

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

NOTICE OF MEETING AND AGENDA
BOND OVERSIGHT COMMITTEE

Friday, September 21, 2018
9:30 a.m. – 2:00 p.m.

COMMITTEE MEMBERS: Marian Breitbart, Michael Day, Daren Gee, Christine D. Johnson, Michael McGill, Anu Natarajan, John Post

A Meeting of the Bond Oversight Committee will be held on Friday, September 21, 2018, at 9:30 a.m. The Meeting will be held in Conference Room 1100, 300 Lakeside Drive, 11th Floor, Oakland, California.

AGENDA

1. Call to Order.
 - A. Roll Call.
2. Introduction of Committee Members.
3. Introduction of BART Staff.
4. Measure RR Update with Timeline (For Discussion)
5. Parliamentary Procedures Training (For Information)
6. Ethics Training (For Information)
7. Public comment.

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to this meeting, as there may be people in attendance susceptible to environmental illnesses.

BART provides services/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of a Board or committee meeting, depending on the service requested. Please contact the District Secretary's Office at (510) 464-6083 for information.



RR Program Expenditures & Project Activities

9/21/2018



RR Program Overview - Expenditures (millions)

9/21/2018

Program	Expended (thru Aug 2018)	% Expended out of 1st Tranche	1st Tranche Spending Objective (thru June 2020)	POs (to date) – Remaining Amt to be Invoiced thru June 2020	Forecast Expenditures thru June 2020
Renew Track	\$51.3	55%	\$93.2	\$66.7	\$223
Renew Power Infrastructure	\$39.4	33%	\$120.6	\$46.7	\$147
Repair Tunnels & Structures	\$6.2	28%	\$22.5	\$12.0	\$28
Renew Mechanical	\$3.5	47%	\$7.5	\$1.8	\$23
Replace Train Control/Increase Capacity	\$0.3	2%	\$19.8	\$5.2	\$20
Renew Stations	\$2.1	23%	\$9.1	\$1.3	\$25
Expand Safe Access to Stations	\$2.3	16%	\$14.8	\$4.6	\$15
Design/Engineer to Relieve Crowding	\$2.9	23%	\$12.5	\$5.2	\$20
Total	\$108.0	36%	\$300	\$143.5	\$501

Total thru July 2018:

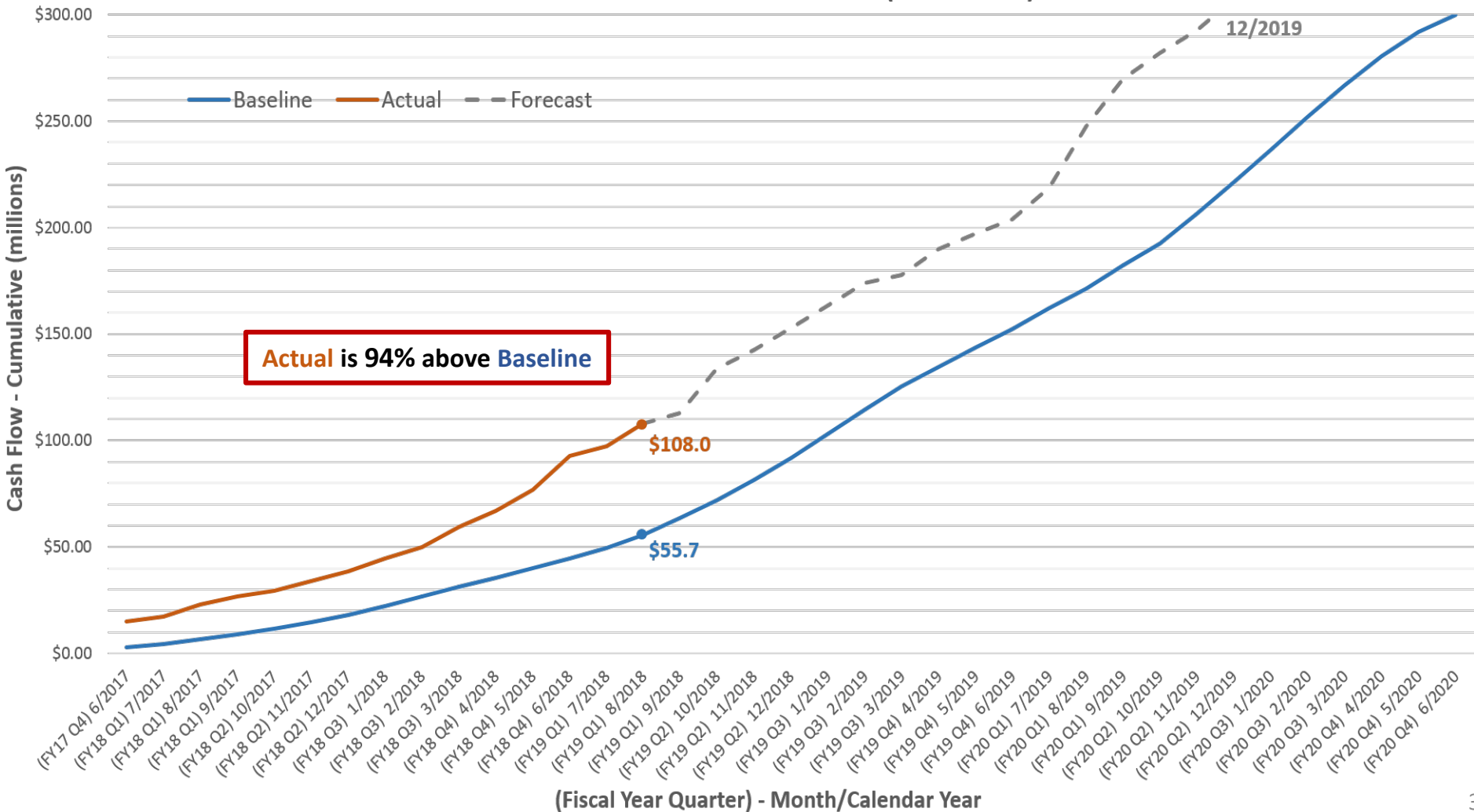
\$96.8

32%



RR Spending - Baseline vs. Actual CUMULATIVE

BART Measure RR Program - FIRST TRANCHE (\$300M Spending Objective 6/2017-6/2020)
Baseline vs. Actual Cash Flow (Cumulative)





Renew Track (millions)

\$625 Total Bond Allocation

Thru 8/2018
EXPENDED: \$51.3

Thru 6/2020
OBJECTIVE: \$93.2
FORECAST: \$223

RENEW TRACK		Current RR Spend/Month	POs Remaining to be Invoiced	Contracts in Bid/Award	Remaining Forecast Expenditures Prior June 2020 (unawarded contracts & forecasted labor)
# Project in Planning	1	\$0.1			
# Projects in Design	7	\$0.2	\$8.3		\$3.1
# Projects in Bid/Award	4			\$5	
# Projects in Construction	7	\$1.0	\$58.4		\$96.9 (\$55 Labor)
TOTAL	19	\$1.3	\$66.7	\$5.0	\$100.0

CRITICAL PATH SCOPE:

August 2018	September 2018	October 2018	November 2018
<ul style="list-style-type: none"> • Bus Bridge for M03 Construction Weekend 1, 2 • BART LABOR Restraining Rail at M03, C55, Rail Profiling 	<ul style="list-style-type: none"> • Bus Bridge For M03 Construction Weekend 3, 4 • BART LABOR: Restraining Rail at M03, C55, Rail Profiling 	<ul style="list-style-type: none"> • Vehicle Leases awarded \$3M • Advertise C25 Construction Contract for \$10M 	<ul style="list-style-type: none"> • Advertise \$2M Service Contracts supporting C55 interlock build. • Pay invoice for M03 interlocking contract \$3M



Renew Power Infrastructure (millions)

\$1,225 Total Bond Allocation

Thru 8/2018

EXPENDED: \$39.4

Thru 6/2020

OBJECTIVE: \$120.6

FORECAST: \$147

RENEW POWER INFRASTRUCTURE		Current RR Spend/Month	POs Remaining to be Invoiced	Contracts in Bid/Award	Remaining Forecast Expenditures Prior June 2020 (unawarded contracts & forecasted labor)
# Project in Planning	8	\$0.2			
# Projects in Design	8	\$0.2	\$22		\$1.0
# Projects in Bid/Award	1			\$35	
# Projects in Construction	4	\$1.0	\$24.7		\$24.9 (Labor)
TOTAL	25	\$1.4	\$46.7	\$35.0	\$25.9

CRITICAL PATH SCOPE:

August 2018	September 2018	October 2018	November 2018
<ul style="list-style-type: none"> Advertise \$18M Station Emergency Lighting BART LABOR COMPLETE Cable Installation and Rectifier Replacement 	<ul style="list-style-type: none"> Award 15EJ171 M Line Cable Replacement \$79M BART LABOR: Cable Installation, Rectifier, UPS Installation 	<ul style="list-style-type: none"> Award material purchase of IDS Switches \$4M Vehicle Leases Awarded \$1M Bid opening for Station Emergency Lighting \$18M Award 15AA110 Tunnel Lighting M line \$11.6M 	<ul style="list-style-type: none"> Complete Design of KTE(Bay Tube East) Traction Power Substation Pay invoice for 34.5 kV Cable for K- Line installation \$1.8M



Repair Tunnels & Structures (millions)

\$570 Total Bond Allocation

Thru 8/2018
EXPENDED: \$6.2

Thru 6/2020
OBJECTIVE: \$22.5
FORECAST: \$28

REPAIR TUNNELS & STRUCTURES		Current RR Spend/Month	POs Remaining to be Invoiced	Contracts in Bid/Award	Remaining Forecast Expenditures Prior June 2020 (unawarded contracts & forecasted labor)
# Project in Planning	3	\$0.1			
# Projects in Design	14	\$0.1	\$11.0		\$1.8
# Projects in Bid/Award	3			\$6.0	
# Projects in Construction	4	\$0.3	\$1.0		\$2 (Labor)
TOTAL	24	\$0.5	\$12.0	\$6.0	\$3.8

CRITICAL PATH SCOPE:

August 2018	September 2018	October 2018	November 2018
<ul style="list-style-type: none"> BART Labor of Platform Edge Rehab at MacArthur <p>COMPLETE</p>	<ul style="list-style-type: none"> Advertise \$2M Construction Contract for 15QN000 Safety Barriers Maintenance of Way 	<ul style="list-style-type: none"> Substation Roofs on Structures Substations Walls 	<ul style="list-style-type: none"> Substation Roofs on Structures Substations Walls Soundwalls Cross Passage Doors (Walnut Creek)



Renew Mechanical (millions)

\$135 Total Bond Allocation

Thru 8/2018
EXPENDED: \$3.5

Thru 6/2020
OBJECTIVE: \$7.5
FORECAST: \$23

RENEW MECHANICAL		Current RR Spend/Month	POs Remaining to be Invoiced	Contracts in Bid/Award	Remaining Forecast Expenditures Prior June 2020 (unawarded contracts & forecasted labor)
# Project in Planning	0				
# Projects in Design	5	\$0.2	\$1.8		
# Projects in Bid/Award	2			\$12.0	
# Projects in Construction	0				\$5.7 (Labor)
TOTAL	7	\$0.2	\$1.8	\$12.0	\$5.7

CRITICAL PATH SCOPE:

August 2018	September 2018	October 2018	November 2018
<ul style="list-style-type: none"> Award \$3.1 Construction Contract for Coverboard <p>COMPLETE</p>	<ul style="list-style-type: none"> Award \$5.2M Construction Contract for Coverboard 	<ul style="list-style-type: none"> Submit Procurement for Wet Standpipe Contract \$600K Submit Procurement for Yard Fire Services (Phase 1) \$1.6 M 	<ul style="list-style-type: none"> Submit Procurement for Yard Fire Services (Phase 2) \$1.9M



Replace Train Control / Increase Capacity (millions)

\$400 Total Bond Allocation

Thru 8/2018
EXPENDED: \$0.3

Thru 6/2020
OBJECTIVE: \$19.8
FORECAST: \$20

TRAIN CONTROL		Current RR Spend/Month	POs Remaining to be Invoiced	Contracts in Bid/Award	Remaining Forecast Expenditures Prior June 2020 (unawarded contracts & forecasted labor)
# Project in Planning	0				
# Projects in Design	0				
# Projects in Bid/Award <i>(Spend FTA Funding First)</i>	1	\$0.3	\$5.2		\$14.5
# Projects in Construction	0				
TOTAL	1	\$0.3	\$5.2		\$14.5

CRITICAL PATH SCOPE:

July 2018	FY19 Q1	FY19 Q2	FY19 Q3
<ul style="list-style-type: none"> Detailed Review with all three proposers for 2 weeks. Spend FTA funds first. 	<ul style="list-style-type: none"> Completed Supplemental qualification of Systems Equipment Installers. Completed 30% design of enabling contract Switch Power Supply Cabinets 	<ul style="list-style-type: none"> Issue more addenda Technical Proposal due (Nov 2018) Review Technical Proposal Increase CSE (M&E) support Hold add'l site tour & pre-proposal meeting for CBTC System Suppliers & Systems Equipment Installers 	<ul style="list-style-type: none"> Workshop with Contractors on Technical Proposal (Jan2019) Issue final addendum for Technical & Cost Proposal (Apr2019) Partially award additional Ultrasound Testing (UT) Support Broken Rail (through M&E, \$418K)

Note: Current average burn rate \$800K/month. Have not received formal approval to use AATC settlement fund. AATC fund can only be used for 80% of Non-CIG expenditure. Need Measure RR for CIG expenditure and 20% match for Non-CIG expenditure.



Renew Stations (millions)

\$210 Total Bond Allocation

Thru 8/2018
EXPENDED: \$2.1

Thru 6/2020
OBJECTIVE: \$9.1
FORECAST: \$25

RENEW STATIONS		Current RR Spend/Month	POs Remaining to be Invoiced	Contracts in Bid/Award	Remaining Forecast Expenditures Prior June 2020 (unawarded contracts & forecasted labor)
# Project in Planning	0				
# Projects in Design	0				
# Projects in Bid/Award	2		\$1.3	\$18.9	\$2.7
# Projects in Construction	0				
TOTAL	2		\$1.3	\$18.9	\$2.7

CRITICAL PATH SCOPE:

August 2018	September 2018	October 2018	FY19 Q2
<ul style="list-style-type: none"> Working with Procurement to finalize Escalator Contract (15LK-120A) IFB document Receive 65% design for Canopy Contract 	<ul style="list-style-type: none"> Working with Procurement: 19th St Station Contract (07EA-120) IFB document Advertise Escalator Contract 15LK-120A (award FY19 Q3) 	<ul style="list-style-type: none"> Advertise 19th St Station Contract 07EA-120 (award FY19 Q3) 	<ul style="list-style-type: none"> Receive 100% design for Canopy Contract



Expand Safe Access to Stations (millions)

\$135 Total Bond Allocation

Thru 8/2018
EXPENDED: \$2.3

Thru 6/2020
OBJECTIVE: \$14.8
FORECAST: \$15

STATION ACCESS		Current RR Spend/Month	POs Remaining to be Invoiced	Contracts in Bid/Award	Remaining Forecast Expenditures Prior June 2020 (unawarded contracts & forecasted labor)
# Project in Planning	2		\$0.3		
# Projects in Design	10	\$0.2	\$2.2		\$3.5
# Projects in Bid/Award	3		\$0.4	\$0.3	
# Projects in Construction	5		\$1.7		\$4.3
TOTAL	20	\$0.2	\$4.6	\$0.3	\$7.8

CRITICAL PATH SCOPE:

August 2018	September 2018	October 2018	November 2018
<ul style="list-style-type: none"> On-going Station Active Access Imprvmnt in various locations Constr: El Cerrito del Norte & MacArthur Transit Improvement Outreach at North Berkeley and Dublin Pleasanton stations WSX West Side Pedestrian Bridge NTP issued. 	<ul style="list-style-type: none"> On-going Station Active Access Improvement in various locations Construction: El Cerrito del Norte & MacArthur Transit Improvement Construction: Hearing Loop installation at agent booths (12th and 19th St and Lake Merritt) Initiated Platform Edge Tile Repl at 6 stations (PD&C & M&E partners) 	<ul style="list-style-type: none"> On-going Station Active Access Improvement in various locations Construction: El Cerrito del Norte & MacArthur Transit Improvement 	<ul style="list-style-type: none"> On-going Station Active Access Improvement in various locations Construction: El Cerrito del Norte & MacArthur Transit Improvement

COMPLETE



Design/Engineer to Relieve Crowding (millions)

\$200 Total Bond Allocation

Thru 8/2018
EXPENDED: \$2.9

Thru 6/2020
OBJECTIVE: \$12.5
FORECAST: \$20

RELIEVE CROWDING		Current RR Spend/Month	POs Remaining to be Invoiced	Contracts in Bid/Award	Remaining Forecast Expenditures Prior June 2020 (unawarded contracts & forecasted labor)
# Project in Planning	3	\$0.3	\$2.5		\$3.8
# Projects in Design	4	\$0.1	\$2.7		\$4.1
# Projects in Bid/Award	1	\$0.1		\$4	
# Projects in Construction	0				
TOTAL	8	\$0.5	\$5.2	\$4	\$7.9

CRITICAL PATH SCOPE:

August 2018	September 2018	October 2018	November 2018
<ul style="list-style-type: none"> Submit Embarcadero New Platform Elevator contract doc to Procurement for review Second Crossing: complete contracting strategy Platform Edge Door: work on schematic design, preparing RFI Millbrae Tail track: design delay due to environmental mitigation 	<ul style="list-style-type: none"> Platform Edge Door: industry review Working with Procurement: <ul style="list-style-type: none"> – Civic Center Platform Stairs (111A-112) – Embarcadero New Platform Elevator (11FE-110) 	<ul style="list-style-type: none"> Advertise Civic Center Platform Stairs Contract Hold industry review for Platform Edge Door 	<ul style="list-style-type: none"> HMC 2: Begin Storage Yard Design



RR Program OCR Small Business & Outreach

9/21/2018



RR Program Overview – Small Business Commitment

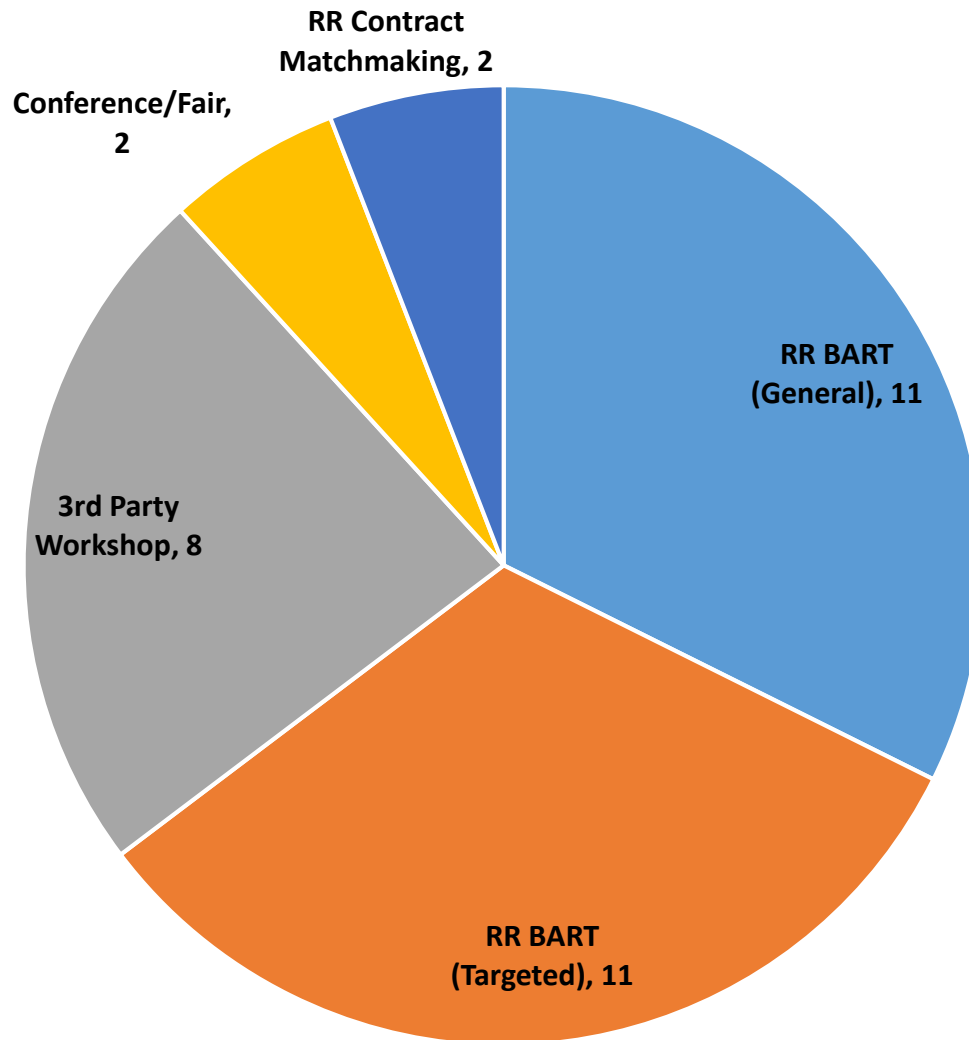
Program	Total RR Commitments	Total RR SB Commitment	# of SB Contracts*	SB Commitment %	Trend Since Last Report
Renew Track	\$33,208,997	\$7,781,943	42	23%	No change
Renew Power	\$138,948,288	\$75,436,385	123	54%	↑ +27%
Repair Tunnels & Structures	\$59,880,682	\$7,586,109	47	13%	↑ +3%
Renew Mechanical	\$10,098,340	\$2,041,641	23	20%	↓ -7%
Replace Train Control/Increase Capacity	\$551,583	\$9,699	1	2%	↓ -1%
Renew Stations	\$3,268,394	\$1,068,505	9	33%	↓ -1%
Expand Safe Access to Stations	\$3,477,135	\$1,132,580	37	32%	no awards
Design/Engineer to Relieve Crowding	\$5,388,242	\$1,411,829	10	26%	↑ +3%
Total	\$254,821,661	\$96,468,691	293	38%	↑ +16%

* # of Small Business Contracts includes Contracts, subcontracts, and commitments on Work Plans.

Notes: All amounts are based on RR fund percent only. Amounts are updated to September 14, 2018. Does not include informal purchases or work performed by BART's own forces. SB totals include DBEs, MSBEs, SBs, and LSBs. Sources: RR commitments are based on RR Requisitions report, Procurement Sealed Bids Report and PeopleSoft Work Plans application. The RR percentage for each project is based on Financial Analysts' report: RR Funds / Total Project Budget.



RR Committee OCR Outreach 2018 Outreach Events



Total # of Events
Performed to Date
34



RR Outreach – Phase 2 Survey Highlights

Survey Question	Average Score	Average Score Last 3 Events	Most Recent Score	# of Events
Good Or Better Event	89%	93%	80%	34
More Likely to Bid BART Work	78%	76%	80%	34
“Very Effective” Presenter Score	69%	61%	40%	34





RR Program Staffing

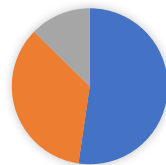
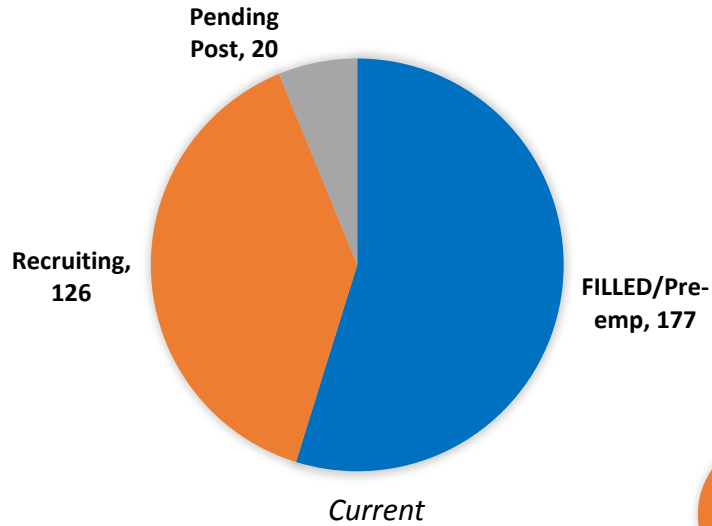
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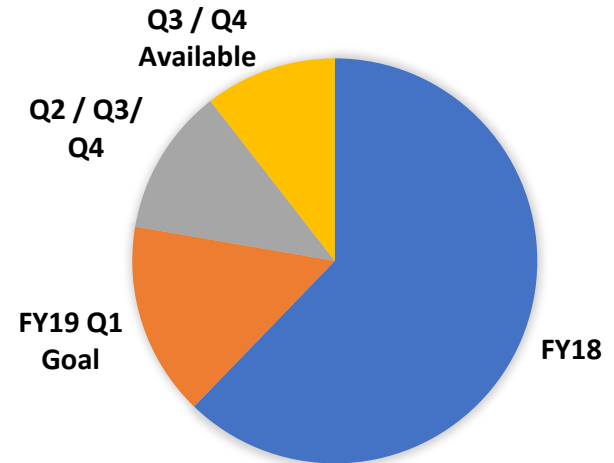
Recruitment- September 18, 2018

Bond Progress	# of Positions
FILLED/Pre-emp	177
Recruiting	126
Pending Post	20
	323

	# of Positions	# of Positions
FY18	201	
FY19	122	
	FY19 Q1 Goal	50
	Q2 Available	38
	Q3 / Q4 Available	34
FY18 + FY19	323	



Last Check-in



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Tips on Parliamentary Procedure

Governing Principles and Common Sense

The BIG Picture

- Parliamentary law is a system of maintaining order in organizations. It provides an approved and uniform method of conducting meetings in a fair, orderly, and expeditious manner.
- Respect for law is a basic characteristic of democratic governments. This respect is clearly shown by a willingness to practice an orderly method of procedure in organizations so as to follow the will of the majority, to protect the rights of the minority, and to protect the interests of those absent.
- The San Francisco Bay Area Rapid Transit District Board of Directors has adopted Alice Sturgis' Standard Code of Parliamentary Procedure to govern its affairs and, unless otherwise indicated, the governance of subordinate bodies.

Alice Sturgis' Philosophy

- Alice Sturgis considered principles more important than rules.
- She stressed the need to understand the “why” behind every procedure.
- She held that when there is a conflict between common sense and archaic ritual, common sense should prevail.

Key Principles

- All members have equal rights, privileges, and obligations; rules must be administered impartially.
- The minority has rights which must be protected.
- Full and free discussion of all motions, reports, and other items of business is a right of all members.
- In doing business, the simplest and most direct procedure should be used.
- Logical precedence governs introduction and disposition of motions.
- Only one question can be considered at a time.
- Members must be recognized by the chair and have obtained the floor.
- No one may speak more than twice on the same question w/o permission of the assembly. No member may speak a second time on the same question if anyone who has not spoken on that question wishes to do so.
- In voting, members have the right to know at all times what motion is before the assembly and what affirmative and negative votes mean.

Summary of Steps in Handling a Motion

- A member rises and addresses the presiding officer.
- The presiding officer recognizes the member.
- The member states the motion.
- Another member seconds the motion.
- The presiding officer restates the motion, thus placing it before the assembly for consideration.
- The assembly may discuss the motion if it is debatable and amend the motion if it is amendable.
- The presiding officer takes the vote.
- The presiding officer announces the result.

Precedence of Motions

- Since only one question may be considered at a time, the sequence in which motions may be taken up is fixed by parliamentary law.
- The main motion is the basic motion and all other legitimate motions are taken up and acted upon before the main motion is finally disposed of.
- In other words, motions are acted upon one at a time in REVERSE ORDER of proposal, with the main motion acted on last.
- Subsidiary and incidental motions which are introduced must be given priority so that the action finally taken on the main motion will accurately reflect the will of the assembly.
- Privileged and subsidiary motions have the highest status and are arranged in an explicit order of precedence. Let's look at them more closely.

What are Privileged Motions?

- Privileged Motions are motions to enable a member to secure an immediate decision that concerns the comfort, convenience, rights, etc. of a member even though other business is pending.
- Example: "I move to take a 15 minute recess."

What are the Privileged Motions?

- To Adjourn
- To Recess
- To raise a Question of Privilege

What are Subsidiary Motions?

- Subsidiary motions are motions to modify a motion that is being considered by the board so that it will express more satisfactorily the will of the members.
- Example: "I move to amend the motion by inserting the word 'three' before the word 'representatives'."

What are the Subsidiary Motions?

- To postpone temporarily
- To close debate
- To limit debate
- To postpone to a certain time
- To refer to committee
- To amend

Ranking of PRIVILEGED and subsidiary motions

- 1. ADJOURN (privileged)
- 2. RECESS (privileged)
- 3. RAISE A QUESTION OF PRIVILEGE (privileged)
- 4. Postpone Temporarily or "Table" (subsidiary)
- 5. Close debate – requires 2/3 vote (subsidiary)
- 6. Limit debate – requires 2/3 vote (subsidiary)
- 7. Postpone to a certain time (subsidiary)
- 8. Refer to a committee (subsidiary)
- 9. Amend (subsidiary)

Tips regarding the ranking table

- When a motion is being considered, only motions with higher precedence (as noted on the earlier slide) may be introduced.
- Lower precedence motions may not be considered.

What is a Main Motion?

- Main motions are motions by which a member may present a substantive proposal to the board for consideration and action.
- It is the basic motion of the transaction of business.
- Example: "I move that we apply for a 223 grant to fund the proposed demonstration project."

What is a restorative main motion?

- The term refers to a motion to amend a main motion that was previously approved by the Board.

What is an Incidental Motion?

- Incidental motions arise incidentally out of the immediate pending business at any time and must be decided as soon as they arise.
- Example: “I move to withdraw my motion.”
- They are not viewed as presenting a problem of precedence.

Unanimous (General) Consent

- Under Sturgis (p.142) Unanimous General Consent is an informal method of taking a vote, used for routine and non-controversial decisions.
- Example: "The minutes have been circulated. Are there any corrections to the minutes? (Pause)? If not, the minutes are approved as circulated."
- Example: "Is there any objection to changing the agenda to consider item 7? (Pause)? There being no objection, we will proceed now with item 7, and then return to item 3."
- Unanimous Consent is not appropriate when voting on main motions, since they do not qualify as "routine and non-controversial decisions". Members must be given the full opportunity to express their sentiment by a formal show of hands.

NOTE: Parliamentary Procedure Rules co-exist with other enactments of government

Hierarchy of Governing Documents under Sturgis (p.203)

- 1. Laws of the Land (Constitution, Statutes, etc.)
- 2. Constitution (Originating Instrument) and Bylaws
- 3. Rule Book (e.g. Sturgis) and Special Rules of Order

Did you know:

- Under Sturgis, the Chair maintains the right to vote.
- A motion requires (at least) a majority vote to pass.
- Where a motion would limit the rights of members, a 2/3 vote is required.
- Associate members cannot vote.
- Board members who have a direct personal gain by voting may not vote.
- Under Sturgis (p. 135) abstentions do not count.
- Under Sturgis (p.136), if the result of a vote is a tie, the motion fails to pass.
- Seconding a motion merely indicates that the member wishes the motion to be considered by the Board; it is not necessarily an endorsement of the motion.

Final words of wisdom

- Don't get bogged down with detail.
- Use common sense.
- Have reference materials readily available.
- Take notes.
- Practice.
- Take care of only one thing at a time.
- No business without a quorum. Individual board members do not have the power to act independently. They are members of a body and therefore may not speak or act for the body unless given specific authority by the body. An individual doing so will be individually responsible for their own actions.

Resources

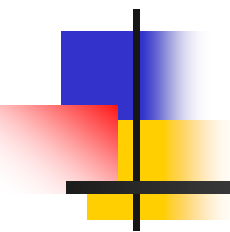
- Alice Sturgis, Standard Code of Parliamentary Procedure (4th edition)

The background is a solid orange color with a pattern of various leaf shapes in a slightly darker shade of orange, scattered across the surface. The leaves vary in size and orientation, creating a subtle, naturalistic texture.

Questions?

Don't be shy – I don't know anything.

ETHICS AND PUBLIC SERVICE



AB 1234 Training –Sept. 2017 by the Office of the General Counsel



SESSION OBJECTIVES

1. To familiarize you with laws that govern your service *and* when to ask questions
2. To encourage you to *think beyond legal restrictions* and provide tools for doing so
3. Help you comply with AB 1234 requirements
 - A. Training
 - B. Expense Reimbursement



PUBLIC SERVICE ETHICS IS DIFFERENT

- Laws play a bigger role
- Perception as important as reality
- Gut is not a reliable guide
 - Not logical
 - Not intuitive



ETHICS V. ETHICS LAW

- Law = Minimum standards
 - What we *must* do
- Ethics is what we *ought* to do
 - Above and beyond law's minimum requirements
- Just because its legal doesn't mean it is ethical (or public will perceive it to be so)



PERSONAL AND ORGANIZATIONAL ETHICS

- Every organization has a culture, ethically
 - Code of Conduct
- Every person has an ethical compass
 - Role models?
 - Parents
 - Public officials



LEADERSHIP AND ETHICS

Where do we look for examples of ethics?

- Corporate America?
- Federal Government?
- State Government?
- Local Government?



LEADERSHIP AND ETHICS

- Organizational Ethics – Where to begin...
- Who is driving the bus?
 - The Community
 - Board
 - General Manager
 - Board Appointees
 - Personal Pride



THE ETHICS EXPLOSION - CALIFORNIA

- **Democracy as Tyranny – Majority Rule – Aristotle**
- **Constitutional Democracy - Democracy by the Rules**
 - Right to Vote: White, Male, Property Owner
- 1800's
 - Common Carrier Prohibition – ethics laws aimed at powerful railroad barons
 - Birth of Contract Prohibition
- 1940's – 1970's
 - Expansion of Contract Prohibition (Govt. Code 1090)
 - Brown Act
 - Public Contract Rules
 - Public Records Act



THE ETHICS EXPLOSION - CALIFORNIA

- 1970's – 2000
 - Political Reform Act -- Proposition 9 -- 1974
 - Bias, Due Process
 - Public Contract Code -- Consolidated - 1981
 - Common Law Conflicts
 - Revolving Door -- State Officials

- 2000 - Present
 - AB 1234
 - Revolving Door -- Expanded to Local Officials
 - New Gift Rules

FOUR GROUPS OF ETHICS LAWS CORE TOPICS – FPPC REG. 18371

1. Personal financial gain
2. Personal advantages and perks
3. Governmental transparency
4. Fair processes



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 \$500 (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

GROUP 1: PERSONAL FINANCIAL GAIN ISSUES

- **Principle:** Public servants should not benefit financially from their positions





EXAMPLES OF LAWS

- Bribery and related crimes
 - Dollars? Favors? Dinner?
- Financial interest disqualification requirements
- Revolving door restrictions





BRIBERY

- Rule: Public officials may not solicit, receive or agree to receive a benefit in exchange for their official actions
- Penalties: Loss of office, prison time, fines, restitution, attorneys fees and public embarrassment





CASE STUDY: STRIPPERGATE

- Council members charged under federal law with tying campaign contributions to the city's consideration of a "no touch" rule
- Strip club owners were cooperating/wearing wires during conversations
- Jury convicted; council members resigned
- Officials were financially ruined and emotionally devastated



Another Case Study: UC Chancellor Katehi & DeVry U.

- Linda Katehi first came to prominence for giving the “green light” to spray tear gas on quietly assembled students on the UC Davis campus.
- Her most recent missteps involved accepting a \$70K position as a paid Board Member for Private For-Profit DeVry U. and taking \$420K in income and stock as Board Member of Wiley & Sons, a textbook publisher.



Is this bribery?

- All the facts are not in.
- Conviction on bribery charges requires proof beyond a reasonable doubt that monies were paid in anticipated exchange for special favors utilizing the public official's public office.



UC Chancellor Ketehe resigns!

- The Sacramento Bee reported on August 9, 2016 that Chancellor Ketehe tendered her resignation to Janet Napolitano.
- Ketehe claimed the investigation showed she did nothing wrong.
- The investigation was not flattering.



And the facts on are in on State Senator Leland Yee

- Facing 20 years for accepting bribes, and \$250,000 in fines, he accepted an 8 year sentence (5 years in prison and 3 years of supervised release) on a plea bargain that required the payment of a \$25,000 fine.
- What' the lesson to be learned here?

For starters . . .

- Avoid community organizers who go by nicknames like "Shrimpboy."





BRIBERY – FEDERAL LAW

- Section 666 – U.S. Code
 - Theft or Bribery Concerning Programs Receiving Federal Funds
 - \$5000 Threshold
 - The illegal act does not need to be related to the federal funds received by the agency

18 U.S.C. § 666



BRIBERY – FEDERAL LAW

- Honest Services – Frauds & Swindles
 - Defrauding the public of its right to a public servant's honest services, including its right to his/her conscientious, loyal, faithful, disinterested, unbiased service, to be performed free of deceit, undue influence, concealment, bribery, fraud and corruption.

18 U.S.C. §§ 1341, 1346



BRIBERY: HONEST SERVICES MAIL FRAUD

Cases: How do they get started?

- Your SEI
- Disgruntled staffer or opponent
- FPPC Tip Line
- Disgruntled Donor/Contributor
- Scorned Spouse



BRIBERY: Fresh Scandals in September 2017

- New Jersey Senator Menendez, 63, is accused of accepting a plethora of campaign donations, gifts and vacations from Salomon Melgen, a Florida eye doctor. In return, Menendez allegedly used his position to lobby on behalf of Melgen's business interests, according to prosecutors.
- Melgen directed more than \$750,000 in campaign contributions to entities that supported Menendez, according to the indictment, which alleges they were inducements to get Menendez to use his influence on Melgen's behalf.



BRIBERY: Fresh Scandals in September 2017

- Melgen, 63, was convicted of 67 counts of health care fraud four months ago in what the Palm Beach Post called one of the biggest Medicare fraud cases in the U.S.
- During that case, prosecutors argued that Melgen robbed Medicare of as much as \$105 million, according to the newspaper. His sentencing has been delayed until after this trial.



BRIBERY: HONEST SERVICES MAIL FRAUD

Summary of Behaviors Which Make You a Target

- Trading votes for \$\$
- Avoid “on-the-side” consulting businesses
- Avoid conflicts with family businesses
 - Jobs
 - Contracts
- Do not use public money/assets for private gain
- Avoid self-dealing – no matter how slight



SIMILAR CRIMES

- Receiving rewards for appointing someone to public office
- Embezzlement—converting public funds or property to your own





Case in point

- DECEMBER 9, 2008--The criminal complaint filed today against Illinois Governor Rod Blagojevich contains a remarkable section detailing the Democratic politician's alleged attempt to cash in on his ability to fill the U.S. Senate seat vacated by President-elect Barack Obama.
- Attached to the U.S. District Court complaint was an FBI affidavit alleging that Blagojevich was caught on wiretaps noting that the Senate seat 'is a fucking valuable thing, you just don't give it away for nothing.' He was also recorded saying that unless 'I get something real good,' he would appoint himself to the vacancy. 'I'm going to keep this Senate option for me a real possibility, you know, and therefore I can drive a hard bargain. You hear what I'm saying. And if I don't get what I want and I'm not satisfied with it, then I'll just take the Senate seat myself.'



THE POLITICAL REFORM ACT

The Fundamental Provisions

No public official shall make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision if he or she knows or has reason to know that he or she has a financial interest in the decision. Cal. Gov't Code § 87100. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a foreseeable and material financial effect on the official or one or more of his or her economic interests. Cal. Gov't Code § 87103; 2 Cal. Code of Regs. § 18700(a).



PERSONAL FINANCIAL GAIN

The Political Reform Act

- FPPC, Form 700
- Oral and Written Advice
- Disclose/Disqualification
- Economic Interests



THE POLITICAL REFORM ACT

Analysis

1. Is a **public official** involved?
2. Is the official **making, participating in making** or attempting to use his/her position to **influence** a government decision?
3. Does the public official have an **economic interest**?
4. Is the economic interest **directly** or **indirectly** involved?
5. Is it **reasonably foreseeable** that the governmental decision will have a material financial effect on the official's economic interest?



THE POLITICAL REFORM ACT

Exceptions?

Public Generally

Legally Required Participation



ECONOMIC INTERESTS – FORM 700 - Financial Discl.

1. Business Entities
2. Real Property
3. Sources of Income
4. Sources of Gifts
5. Personal Finances



1. BUSINESS ENTITIES

- Direct or Indirect Investment of \$2000
- Are you a director, officer, partner, trustee, employee or do you hold a management position
- Parent/subsidiary
- Defined: Any organization operated for profit

2. REAL PROPERTY INTEREST

- \$2000 or more
- Direct or indirect
- Partner's/child's property
- Tenancy interest
(except month to month)
- 500 foot rule





Revised 500 foot rule (2014)

- The FPPC has eliminated the “one penny rule” and replaced it with a somewhat more lenient
- standard that provides that a public official is presumed to have a conflict of interest if he or she owns
- residential property within 500 feet of a project, unless the FPPC determines that there are sufficient facts
- to indicate that there will be no reasonably foreseeable measurable impact on the official’s property. The
- significance of this amendment is that now public officials may be able to participate in government
- decisions even if they own residential property within 500 feet of a project, if they get FPPC approval,
- even if it is possible that there might be a nominal financial impact on their real property interest. While
- public officials could previously request advice letters on this issue, the standard the FPPC used to
- determine whether the official could participate was the strict “one penny rule” that essentially required
- the public official to demonstrate that it was not reasonably foreseeable that the project would have even
- “one penny” of impact on the public official’s property value. This was obviously a high standard, and
- while it was a rebuttable presumption, it was very difficult to overcome. Under the revised regulations, an
- official will only need to demonstrate that there is “no reasonably foreseeable measurable impact on the
- official’s property.” While, as a practical matter, this standard may still require public officials to obtain
- appraisals and related other documentation to support their claims, the revised hurdle is intended to be
- somewhat easier to overcome than the former “one penny rule.” (*Compare* former 18704.2(a)(1) and
- current 18705.2(a)(11).)



However . . .

- Even if a public official owns residential real property that is located more than 500 feet
- away from the project area, he or she may still have a disqualifying conflict of interest if the government
- decision would (1) change the development potential, income-producing potential, or the highest and best
- use of the property; or (2) “...change the character of the parcel of real property by substantially altering
- traffic levels or intensity of use, including parking, of property surrounding the official’s real property
- parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would
- affect the market value of the real property parcel in which the official has a financial interest.” Stated
- otherwise, even if the official’s residential property is located more than 500 feet away from a project, if
- that project would impact the parking, privacy, noise, odors, or views from that parcel and those impacts
- affect the market value of the property, then the official may have material financial interest which could
- result in disqualification. For instance, if the public official owned an ocean view residence 1,000 feet
- away from a proposed 10-story apartment that, if approved, would block the official’s ocean views, he or
- she may have a material financial interest subject to disqualification, unless he or she could demonstrate
- that the impeded views would not have any effect on his or her market value.



3. SOURCES OF INCOME

- \$500 or more
- Your own income
- Promised income
- Partner's/child's income
- Loans/guarantors





4. SOURCES OF GIFTS

- Form 700 → Disclose \$50 or more
 - Aggregate by Source – calendar year
- \$470 or more – aggregate 12 months prior to decision
- \$470 annual gift limit; exceptions
- Amazingly detailed regulations

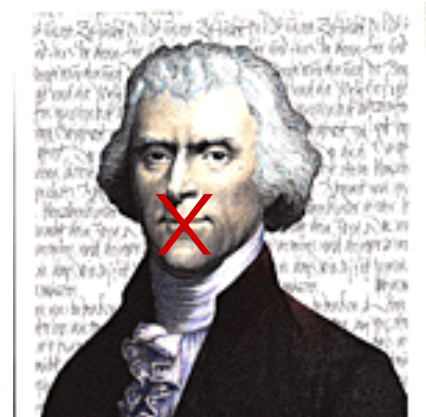


5. PERSONAL FINANCES RULE

- You have a financial interest if you can reasonably foresee a financial effect of \$250 or more
- 12 months prior to/after the decision

IF YOU ARE DISQUALIFIED FOR A FINANCIAL CONFLICT

- Don't discuss or influence (staff or colleagues)
- Identify nature of conflict at meeting
- Leave room (unless the matter is on consent)
- Limited exceptions
 - Owned property
 - Owned/controlled business



DISQUALIFICATION BASED ON FINANCIAL INTERESTS

- Rule: You may not participate in a decision if “your” economic interests are affected by a decision
- Effect can be positive or negative





DISQUALIFICATION VERSUS ABSTENTION

- Abstention => voluntary
- Disqualification => Legally required
 - Does not imply wrongdoing
 - Unless you don't disqualify yourself when required



PENALTIES

- Invalidate decision
- Misdemeanor (could result in loss of office)
- Fines (\$5,000 to \$10,000 per violation)
- Attorneys fees (yours and others)
- Embarrassment (personal/political)



CASE STUDY: THE TRAVEL STORE

- Elected official in travel business
 - Twice failed to disclose on SEI
- Voted on consent calendar
- Included approval of payments to her travel agency (\$28,481 total)
- Possible fine under PRA: \$76,000 (ultimate fine: \$29,000); possible felony under Gov't. Code 1097



FUTURE EMPLOYMENT ISSUES

- Revolving door prohibition
 - Electeds, managers
 - Cannot represent people for pay for a year after leaving their agency
 - City of Mountain View - Effective July 1, 2006 but not at BART (Self-dealing prohibition still applies)
- No participation in decisions involving future employers
 - Cut it off – in writing, email

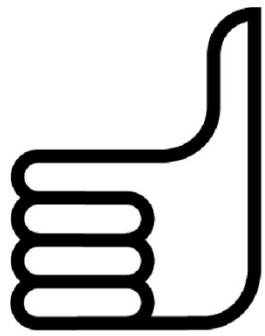


MASS (BULK) MAILING

Simplified: Prohibits the govt. from mailing (at public expense) 200 or more same or similar pieces of mail which feature an elected official(s).

- Newsletters
- Letters

Penalties: 2X or 3X the cost of the mailing is possible



BEST PRACTICES

- Avoid temptation to look at public service as an opportunity for financial gain
- Look at every decision and ask yourself whether it involves some kind of financial interest for you

WARNING! SPECIAL RULES FOR CONTRACTS

- Government Code Section 1090
- Disqualification may not be enough
 - Direct or indirect interest
 - Limited exceptions
- May have to refund money paid
- Felony: \$1,000 fine, imprisonment, and loss of office





CONTRACTS – GOVERNMENT CODE 1090

- *Thomson v. Call*
- *People v. Honig*
- *People v. Chacon*
- Statutory Provision
- Government Code section 1090 states in pertinent part:
"Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."



GROUP 2: PERKS

- “Perk” or Perquisite – French
 - “Casual income or profits accruing to the lord of a feudal manor”
 - “A privilege, gain or profit incidental to an employment in addition to regular salary or wages”



GROUP 2: PERKS

- Principles: No Unauthorized Perks

- Democratic equality

- Public servants should not receive **unauthorized** special benefits by virtue of their positions



Don't use government resources to cover up your affairs !

- Republican governor Bentley quits amid sex scandal.
- Converted campaign contributions to personal use – to cover up his affair with a staffer.
- Failed to file report re campaign funds.



TWO KINDS OF PERK RULES

1. Perks that others offer you
2. Perks that you give yourself/use-of-public-resources issues





NOT ALL GIFTS HAVE BOWS

- Meals, food and drink (including receptions)
- Entertainment (concerts & sporting events)
- Certain kinds of travel and lodging
- BART Employee Gift Policy –
Management Policy



NOT ALL GIFTS HAVE BOWS

■ Gifts

- From anywhere--inside or outside the jurisdiction
- \$50 or more -- disclose on annual statement
- \$470 -- gift limit in effect until December 31, 2018; (aggregate in 12 calendar months)
- Disclosure
 - Aggregate from one source
 - Based on **calendar** year
- Disqualification - \$470 or more. Accepting less is OK
 - – but disqualification from participating in the decision making process may result because **you go back 12 months preceding the decision – not “calendar” months!**



BYRON'S GIFT THEORUM

“When you become an elected official, you will attract new “best friends” in a number you wish you had in high school.”



EXCEPTIONS TO THE DEFINITION OF "GIFT"

1. Informational material
2. Returned unused (within 30 days)
3. Relatives - close family
4. Campaign contributions
5. Plaques or awards (less than \$250)
6. Home hospitality
7. Exchange of gifts – birthdays, holidays, where similar in value
8. Devise or inheritance
9. Free admission where you give a speech; travel within California and lodging as necessary for the speech

GIFTS

GUIDES TO GIFT REGULATIONS

§18940

- a. Limits on Gifts -- Government Code §89503
- b. Gift Limit Amount -- §18940.2
- c. Definition of "Gift" -- Government Code §82028(a)
 - 1. Receipt. Promise and Acceptance of Gifts -- §18941
 - 2. Payments for Food -- §18941.1
- d. Exclusion and Exceptions
 - 1. Exceptions to "Gift" and Exceptions to Gift Limits -- §18942
 - 2. Definition of "Informational Material" -- §18942.1
- e. Return, Donation or Reimbursement of a Gift -- §18943
- f. Recipient of the Gift
 - 1. Valuation of Gifts to an Official and His or Her Family -- §18944
 - 2. Passes or Tickets Given to an Agency -- §18944.1
 - 3. Gifts to an Agency -- §18944.2

GIFTS

GUIDES TO GIFT REGULATIONS

(Continued)

- g. Sources of Gifts -- Government Code §18945
 - 1. Cumulation of Gifts; "Single" source -- §18945.1
 - 2. Intermediary of a Gift -- §18945.4
 - 3. Gift from Multiple Donors -- §18945.4
- h. Reporting and Valuation of Gifts: General Rule -- §18946
 - 1. Passes and Tickets -- §18946.1
 - 2. Testimonial Dinners and Events -- §18946.2
 - 3. Wedding Gifts -- §18946.3
 - 4. Tickets to Nonprofit and Political Fundraisers -- §18946.4
 - 5. Prizes and Awards from Bona Fide Competitions -- §18946.5
- i. Travel -- §18950 through §18950.4



GESTURE OF TICKET FROM NON-PROFIT/POLITICAL FUNDRAISERS NOT COUNTED AS "GIFT" IF:

1. Single Ticket;
2. If held by the organization;
3. One ticket directly from the organization
4. Official must use the ticket personally
5. Counts toward gift limit
6. How does it count? → Face value minus donation portion



NON-PROFIT/POLITICAL FUNDRAISERS

7. Applying the gift limit – count all non-deductible portion from non-profit/political organization

PLUS

Any tickets from the organization which are not subject to the “Single Ticket” rule

- e.g. - Face value of ticket
- Pro-rata share
 - Drop-in visit/ceremonial

8. If over gift limit from one organization, pay down the difference

GIFTS

GIFTS TO THE PUBLIC AGENCY (VERSUS THE PUBLIC OFFICIAL)

FOUR CRITERIA:

1. Agency must receive and control payment.
2. Payment must be used for official agency business.
3. Agency must determine the specific official who will use the payment.
 - Donor may specify purpose -- not person.
 - Not for elected or 87200 officials (i.e. folks filing Form 700s)
4. Agency must memorialize receipt of the payment; disclose on internet and in writing.



PERKS - OTHER OFFERS

- No free transportation from transportation carriers
- No honoraria (fees) for speaking or writing
 - Any payment made for speech given, article written or attendance at any public or private conference, convention, meeting, meal, social event, etc.



USE OF PUBLIC RESOURCES ISSUES

- Personal use of public resources (including staff time and agency equipment) prohibited
- Personal errands
- Political use of public resources also prohibited



Case Study: Chancellor Katehi & the Internet

- Katechi reportedly paid a private PR company with public funds to assist in the elimination of internet posts and negative blog entries about her personally.
- Is this any different than a mayor having public works crews planting shrubs in his/her front yard at the mayor's private residence?



EXAMPLE: EXPENSE REIMBURSEMENT

- Familiarize yourself with your agency's policies/limits
 - What kinds of expenses
 - What rates for food, lodging and transportation
 - The importance of documentation
- Note: Spouse/partner expenses not reimbursable

CONSEQUENCES OF VIOLATIONS

- Civil penalties: \$1,000/day fine + 3X value of resource used
- Criminal penalties: 2-4 year prison term + disqualification from office
- Can also have income tax implications





WHAT IS THE BART RULE ON
GIFTS?

NO GIFTS!



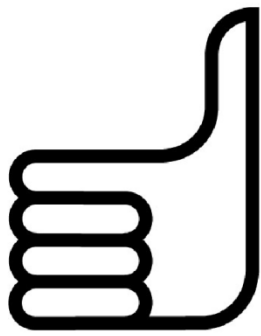
CASE STUDY: SACRAMENTO SUBURBAN WATER DISTRICT

- Staff and directors misusing public resources
- Investigative report by *Sacramento Bee*
 - Use of agency credit card for personal purposes
 - Misreporting of income
 - Double-dipping on expense reimbursements
- Legislative response: AB 1234

POLITICAL USE OF PUBLIC RESOURCES

- By individuals or agency itself (support of ballot measures)
- Mass mailing restrictions
 - Goal: restrict incumbents' advantages
- Gifts of public funds





BEST PRACTICE

- Avoid perks *and* the temptation to rationalize about them
 - Legally risky
 - Public relations headache
 - Byron's Rule: No Gifts!!



GROUP 3: TRANSPARENCY LAWS

Principles:

- It's the public's business
- Public trusts a process it can see





TRANSPARENCY RULES

- Conduct business in open and publicized meetings
- Allow public to participate in meetings
- Allow public inspection of records

INSTITUTE for LOCAL GOVERNMENT

Celebrating 50 years of service to local officials
www.ilsg.org

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:

- Conduct the public's business in open and publicized meetings, except for the limited circumstances under which the law allows closed sessions.
- Allow the public to participate in meetings.
- 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.



For a Regular Meeting of a Legislative body

- An agenda adequately describing the business items that will be addressed in the meeting must be posted in a public place for a full 72 hours prior to the meeting time.



For a Special Meeting of a Legislative body

- An agenda adequately describing the business items that will be addressed in the meeting must be posted in a public place for a full 24 hours prior to the meeting time.



For an Emergency Meeting of a Legislative Body

- An agenda adequately describing the business items that will be addressed in the meeting must be posted in a public place for one hour prior to the meeting time with telephonic notice going to media outlets that have requested notice of such meetings.



For a dire emergency meeting of a Legislative Body

- Since September 11th, dire emergency meetings have been added to the statutory scheme of the Brown Act. Mass destruction or terrorist activity posing immediate peril is the justification for such meetings. Notice to the public is made at the time the presiding officer notifies the legislative body members.



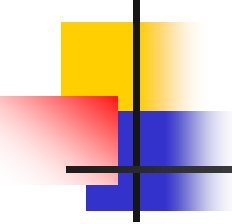
CONDUCTING BUSINESS AT OPEN MEETINGS

- A majority may not consult outside an agency-convened meeting
- Key concept: what constitutes a meeting
 - Example: Serial communications (beware of emails and other social media communications)
- Exceptions for certain kinds of events
 - As long as a majority does not consult among themselves (conferences, purely social events, being in the audience of another's meeting, etc.)



CONSEQUENCES OF VIOLATIONS

- Nullification of decision
- Criminal sanctions for intentional violations (up to 6 months in jail/\$1000 fine)
- Intense adverse media attention



Some governments enact additional transparency rules

- BART not only requires compliance with the Brown Act for its formal advisory bodies (advisory to the Board), but it also requires that bodies that are not subject to the Brown Act (i.e. those not formed by the District) be subject to meeting notification requirements and accessibility requirements.



BART's Brown Act Lite Rules

- The trigger for these “Brown Act Lite” noticing and accessibility requirements is the attendance of one or more members of the Board at these non-Brown Act public meetings.
- The BAC is an example of one of these types of “Brown Act Lite” bodies.



PUBLIC RECORDS

- Agendas and meeting materials
- Other writings prepared, owned, used or retained by agency (including electronic)
- New: Public emails on private devices have recently been ruled public records!
- Penalties: Adverse media attention + costs and attorneys fees if litigated

FINANCIAL INTEREST DISCLOSURE

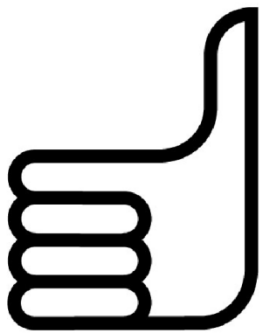
- Transparency includes obligation for high level public servants to disclose financial interests
 - Assuming office
 - Annually while in office
 - Upon leaving office





CHARITABLE FUNDRAISING

- Rule applies to elected officials who are successful in getting someone to contribute \$5,000 or more to a cause during a calendar year.
- Must disclose \$5,000 or more from single source within 30 days.
- Causes include charitable, legislative or governmental purpose



BEST PRACTICES

- Assume all information is public or will become public
- Don't discuss agency business with fellow decision-makers outside meetings



GROUP 4: FAIR PROCESS LAWS

- **Principle:** As a decision-maker, the public expects you to be impartial and avoid favoritism



FAIR PROCESS LAWS

- Due process requirements and rules against bias
 - *Nasha LLC v. City of Los Angeles*
 - *Clark v. Hermosa Beach*
- Incompatible office prohibitions
- Trading Votes: Illegal!





Nasha LLC v. City of LA

- The essential issue presented was whether the Planning Commission's decision should be set aside due to an unacceptable probability of actual bias on the part of one of the decisionmakers.
- While this matter was pending before the Planning Commission, one of its members authored an article attacking the project under consideration. Accordingly, Nasha's claim of bias is well founded. The judgment is reversed with directions.



Clark v. Hermosa Beach

- The City exhibited bias in connection with its unsuccessful effort to impose a construction moratorium. In February 1992, the Council had attempted, but failed, to enact a moratorium on the construction of buildings higher than 30 feet. The measure fell one vote short of the four votes needed. (See Gov. Code, § 65858.) Consequently, the City's 35-foot height restriction remained in effect in R-3 zones. Yet, shortly after the moratorium failed, the Council and the planning commission denied permits on three projects (including the Clarks') involving 35-foot structures. This sequence of events indicates that the City was attempting to do — by a majority vote on a project-by-project basis — what the law required a four-fifths vote of the Council to accomplish.²¹ At a minimum, this evidence establishes that the Council was not impartial to the Clarks' project.

FAIR PROCESS LAWS

continued

- Competitive bidding requirements
 - State law defines
 - Also local requirements
 - Principles:
 - Everyone has a right to compete for agency's business
 - That competition produces the best price for taxpayers

- Example:
 - Council member steered contracts to sister's firm and apparently received kickbacks

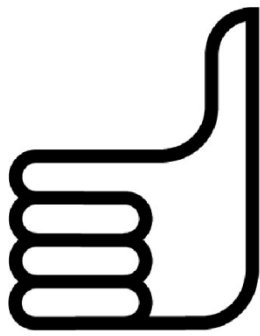


FAIR PROCESS LAWS

continued

- Disqualification requirements if decision involves family members
 - The Law and Ethics
- Campaign contribution restrictions (appointed bodies)
- Soliciting campaign contributions from employees

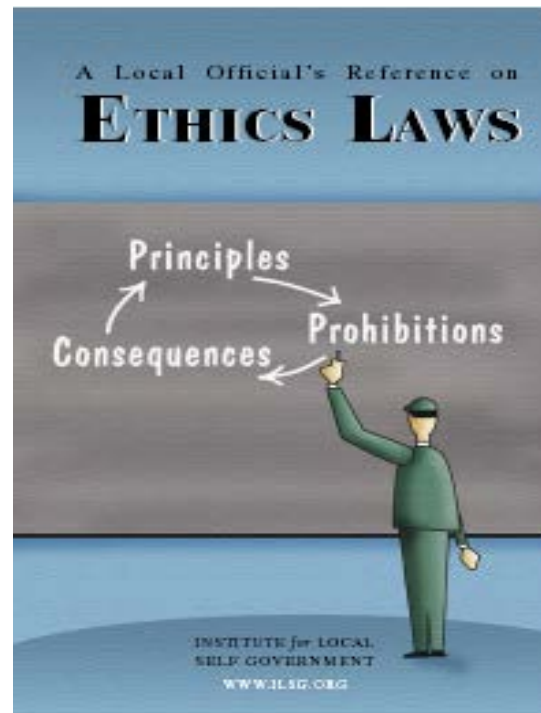




BEST PRACTICES

- Think fairness and merit-based decision-making in your decisions
- Keep politics separate from relationships with agency staff

RESOURCES FOR FURTHER READING



BEYOND THE LAW: PUBLIC SERVICE ETHICS PRINCIPLES





ETHICS = VALUES

- Six universal ethical values:
 - Trustworthiness - Honesty
 - Loyalty
 - Responsibility
 - Community interest
 - Respect
 - Fairness
 - Compassion

Source: Institute for Global Ethics

APPLYING VALUES TO PUBLIC SERVICE

Trustworthiness:

- I am truthful with my fellow officials, the public and others.

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.

Integrity

- 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.

Compassion

- 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.



ANALYZING ETHICAL DILEMMAS

Two kinds of dilemmas:

- Two competing “right values”
- Doing the right thing costs more than one wants to pay

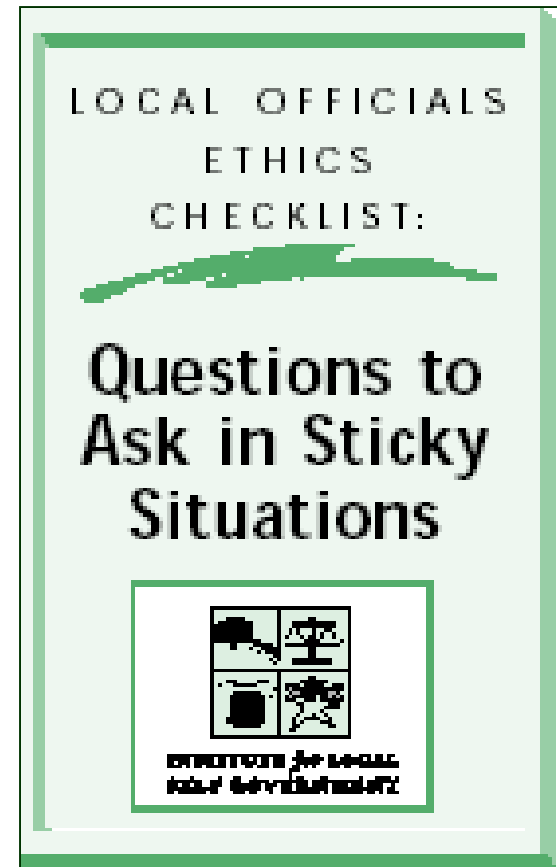


EXAMPLE

- Campaign contributor wants you to do commercial/zoning on their property
- Residential zoning may be in the best interests of the community
- Right versus right dilemma (loyalty versus responsibility)
 - Doing the right thing (acting on responsibility) then becomes a personal cost dilemma

QUESTIONS TO ASK

- What would inspire public confidence?
- Ask: Why am I choosing this alternative?
- What would you want to read about on the front page?
- How do you want to be remembered?





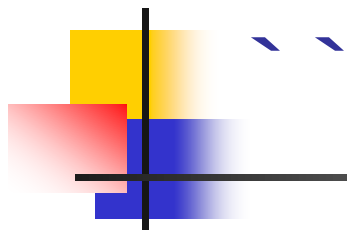
KEY LESSONS

- The law sets minimum standards for ethical behavior
 - Violations of ethics laws carry stiff penalties
 - When in doubt, ask and ask early
- It's your choice how high you want to set your sights above the minimum requirements of the law



AB 1234 COMPLIANCE

- Sign in
- Proof of participation certificate
- Provide to clerk of agency as public record
- Consider going beyond the minimum in terms of education



QUESTIONS?