

CITY OF MORGAN HILL ETHICS POLICY

The City of Morgan Hill's Ethics Policy requires that:

- public officials, both elected and appointed, comply with both the letter and the spirit of the laws and policies affecting the operations of government;
- public officials be independent, impartial, and fair in their judgment and actions;
- public office be used for the public good, not for personal gain; and
- public deliberations and processes be conducted openly, unless legally required to be confidential, in an atmosphere of respect and civility.

As those charged with carrying on the City's business, we the undersigned, affirm our commitment to Morgan Hill's ethics policy and endeavor to practice the following core values:

Honesty. I am honest with my fellow elected officials, the public and others. I am prepared to make unpopular decisions when my sense of the public's best interests requires it; and I take responsibility for my actions, even when it is uncomfortable to do so. I am trustworthy.

Respect. I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community. I respect others' time by coming to meetings prepared and offering observations only when I believe it will move the discussion forward. I work to gain value from diverse opinions and build consensus. I am approachable, open-minded and willing to participate in dialog and I work to convey this to others. I recognize government's responsibilities to everyone. I convey the agency's care for and commitment to its community members through my words and deeds. I am attuned to, and care about, the needs and issues of citizens, public officials and agency workers.

Responsibility. I do not accept gifts, services or other special considerations because of my public position. I refrain from any action that might appear to compromise my independent judgment. I support merit-based processes for the award of public employment and public contracts. I demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment and funds).

Fairness. I support the public's right to know and participate in the conduct of the public's business. I am impartial when making decisions. I make decisions based on the merits of the issue.

Loyalty. I respect the confidentiality of information concerning the agency's property, personnel and affairs. When presenting my individual opinions and positions, I explicitly state that my opinions do not represent the agency's position and I will not allow the inference that they do.

BROWN ACT
(GOVERNMENT CODE SECTION 54950, et seq.)

Policy Behind the Act

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

All 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, except as otherwise provided. (Section 54953)

Who Does the Act Apply To? "Legislative Body" Defined

The Act applies to "Legislative Bodies," which include:

- A local governing body (i.e., city councils, school boards, district board);
- A public commission, which may be advisory or decision-making;
- A committee of the above bodies (if created by charter, ordinance or formal action of the legislative body);
- Board of private entities which either:
 - Are created by the legislative body to exercise authority delegated to it or
 - Receives agency funds and whose board includes a member of the legislative body, appointed by the legislative body.

When Does It Apply? "Meeting" Defined

The Act must be followed for any "meeting," defined as: "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."

The following are NOT meetings:

- Attending an open and noticed meeting of another body.
- Attending a social function (e.g., a holiday party).
- Observing the meeting of one of the body's standing committees (the "church mouse exception.")
- Individual contacts by members.
- Attending a conference.
- Attending an open & publicized community meeting (e.g., an election debate).

Serial Meetings

"Meetings" include "serial meetings" where there is "use of direct communication, personal intermediaries or technological devices that is employed by a majority of the members of a legislative body to develop a collective concurrence as to an action to be taken."

Possible Examples

- The "DAISY CHAIN" Serial Meeting (direct communication by members) where A calls B and shares her views, they agree. B calls C, and so on until a quorum is reached.
- Emails (and chat rooms – communication by technological device).
- "Reply to all" and other assorted ways to succeed in violating the Brown Act without really trying.

Location of Meeting

Legislative Bodies must meet inside agency's boundaries, unless one of the following exceptions applies:

- No facility within agency's boundaries.
- To comply with state or federal law or a court order.
- To inspect real or personal property outside of the district.
- Multi-agency meetings held within the boundaries of one of the member agencies.
- In an agency facility if the agenda is limited to that facility/program.
- Meet with state or federal officials solely to discuss legislative or regulatory issues affecting the local agency.
- For a closed session with agency attorney on pending litigation.
- By video or teleconferencing if:
 - Open to public & posted at all locations
 - Quorum remains within agency boundaries.
- Special school district & JPA exceptions.

Agenda Requirements

Each meeting must have an agenda to inform the public of the items to be discussed at the meeting. Requirements include:

- 72 hour advance posting;
- Time and location of meeting;
- Description of each item of business; and
- Available in alternative formats to the disabled.

Agenda not placed on a noticed agenda should not be discussed, except

- Brief response to public comment.
- Brief report of own activities.
- Routine comment.
- Refer items to staff.

- Emergency items, as determined by majority of the body.
- Urgent item the need for immediate action came to the attention of the agency after the posting of the agenda, as determined by 2/3 of those present (or if there is not 2/3 of the body, by unanimous vote of those present).

Special meetings may be called by Presiding Officer or majority of the body:

- 24 hour posting/notice;
- Same agenda content requirements;
- Public comment required only on agenda items; and
- No non-agendized matters.

Emergency Meetings may be held without notice only if public health or safety may be threatened (work stoppage, disaster), requiring only one-hour notice or less notice if a dire emergency (e.g., crippling disaster, mass destruction)

Closed Sessions

There are certain types of meetings that are exceptions from the public meeting requirement of the Brown Act. These meetings, the agenda of which must be publicly noticed, may be held in "closed sessions". These include:

- Real Estate Negotiations.
- Pending Litigation.
- Actual litigation.
- Threatened litigation – based on facts & circumstances.
- Potential litigation.
- Personnel.
- Labor Negotiations.
- Public Security.
- Threat to the security of essential public services.

PUBLIC RECORDS ACT
(GOVERNMENT CODE SECTION 6250, et seq.)

What the Act Does

The Act makes all non-exempt, state and local government agency records (including reasonably segregable, non-exempt portions of otherwise exempt records) in any form or medium subject to public inspection during office hours and subject to being made available for copying on payment of duplication costs or a statutory fee. (Section 6253)

The Act's Stated Purpose

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Section 6250). The Act involves the fundamental, competing interests of prevention of secrecy in government and protection of individual privacy.

Existing Records Only

The Act only applies to existing, reasonably identifiable records. The Agency is not required to create records or responses not already in a record.

Requester Assistance

The Act requires public agencies to assist requesters by identifying records responsive to the request or its purpose, describing the information technology and the physical location of the records, and providing suggestions for overcoming any practical basis for denial of records access.

Response Required

The agency must notify requesters in writing within 10 days of receipt of the request whether the agency possesses disclosable records, or whether the time for notice will be extended. The time for notice may be extended up to an extra 14 days to:

- Search for records in separate offices or among voluminous records.
- Consult with another agency or part of an agency with a substantial interest concerning disclosure of the records.
- Write programming language or construct a computer report to extract data.

Notices extending time must be by an agency head or designee and give the reasons for the extension and expected notice date. In notifying requesters that disclosable records exist, state the estimated time when the records will be available.

Denying Records

The agency may deny the request only by issuing written rejections within the allowed time for responding to the request and by specifying what information will not be disclosed, citing applicable exemptions.

Records Disclosure and Electronic Records

Records requested in electronic format must be made available in that format if it is the one the agency has used for storing the records or for transmitting them to another agency.

Records need not be disclosed in electronic format if doing so would compromise the security or integrity of the original record.

Response to requests for disclosure under the Act should disclose all existing, reasonably identifiable, non-exempt information covered by the request so as to permit the public to know how its business is being conducted.

Statutory and Common Law Exemptions

The Act specifies certain exemptions and allows or requires an agency to withhold the specified records. Exemptions include:

- Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.
- Records pertaining to pending litigation of the agency or to claims made under the Government Code.
- Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- Certain police record information, including information that would endanger the successful completion of an investigation or a person's safety, and officer analyses or conclusions. Certain prescribed arrest, complaint, and investigation information must be disclosed on request.
- Content of real estate appraisals or engineering or feasibility estimates and evaluations concerning property acquisition and public supply and construction contracts, but only until the property is acquired or the contract obtained.
- Required taxpayer information regarding tax collection that is received in confidence and that, if disclosed, would result in unfair competitive disadvantage to the person supplying the information.
- Records, whose disclosure is exempted or prohibited pursuant to federal or state law, including, records that are privileged under the Evidence Code, e.g.:
 - Attorney-client privileged information.
 - Official-information privileged information.
- Personal financial data filed with licensing agencies as required to establish the applicant is qualified for the license, certificate or permit being sought.

- Memoranda submitted to a local agency legislative body by its legislative counsel pursuant to California Government Code Section 54956.9.
- Information where on the facts of the particular case the public interest in non-disclosure clearly outweighs the public interest in disclosure ("catch-all" exemption). Includes deliberative process privileged information.

Waiver of Exemptions

Disclosure of an otherwise exempt record to any member of the public waives the exemptions that would otherwise apply and makes the record subject to disclosure to all requesters, unless an exception applies. Exceptions include: certain discovery disclosure, disclosure prohibited by the legislative body, and confidential disclosure to another agency.

CONFLICT OF INTEREST

The Concept of Conflicts

No person may serve two masters. The public has a right to expect its servants to act in the public's best interest without regard to an official's private concerns. In many instances, the separation of "public duty" and "private interests" include duty to avoid actual conflict or the appearance of impropriety.

The Judge's Rule: "Common Law" Conflicts of Interest

The courts have held through rulings that a public official has the duty to act with "disinterested zeal." The rules apply to private financial interests, other interests and nepotism. Violations may involve the use of public resources, public funds or the receipt of gifts.

Legislative Regulation: Political Reform Act of 1974 – Conflict from Economic Interest ("Reform Act," Government Code Section 81000, et seq.)

The Reform Act was adopted by voters as a response to Watergate. The prohibitions apply to financial conflicts arising from "economic interests" whether or not a contract is involved. The law is interpreted and enforced by the Fair Political Practices Commission ("FPPC").

Reform Act is Very Broad

The Act regulates the following areas:

- Disqualification when there is a conflict – prohibition on participation.
- Report and disclosure – filing of FPPC form 700.
- Gifts and Honoraria limits.
- Travel reimbursement limits.
- Campaign contributions limits.

Conflict of Interest Under the Political Reform Act (Government Code Section 87100)

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

When Is There A Conflict?

FPPC has promulgated an "Eight Step" test of whether a conflict exists. (See, 2 CCR Section 18700, et seq.) If the answer to any of the steps one through seven is "no," then there is no conflict.

- Step One: Are you a "public official"? Yes, if one is a member, employee, consultant of a public agency.

- Step Two: Are you making or attempting to influence a decision? The definition of "influence" is very broad, to include:
 - Voting.
 - Discussion among board members or other public officials (including staff or consultants having decision making roles over a matter).
 - Lobbying.
- Step Three: Is there any of the following "economic interests" involved?
 - Business investments of \$2000 or more.
 - Business management positions in for profit entities.
 - Real property interests of \$2000 or more.
 - Sources of income of \$500 or more.
 - Sources of gifts of \$420 or more.
 - Personal financial effects.
- Step Four: Is your economic interest "directly involved" or "indirectly involved"?
 - Rules of conflict are stricter for a "directly involved" economic interest than for an "indirectly involved" economic interest.
 - There is a different test for direct involvement for each type of economic interest.
 - Generally, if it is not "directly involved," then it is "indirectly involved."
- Step Five: Is your economic interest "material"?
 - Materiality is a measure of "how important" it is. (Materiality is "relative.")
 - Any impact of a directly involved economic interest is material.
 - Rules of indirectly involved economic interests vary by type of interest.
- Step Six: Is it reasonably foreseeable that the decision will materially affect your economic interest? An effect is "reasonably foreseeable" if there is a "substantial likelihood" it will occur.
- Step Seven: Is the effect distinguishable from the effect on the "public generally"?
- Step Eight: Is participation "legally required"?
 - A limited "rule of necessity."
 - Not applicable to break a tie.
 - Not applicable when lack of a quorum is caused by vacancy in office or members absent from a meeting.
 - If used:
 - Only qualify the minimum number necessary.
 - Disclose the financial interest, the conflict, and why participation is necessary.

What to Do if There is a Conflict

If there is a conflict identified in the 8-step test, then:

- Publically identify the financial interest.
- Recuse yourself from participation in discussion and refrain from attempting to influence.
- Abstain from voting.
- Leave the room while the item is discussed (unless on consent calendar).
- Make sure the record reflects you have done this.

Legislative Regulation: Prohibited Contracting (Government Code Section 1090)

There is an absolute prohibition on making contracts between the agency and its public official who may be financially interested in a contract. Such contracts are prohibited even if the contract may be objectively fair and reasonable, if it was awarded to the lowest bidder or if the financially interested official abstains from participation.

Harsh Consequences of a "1090" Violation

If a prohibited contract is entered into, the consequences include:

- Contract is void, but agency may keep benefit of the contract.
- Official must disgorge any monies it made from the contract.
- Violation is a felony
 - Fine
 - Imprisonment
 - Disqualification from public office.

What Financial Interests Are Regulated by 1090?

All financial interests, no matter how small: the "One Penny" rule.

All financial interest, no matter how indirect: the long and winding road.

What Constitutes "Making a Contract"?

The following activities are prohibited by any financially interested official:

- Voting to approve.
- Designing specifications.
- Preliminary discussions.
- Negotiating.
- Actual signing of contract.

What are the Exceptions to Section 1090?

There are certain exceptions where the making of a contract is not a violation:

A contract is not prohibited where the interest of the official is "remote":

- Employee or officer of a non-profit.
- Employee of a private party if:
 - 10 or more other employees and
 - Employed more than 3 years.
- Interest in minor child's earnings.
- Salary or per diem from a directly involved government department.
- Supply of same goods and services for 5 years "to the contracting party" prior to taking office.

If the "Remote Interest" Exception Applies, then:

- The interest must be disclosed to the board;
- The interest must be noted in the "official records" of the board;
- The official must abstain from participation; and
- The board must authorize the contract in good faith.

Certain interests are considered "non interests"

- Ownership of <3% of stock.
- Spouse's employment, if employed in same position >1 year prior to taking office.
- Salary or per diem from a non-directly involved government department.

GIFTS AND HONORARIA

Introduction

The Political Reform Act restricts receipt of gifts, travel payments and prohibits receipt of honoraria by public officials and certain employees of local government agencies. The Act and the regulations promulgated pursuant to the Act also include disclosure requirements that apply in certain circumstances.

Applicability – Government Code Section 87200

- Members of boards of supervisors and city councils.
- Mayors.
- City/county planning commissioners.
- City/county chief administrative officers.
- City/county treasurers.
- District attorneys.
- County counsels.
- City managers.
- City attorneys.
- Public officials who manage public investments.
- Candidates for office.

Certain categories of employees of local government agencies also fall under regulation by the Act if the agency's conflict of interest code requires that employees in that category must file a Statement of Economic Interests (Form 700).

Gift Limit

Public officials may not accept gifts from any single source totaling more than \$420 in a calendar year.

What is a "Gift"?

A "gift" includes any payment or other benefit conferring a personal benefit for which the public official does not provide goods or services of equal or greater value. A rebate or discount not regularly available to members of the public is also considered a gift.

When is a Gift Accepted?

A gift has been received or accepted when the official takes actual possession of the gift or exercises direction or control over the gift, including discarding the gift or turning it over to another person.

Disclosure

Gifts aggregating \$50 or more must be disclosed on a Form 700.

Disqualification

Gifts aggregating \$420 or more could disqualify the official with respect to a decision affecting the party who made the gift.

Travel Payments

Certain travel payments may be subject to gift limit restrictions and/or may be reportable. Travel payments include payments, advances, or reimbursements for travel, including actual transportation as well as related lodging and subsistence.

Honoraria Ban

Generally, public officials may not accept honoraria payments.

RESTRICTIONS ON USE OF PUBLIC FUNDS OR RESOURCES

Prohibition Against Use of Public Resources for Personal or Political Purposes

Local officers and employees may not use public funds for personal purposes, including political activity.

What are "public funds"?

What is the penalty of misuse of public funds?

Illegal Gifts of Public Funds

The California Constitution prohibits a legislative body from approving a gift of public funds to a private person or group.

When is an expenditure a gift?

What is a "substantial public purpose"?

Mass Mailing Restrictions

Items mailed at public expense may not:

Feature an elected officer.

Mention an elected officer if prepared in coordination with the elected officer.

INCOMPATIBLE REQUIREMENTS

Fair Process Requirements: Incompatible Offices

Incompatible Offices: A public officer who is appointed or elected to another public office automatically vacates the first office if the two are incompatible.

Incompatible Activities

A local agency officer and employee shall not engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties. (Government Code Section 1126)