



# Conflicts of Interest: Political Reform Act

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## Exceptions:

- Public generally (e.g., 25% of population.)
- Legally required to participate to reach quorum.



# Conflicts of Interest: Political Reform Act

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## 2022 amendment to GC § 84308

**Rule:** If you are an elected or appointed official involved in a permitting or entitlement decision, do not solicit or accept contributions of \$250 or more from the applicant during or within three months after the decision.

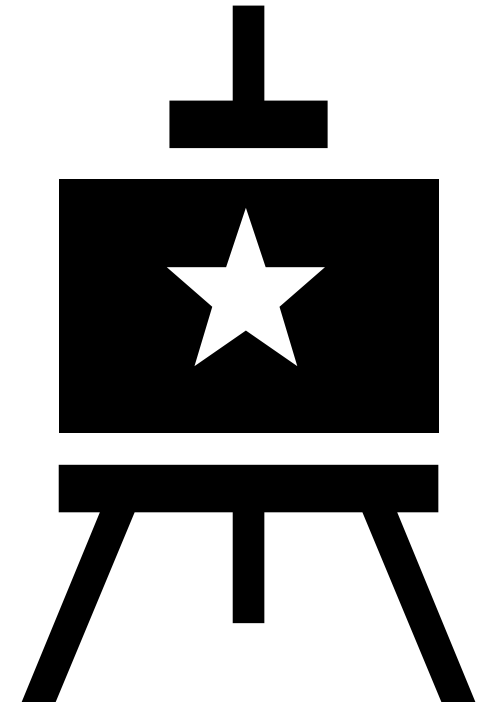
- If you accepted such contributions within the prior 12 months, must disclose and recuse yourself.

# Scenario 3

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Pursuant to his delegated spending authority, city manager Ross hires Rachel to design a city logo and identify areas, ways, and places around the city that it can be used. Now, the city council directs staff to issue an RFP for producing memorabilia and executing a rebranding campaign using Rachel's design and information. Rachel intends to submit a proposal.

- Can Rachel submit a proposal?
- How might the issue, if any, have been avoided?

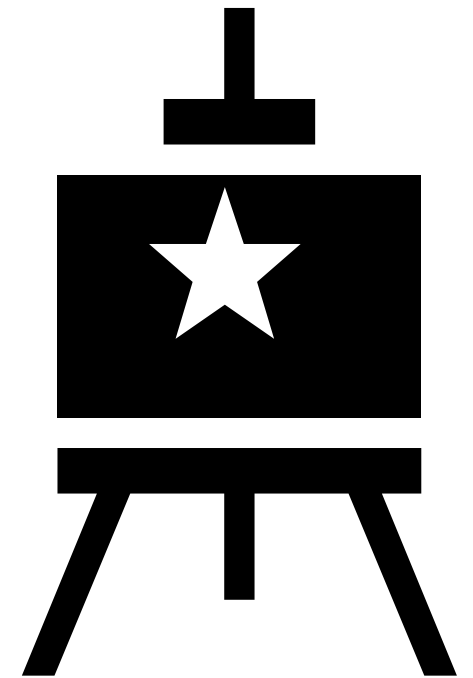


# Conflicts of Interest: Section 1090

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**Rule:** Do not *make* a government contract if you have a personal financial interest in the contract.

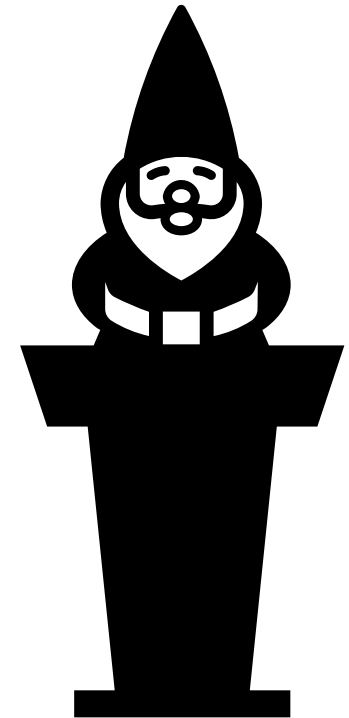
- General rule: if you are on the governing board and have a 1090 conflict, the Agency cannot enter into the contract with you. For staff, contract can be approved if you do not participate in any aspect of the contract-making process.
- If you fall within an exception (non-interest or remote) → state it in the record and you might be able to participate.\*



# Conflicts of Interest: Revolving Door

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**Rule:** If you were an elected official or top-level manager (e.g., agency manager), do not lobby your former agency for at least one year after leaving your position.



# Conflicts of Interest: Revolving Door

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**Rule:** Do not attempt to get a new job by using your official position to influence a government decision.





# Conflicts of Interest: Incompatibility

**Rule:** Public officials may not hold two different public offices simultaneously if the offices have overlapping *and* conflicting public duties.

- The Legislature may adopt a statute allowing holding the two offices.
- Only applies to public offices, not employment.
- Offices are incompatible when:
  1. Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;
  2. Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices; and
  3. Public policy considerations make it improper for one person to hold both offices.



# Conflicts of Interest

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- Consequences of violating the rules:
  - Fines imposed by the FPPC (often in the \$1000s of dollars).
  - Forfeiture of office (1090, incompatibility).
  - Imprisonment.
  - Vote does not count (PRA).
  - Decision of entire board is nullified (1090).



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# Abusing the Perks of Office

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**Rule:** Do not make or accept an amount over the campaign contribution limits set by law, currently \$5,500 for city or county candidates.

- Limit only applies to cities and counties that have not already enacted laws addressing contribution limits on such candidates. Local regulation may also be in addition to the state-level max.
- Primary, general, special, and special run-off elections are considered separate elections. Contribution limits to candidates apply to each election.
- Ballot-measure committees are not included.

# Abusing the Perks of Office

## 2023-2024 Contribution Limits to State and Local\* Candidates Per Election

Candidate or Officeholder	Contributor Sources		
	Person (individual, business entity, committee/PAC)	Small Contributor Committee (see definition below)	Political Party
City and County Candidates in Cities and Counties That Have Not Enacted Limits*	\$5,500	\$5,500	\$5,500
Senate and Assembly	\$5,500	\$10,900	No Limit
CalPERS/CalSTRS	\$5,500	\$10,900	No Limit
Lt. Governor, Secretary of State, Attorney General, Treasurer, Controller, Supt. of Public Instruction, Insurance Commissioner, and Board of Equalization	\$9,100	\$18,200	No Limit
Governor	\$36,400	\$36,400	No Limit



# Abusing the Perks of Office

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**Rule:** Public officials may not accept gifts totaling more than \$590 a year from any single source.



# Abusing the Perks of Office

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- What is a gift?
  - Payment or item of value where you don't pay full value.
- Better question – what is *not* a gift?
  - E.g., gifts from family, reimbursed/returned/unused services or items, admission for speaking at an event.

# Abusing the Perks of Office

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In *limited circumstances*, if you are traveling because of your government position, payments for *reasonable* travel expenses are not considered gifts.





# Form 700

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- Public officials and some staff are required to file “Form 700” statement of economic interests.
- The Form 700 must be filed:
  - Within 30 days of assuming office.
  - Annually by April 1<sup>st</sup> .
  - Within 30 days of leaving office.
- Form 700 filers are identified in the Agency’s Conflict of Interest Code.



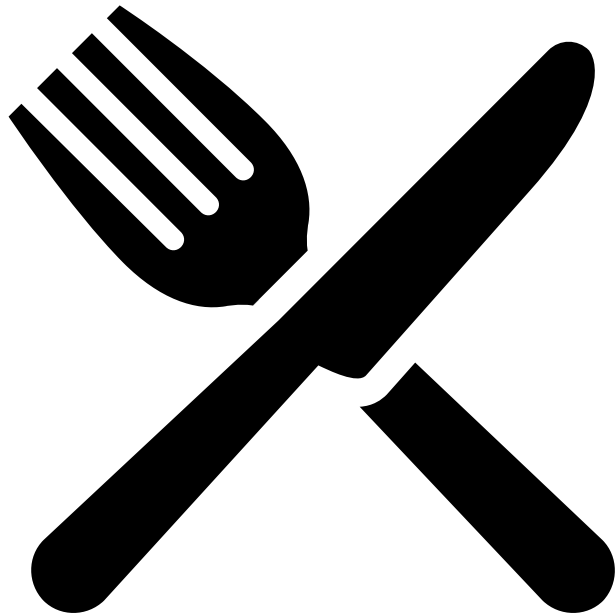
# Form 700

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**Rule:** If you are a Form 700 filer, you are generally prohibited from accepting honoraria (i.e., payments for appearing, speaking, writing) from any source.

## Scenario 4

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Councilmember Leslie Knope meets with her constituents weekly over waffles at JJ's Diner. Citizen Ann is so grateful for these opportunities to talk about city issues that she buys Councilmember Knope's waffles about once a month.

- Is this an issue?
- If so, what does Councilmember Knope need to do?

# Abusing the Perks of Office

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**Rule:** The use of public resources (e.g., facilities, equipment, materials, staff time) for campaign activity or personal use is prohibited.

- Exception: voter education.  
(Discussed in the following slide.)



# Abusing the Perks of Office

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## Rule:

- Public funds may not be used for campaign activity (i.e., advocacy on how to vote).
- Public funds may be used to educate the voters on effect of ballot measure on an agency.
  - Be careful when preparing this type of publication.

# Abusing the Perks of Office

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**Rule:** Public agencies may not make a gift of public funds.

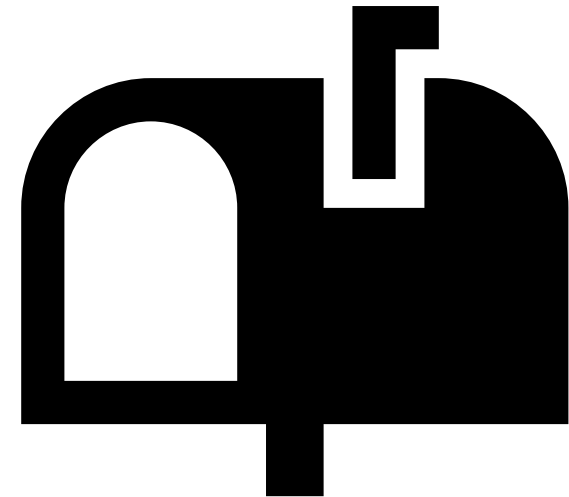
- A “gift” occurs when the public or public agency does not receive a benefit.
- “Gifts” may also include public agency property or other non-cash assets.
- Exceptions include official grants or acts that advance the public interest of the donor agency.



# Abusing the Perks of Office

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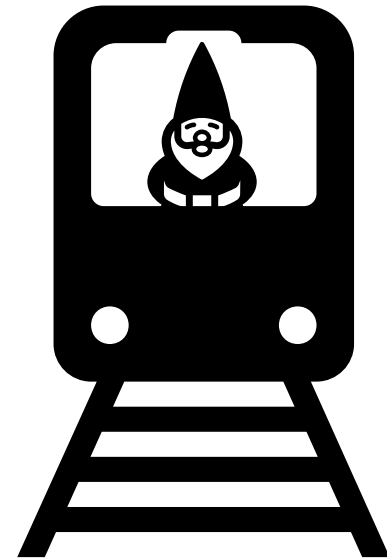
**Rule:** Public funds may not be used to fund newsletters or mass mailings.



# Abusing the Perks of Office

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**Rule:** Public officers may not accept free or discount transit passes.





# Abusing the Perks Office

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- Consequences for violating the rules:
  - Monetary fines from the FPPC (gifts, honoraria).
  - Vote does not count (gifts).
  - Forfeiture of office.
    - Violation of Rule 8 (transit passes).
  - Imprisonment (misuse of funds).





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# BREAK POINT!

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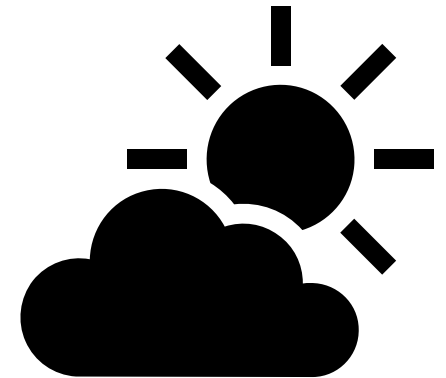
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# Government Transparency: The Brown Act

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- In a nutshell...the Brown Act, Gov. Code § 54950 et seq., is California's sunshine law, bringing governmental decisions out of the dark.
- Generally, mandates “[a]ll *meetings* of the *legislative body* of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency.”



# Government Transparency: Brown Act

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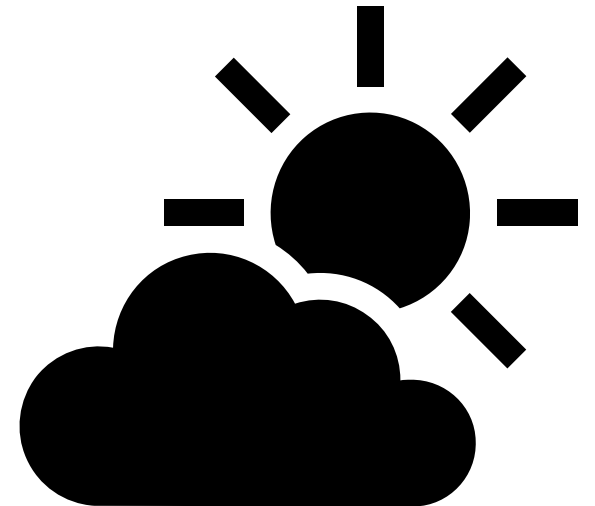
- Requires that “meetings” of “legislative bodies” be open to the public.
- A meeting of a legislative body triggers many requirements:
  - Meeting Notice Requirements.
  - Public Participation Requirements.
  - Open Deliberation.
  - And more....



# Government Transparency: Brown Act

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- A “legislative body” includes:
  - Boards, Councils, and other principal leadership;
  - Standing lower decision-making bodies (e.g., Planning Commission, executive committee); and
  - Many advisory bodies.



# Government Transparency: Brown Act

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- What is it a “meeting”?
  - “Any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to *hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.*”
    - ✓ Majority.
    - ✓ Hear, discuss, deliberate or take action.
    - ✓ Within subject matter.
- A “meeting” can occur:
  - When a majority of the members of the body meet.
  - Virtually, in-person, or combo (e.g., emails, social media).
  - Through intermediaries (e.g., hub+spoke, phone-chain).

# Government Transparency: Brown Act

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- When is it *not* a “meeting”?
  - Meetings with staff;
  - Meetings with constituents;
  - 1:1 between manager and officials (no conduits!); or
  - Attending public meetings of other agencies.



# Government Transparency: Brown Act

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## Teleconference Meetings

- *Traditionally* – quorum in jurisdiction, access at each teleconference location, post locations on the agenda, etc.
- *Emergency/Just Cause* – quorum in single location in jurisdiction identified on agenda and open to the public, audio/visual access is provided and in agenda, teleconference participant IDs anyone in the room, total no more than 20% of regular meetings, etc.
  - *Emergency* – no max; physical or family medical emergency; requires approval vote.
  - *Just Cause* – max twice per year; (a) caregiving needs of a child or certain family member, (b) contagious illness, (c) needs related to certain physical or mental disabilities, or (d) travel on official business of any public agency; no approval required.

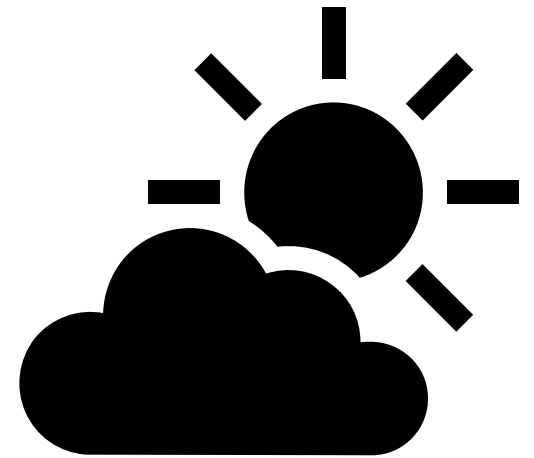


# Government Transparency: Brown Act

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## Types of Meetings

- General
- Special
- Adjourned or Continued
- Emergency

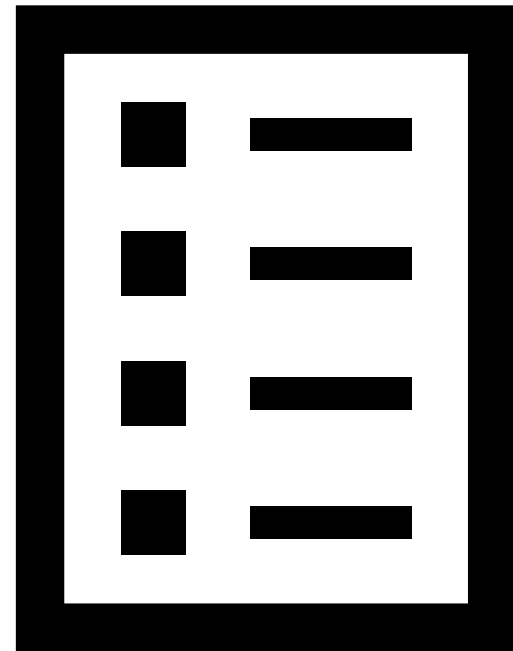


# Government Transparency: Brown Act

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## Agenda Requirements

- Posting
- Contents
- Additions
- Restrictions



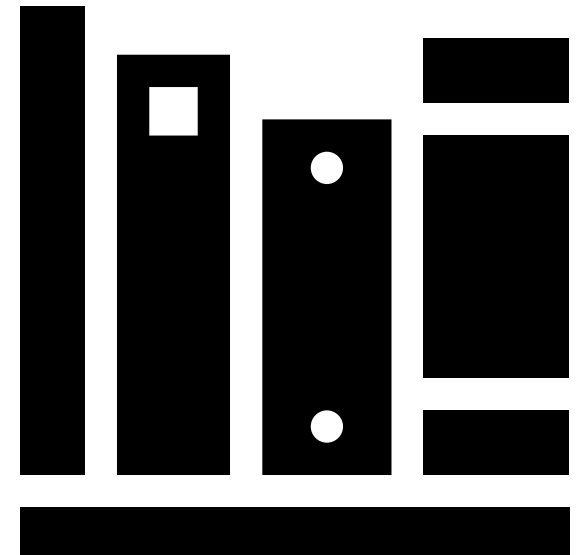
# Government Transparency: Brown Act

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- ***Closed session meetings*** are non-public meetings of a legislative body. Closed session meetings may **only** be held for:
  - Real property negotiations;
  - Conference with the attorney for existing or anticipated litigation
  - Certain personnel issues;
  - And limited other special cases.
- Closed session meetings have other specific notice and disclosure requirements.

# Government Transparency: Public Records Act

- In a nutshell...mandates a public agency disclose records in its possession upon request.
- Similar to the federal Freedom of Information Act and another California “sunshine law” bringing governmental decisions out from the dark.
- Agencies are required to take a liberal view of requests and promptly disclose all (1) responsive and (2) non-exempt records.



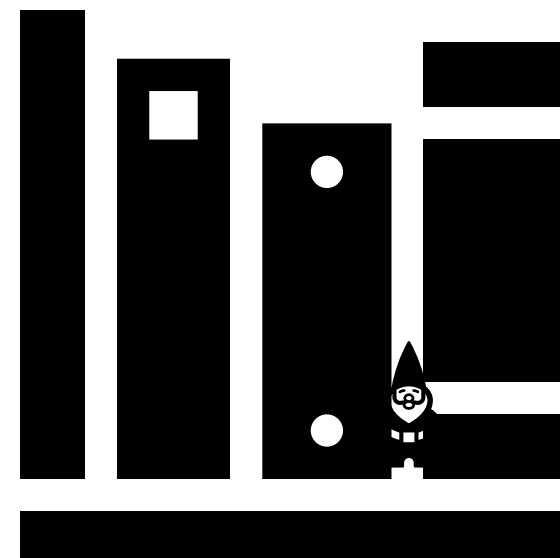
# Government Transparency: Public Records Act

- “Public record” is defined broadly
  - “Any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency, regardless of physical form or characteristics.”
- Name of a requester is not required.
- Motive in seeking records is irrelevant.
- Request can be oral or written and need not cite PRA.
- Exceptions exist for some sensitive or private records.



# Government Transparency: Public Records Act

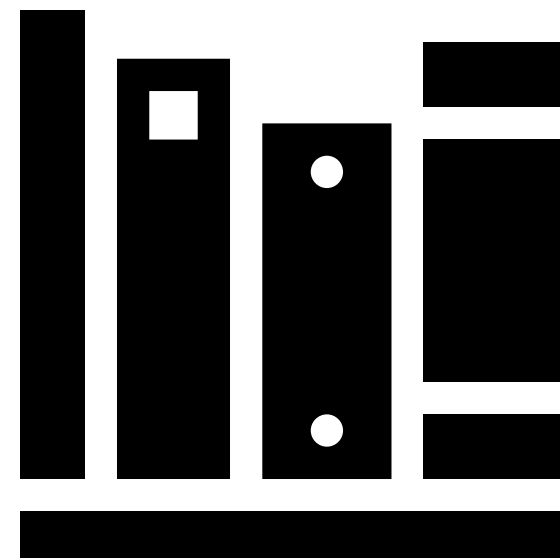
- What constitutes a “writing”?
  - Means any “handwriting, typewriting, printing, photo-stating, photographing and every other means of recording...upon any form of communication of representation...including:”
    - Letters, Emails, Text Messages.
    - Pictures.
    - Sounds.
    - Voicemail.
    - Photographs.
    - Texts (*San Jose v. Sup. Ct.*)



# Government Transparency: Public Records Act

## Steps to Reply to a PRA Request

1. Determine whether the request is for records.
2. Provide acknowledgment within 10 days.
3. Circulate request to relevant personnel and search files and servers.
4. Disclose records within a reasonable time thereafter; state statutory basis for withholding exempt records, if any.
  - e.g., personnel records, attorney-client documents, etc.





# Government Transparency: Public Records Act

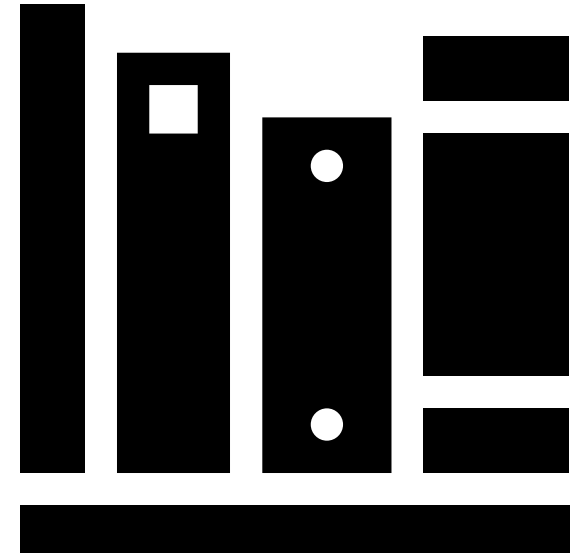
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- *National Lawyers Guild, San Francisco Bay Area Chapter v. City of Hayward (2020)*
  - California Supreme Court held that public agencies are prohibited from charging a fee to redact police body camera footage in response to a CPRA request.
  - Reinforced only actual cost of production (e.g. paper cost \$0.25 per page) chargeable to requestor.

# Government Transparency: Public Records Act

## Your Role in the Public Records Act

- Immediately alert your supervisor if you have received a request for records (e.g., oral, via public comment, via electronic or non-electronic mail, in-person).
- Promptly provide responsive records (make a reasonable effort to review all your files).
- Do not conduct personal business on Agency servers.
- Do not conduct Agency business on personal devices, if possible.

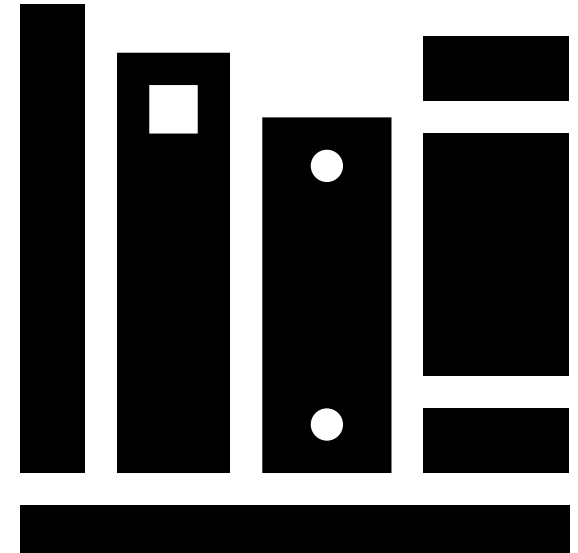


# Government Transparency: Public Records Act

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## Consequences for Violating the Public Records Act:

- Payment of attorneys' fees and costs.
- Disclosure of Records.
- Personal and Agency Embarrassment.
- Loss of Public Trust.





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# Fair Processes: Bias

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- Premised on published California Supreme Court and appellate court decisions.
  - “A public officer is impliedly bound to exercise the powers conferred on him [or her] with disinterested skill, zeal and diligence and primarily for the benefit of the public.”

# Fair Processes: Due Process

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**Rule:** An applicant appearing before an agency body that is acting in a quasi-judicial or adjudicatory capacity has the right to a fair and unbiased decision-maker under the due process clause of the Constitution.

- If a person or a person's property interest may be affected by a decision, the person must be provided notice and an opportunity to be heard.
- Cannot have a personal interest in the outcome or if receive information outside of the public hearing. Must divulge that information and allow the other party to respond.

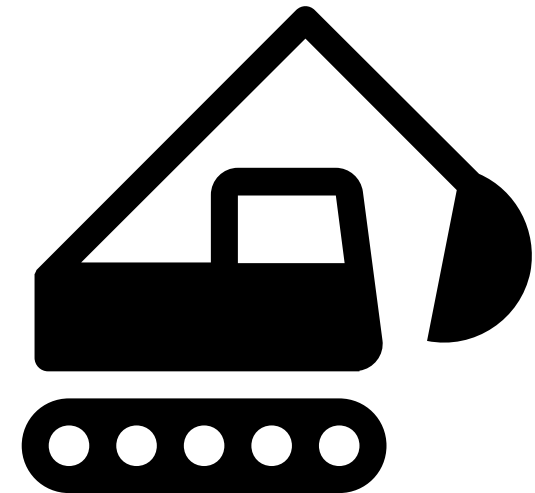


# Fair Processes: Competitive Bidding

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**Rule:** “Public works” contracts must be competitively bid.

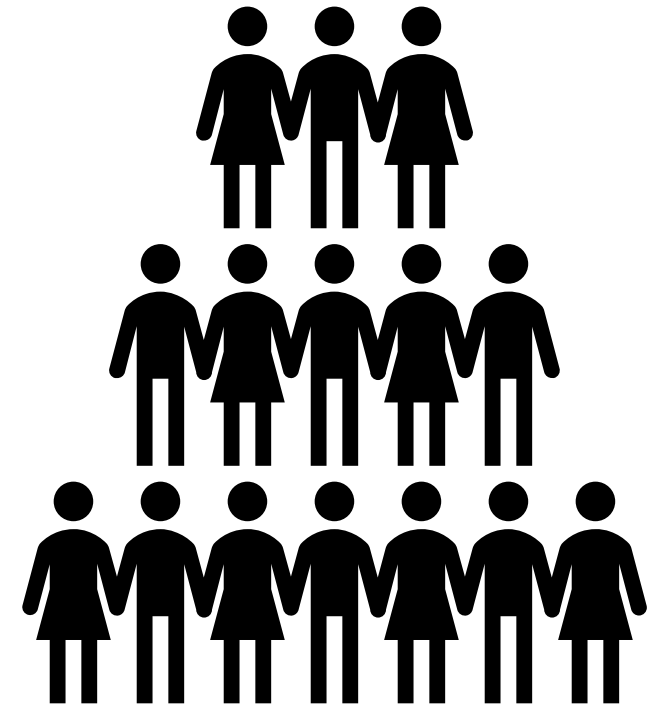
- *Process* – Advertise for bids via RFP/RFQ, award to lowest responsive/responsible bidder.
- Intended to eliminate favoritism, conflict of interest, fraud, or misuse of public funds.
- Exemptions for emergencies, small contracts, specialized services, and sole source.



# Fair Processes: Anti-Nepotism

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- No state mandate, just a general rule not to award positions or contracts based on relationship.
- Specific rules may be adopted by each agency.





# Scenario 5

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A willow tree on District property fell on Arthur Weasley's car, a Ford Anglia. He shows up at that evening's District Board meeting and gives public comment about the damage to his car.

Board member McGonagall immediately moves to approve \$20,000 check to Mr. Weasley for his car based on an in-time search of the car's value and her want to avoid litigation. It is seconded and approved, 5-2-0.

Board members Snape and Quirrell vote "nay" because they're outspoken opponents of Mr. Weasley's other lobbying work.

Board member Flitwick is Mr. Weasley's landlord, votes "yay," and, during the comment, distributes fliers he'd mailed from District offices to the jurisdiction on the District's ongoing mismanagement of trees around the District property, which abuts his property.

Seeing the tree emergency, Board member McGonagall then moves to contract with Quirrell's partner's company, Voldemortar and Pestle, to build retaining walls for all trees on District property, which staff had researched before at about \$200,000. It is also seconded and approved, 7-0-0.

- What issues are present?
- How *should* the District handle this?





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