The following information comprises the minutes for a special and regular meeting of the City Council, a joint meeting of the Banning City Council and Banning Utility Authority and a joint meeting of the Banning City Council and the Banning City Council sitting in its capacity as the Successor Agency Board.

MINUTES **04/27/2021**
CITY COUNCIL **SPECIAL WORKSHOP MEETING**

COUNCIL MEMBERS PRESENT: Mayor Colleen Wallace
Mayor Pro Tem David Happe
Council Member Mary Hamlin
Council Member Kyle Pingree
Council Member Alberto Sanchez* ***at 4:08 PM***

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Douglas Schulze, City Manager
Kevin Ennis, City Attorney
Marie Calderon, City Clerk
Caroline Patton, Deputy City Clerk
Alejandro Geronimo, City Treasurer*
Tom Miller, Electric Utility Director*
Art Vela, Public Works Director/City Engineer*
Suzanne Cook, Deputy Finance Director*
Laurie Sampson, Executive Assistant*

*****Participated via Zoom.

1. CALL TO ORDER

Roll Call – *Council members Hamlin, Happe, Pingree, Sanchez, and Mayor Wallace*

2. WORKSHOP

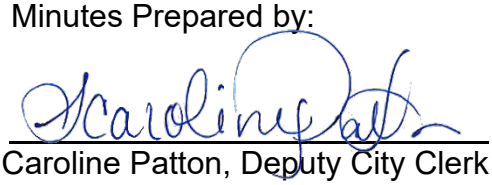
2.1 Conflict of Interest Council Training

Kevin Ennis, City Attorney presented this training.

3. PUBLIC COMMENTS

4. ADJOURNMENT

Minutes Prepared by:



Caroline Patton, Deputy City Clerk

This entire meeting may be viewed here:
https://banninglive.viebit.com/player.php?hash=qhqPXizmyNs2.
A CD or DVD may be purchased for $7.00 each at Banning City Hall, located at 99 E. Ramsey Street, Banning, CA 92220.

All documents related to this meeting are available here:
http://banning.ca.us/ArchiveCenter/ViewFile/Item/2461

City of Banning

KEVIN G. ENNIS, CITY ATTORNEY'S OFFICE

Public Entity Ethics Laws and Conflicts of Interest

4.27.21

RELATIONSHIP BETWEEN ETHICS AND THE LAW

- The law is the **starting point** for most ethical analyses
- The law is **the floor** for ethical conduct, not the ceiling
- Just because it's legal, doesn't mean the public will see it as being **right**

OVERVIEW – GOVERNMENTAL CONFLICT OF INTEREST LAWS

- **Political Reform Act**
  - Disclosure
  - Disqualification
- **Contracts**
  - Gov. Code §1090
- **Common Law Doctrine against Conflicts of Interest**

GOALS OF CONFLICT OF INTEREST LAWS

A basic principle of good government is that one should enter into public service to benefit the public and not one's personal financial interest

Officials should perform duties solely in the public's interest, not for their own financial interests

Ensure integrity and promote public confidence in local agency decisions by requiring public officials to step aside from decisions that could affect their financial interests

HOW ARE THESE GOALS CARRIED OUT?

- The law is aimed not just at actual misconduct, but at the perception of misconduct and temptation
- California public entity ethics laws have had to draw lines as to what is and is not a conflict of interest
- Lines are not always intuitive or obvious
- Actions that seem "right" may still be illegal

HOW IS THIS DONE?

How is this done?

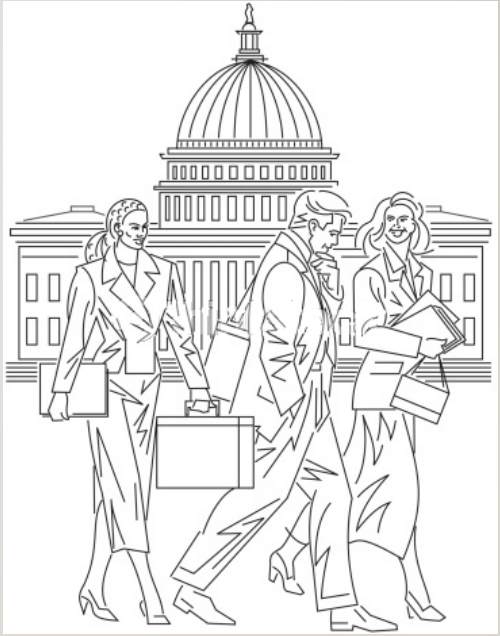
Disclosure (Form 700)

Disqualification/Recusal

POLITICAL REFORM ACT OF 1974

- Enacted in 1974
- Created the Fair Political Practices Commission (FPPC)
- Applies to Public Officials, including City Councilmembers

(Gov. Code § 82048)



DISCLOSURE OF FINANCIAL INTERESTS ON A STATEMENT OF ECONOMIC INTERESTS - FORM 700

- Form 700 Statement of Economic Interests
  - As a candidate for office, upon assuming office and annually
  - Purpose – allows the public to understand your financial interests and thereby keep public officials accountable.
  - Disclose your economic interests –
    - Sources of income
    - Real property interests
    - Investments
    - Business entities that you own
    - Sources of gifts

RECUSAL (ABSTENTION) DUE TO CONFLICT OF INTEREST

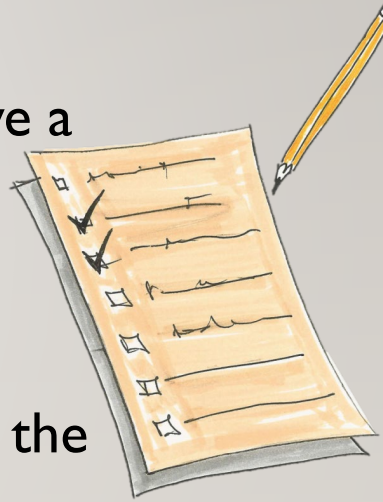
"No public official . . . shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

- Political Reform Act, Government Code § 87100

PERSONAL FINANCIAL INTERESTS POLITICAL REFORM ACT OF 1974

Questions to ask:

1. Is it reasonably foreseeable that the decision will have a financial effect on your economic interest?
2. Will the financial effect be material?
3. Is the financial effect indistinguishable from effect on the public generally?
4. If not, absent an exception, you may not make or participate in the decision.



WHAT ARE YOUR FINANCIAL INTERESTS?

- Real property interests (including leases)
- Sources of income of $500 or more in the last 12 months
- Investments worth $2,000 or more
- Business interests
- Gifts of $520 from a single source over the last 12 months

REAL PROPERTY INTERESTS

- Real property interests worth at least $2,000
  - Owned by you
  - Owned by you and your spouse together
  - Owned by your spouse separately
  - Your dependent child's property
  - Your interest as a tenant in real property (except month-to-month)

MATERIALITY STANDARDS FOR IMPACTS ON REAL PROPERTY INTERESTS: OWNERSHIP

- **Direct Decisions**:
  - When your property is the subject of a general plan amendment, zoning/rezoning, or permit decision
  - Decision involves improvements to streets, water, sewer, storm drainage or similar facilities, and your property will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving those services

500 TO 1,000 FOOT RULE

New Rule as of 2019:

- **500 feet or less**: Material effect if the decision involves property that is located 500 feet or less from the property line of your property unless there is clear and convincing evidence that the decision will not have any measurable impact on your property.
- **Between 500 and 1,000 feet**: No material effect unless decision would change the development potential, income producing potential, highest and best use, or substantially alter traffic, intensity of use, parking, view, privacy, noise levels or air quality, or market value of your property.

500 TO 1,000 FOOT RULE

- New Rule (cont.)
  - **More than 1,000 feet**: If the decision involves property 1,000 feet or more from the property line of your property, then that decision is presumed not to materially affect your property unless there is clear and convincing evidence the governmental decision would have a substantial effect on your property.

MATERIALITY STANDARDS FOR IMPACTS ON REAL PROPERTY INTERESTS: LEASES

- 5 criteria apply when property is leased:

  The decision will:

  1. Change the termination date of the lease
  2. Increase or decrease the potential rental value of the property
  3. Increase or decrease the rental value of the property, and the official has a right to sublease the property
  4. Change the official's actual or legally allowable use of the property
  5. Impact the official's use and enjoyment of the property

MATERIALITY STANDARDS FOR IMPACTS ON REAL PROPERTY INTERESTS: EXCEPTIONS

- Exceptions:
  - There is no material financial effect if a decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities
  - General plan policy decisions
  - Common areas in common interest developments are now excluded from the definition of "real property" for the purpose of conducting a conflict of interest analysis

YOUR SOURCES OF INCOME

- Sources of income of $500 or more in the last 12 months
  - Your own income such as salary from a private employer
  - Promised income
  - Child's income
  - Loans
  - Spouse's income
  - Commission income

INVESTMENTS AND BUSINESS INTERESTS

- **Investments**
  - Investments worth $2,000 or more
  - Mutual Fund exception
- **Business Interests**
  - Management or employment
  - "Related" business entities
  - Property interests of businesses

MATERIALITY STANDARDS FOR IMPACTS ON BUSINESS INTERESTS

- A presumption of materiality if the business is directly involved in the decision
  - For example, contracts between the City and the business in which you hold a business position
- Otherwise, "the financial effect is material if a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the business entity's publicly traded stock, or the value of a privately-held business entity

YOU HAVE AN ECONOMIC INTEREST IN YOUR "PERSONAL FINANCES"

- Personal Finances
  - Your personal expenses, assets or liabilities
  - Will the decision cause you, your spouse or your dependent children to receive a measurable financial benefit or loss?
  - Or those of your spouse or dependent children?

IF YOU HAVE A FINANCIAL INTEREST IN A DECISION, YOU WILL NEED TO RECUSE YOURSELF FROM THE DECISION UNLESS CERTAIN EXCEPTIONS APPLY

- Public Generally Exception
  - Decision will affect 25% of all properties in your district
  - Decision will affect 25% of all businesses in your district
  - And the decision will affect your interests in substantially the same manner as that 25% segment
  - Or, if the only financial interest of yours that is affected is your principal residence, then 15% of the residential properties in your district and the decision will affect your property in the same manner as the other 15% of residential properties
  - Does not apply if your interests are affected uniquely (due to size of property or number of properties you own)

IF YOU HAVE A FINANCIAL INTEREST IN A DECISION, YOU WILL NEED TO RECUSE YOURSELF FROM THE DECISION UNLESS CERTAIN EXCEPTIONS APPLY

- Rule of Legally Required Participation
  - If a majority of the Councilmembers have a conflict of interest in the decision, leaving only two to act, then this Rule allows one other member to be selected at random to participate so as to make up a minimum number of three required to act on the item
  - Need all three to be present so as to select one of them to participate
  - Can be done by drawing straws, picking a number out of a hat, or drawing the highest card (any random method is okay)

IF YOU HAVE A FINANCIAL INTEREST IN A DECISION AND NO EXCEPTION APPLIES

- That means you have a conflict of interest in the decision and must recuse yourself from making, participating in the making, or using your official position to influence the decision

WHEN YOU HAVE A CONFLICT OF INTEREST IN A DECISION WHAT DOES IT MEAN TO RECUSE YOURSELF FROM THE DECISION?

- It means that you are not allowed to "make a decision"
  - Voting on the matter when in comes up for a decision
  - Committing the City to a course of action
  - Approving a contract that affects your financial interests

WHEN YOU HAVE A CONFLICT OF INTEREST IN A DECISION WHAT DOES IT MEAN TO RECUSE YOURSELF FROM THE DECISION? (CONT.)

- You are not allowed to "participates in making" a City decision
  - Participation in the discussion and deliberation of the item
  - Acts within authority of his/her office or position and advises or makes recommendations to decision-maker
  - Negotiates with third party regarding governmental decision

WHEN YOU HAVE A CONFLICT OF INTEREST IN A DECISION WHAT DOES IT MEAN TO RECUSE YOURSELF FROM THE DECISION? (CONT.)

- You are also not allowed to "attempt to use your official position to influence a decision"
  - Talking with colleagues on the Council about the item outside of the meeting
  - Contacts or appears before or otherwise attempts to influence any member, officer, employee or consultant of the agency, or
  - Advocates on behalf of his/her agency to another governmental agency

IF YOU ARE DISQUALIFIED AND MUST RECUSE YOURSELF FROM THE DECISION

- When the item comes up on the agenda, identify nature of financial interest that gives rise to your conflict of interest
- Get up out of your seat
- Leave chambers after stating abstention (except for items on consent calendar)

PARTICIPATION AS A MEMBER OF THE PUBLIC - ALLOWED IN LIMITED SITUATIONS

- Recuse yourself from participating in your official capacity
- May only speak as a member of the public to represent your "Personal" interests
- Personal interests are:
  - Property solely owned by you and your spouse
  - Business solely owned by you and your spouse

PENALTIES FOR VIOLATING THE PUBLIC REFORM ACT

- Invalidation of decision
- Misdemeanor (could result in loss of office)
- Fines imposed by FPPC
- Attorney's fees (yours and others)
- Embarrassment (personal / political)

GOVERNMENT CODE SECTION 1090

GOVERNMENT CODE SECTION 1090

- A public official may not "make" a contract in which he or she is "financially interested"
- For example:
  - It means that the City cannot enter contracts with you or your spouse
  - City cannot buy your property
  - You cannot sell your property to the City

WHAT ARE THE ELEMENTS OF GOVERNMENT CODE SECTION 1090?

- You must be an officer or employee of the City
- You have a financial interest in a contract
  - Direct contractual interest – contract is between you and the City
  - Indirect benefit from the making of a contract – the contract is with another entity with whom you have a business relationship
- Contract made by the official or body of which you are a member
  - Broadly interpreted to include negotiations, discussions, design, planning, etc.
- If City Councilmember is financially interested, City cannot enter into contract unless certain exceptions apply

GOVERNMENT CODE SECTION 1090 - EXCEPTIONS

- **Exceptions**
  - "Remote Interests" – Section 1091
    - Abstention and disclosure required
    - 17 specific remote interest exceptions
  - "Non-interests" – Section 1091.5
    - No abstention required. Disclosure sometimes required
    - 14 specific non-interest exceptions

GOVERNMENT CODE SECTION 1090 - EXCEPTIONS

- Examples of remote interests – requires your abstention but allows the contract to go forward:
  - You are the landlord or tenant of the entity that is seeking a contract from the City
  - You are a supplier of goods or services to the entity that is seeking a contract from the City, if you supplied goods and services to that entity for over 5 years prior to your election or appointment to office
  - You are an officer of employee of a non-profit entity
    - Example – if you served on the Board of the Banning Sportsman Club and the City was considering to vote to extend its lease of City land

GOVERNMENT CODE SECTION 1090 - EXCEPTIONS

- Examples of non-interests – allows you to participate as long as you disclose the relationship:
  - You are a non-salaried member of a non-profit entity
    - Example – you were a member of (not board member of) the Banning Sportsman Club
  - You are employed by another government entity and the City is contracting with that governmental entity for a service that does not involve the department that employs you
    - Example – you are employed by Riverside County Health Department and the City is contracting with the County for Fire Services

GOVERNMENT CODE SECTION 1090

- If you have a financial interest in contract, you must recuse yourself from all acts leading up to contract approval

PENALTIES FOR VIOLATING GOVERNMENT CODE SECTION 1090

- **Penalties Severe**
  - Contracts are not just "voidable," but void
  - Contractor may have to refund money
  - Willful violation is a felony
  - Fines (up to $10,000) or imprisonment
  - Prohibition against holding public office
  - Usual tool of the DA to prosecute for corruption

SECTION 1090 PENALTIES

- **Defenses that don't work**
  - Contract was fair, just and equitable to all parties
  - City Attorney said it was okay to participate
  - Abstention may not be enough to avoid 1090 violation and invalidation of the contract if the interest does not qualify as a "remote interest"

COMMON LAW DOCTRINE AGAINST CONFLICTS OF INTERESTS

- The final Conflict of Interest law
- Judicially-created law
- Applies when public official is tempted by personal interests
- Even if those interest are not a "financial conflict" under Political Reform Act or Government Code Section 1090
- Infrequently applied but beware

CAMPAIGN CONTRIBUTIONS

- Generally do not create a conflict of interest in a decision affecting a campaign contributor
- But campaign contributions cannot be tied to official action
- Special rule for appointed boards and commissions
  - $250 / 12 month / 3 month rule

CAMPAIGN CONTRIBUTIONS

- Prohibition on soliciting campaign contributions from other officers or employees of your agency – Government Code Section 3205
- Prohibition applies to direct or indirect solicitation of contributions

THE OBVIOUS: DO NOT TAKE BRIBES

- Do not solicit or accept contributions, things of value or payments in exchange for votes or other official action

EXAMPLES OF CAREERS ENDED - TEMPLE CITY

L.A. NOW

SOUTHERN CALIFORNIA -- THIS JUST IN

« Previous Post | L.A. NOW Home | Next Post »

Cathe Wilson, former Temple City mayor, sentenced to prison for bribery, perjury [Updated]

June 23, 2011 | 11:23 am

Former Temple City Mayor Cathe Wilson was sentenced Thursday to four years in state prison after her conviction for bribery and perjury involving a sweetheart deal with a developer while in office.

Los Angeles Superior Court Superior Court Judge Alex Ricciardulli sentenced the 78-year-old ex-mayor and ordered her to pay $10,000 in restitution.

EXAMPLE OF CAREERS ENDED – UPLAND

L.A. NOW

SOUTHERN CALIFORNIA -- THIS JUST IN

« Previous Post | L.A. NOW Home | Next Post »

Former Upland mayor pleads guilty to federal bribery charges

April 26, 2012 | 11:09 am

Aa Comments Tweet Like

This post has been corrected. Please see the note below.

Former Upland Mayor John Pomierski pleaded guilty Thursday to bribery involving a scheme to extort money and campaign contributions from businesses seeking permits and other city services.

EXAMPLE OF CAREERS ENDED – SANTA FE SPRINGS

L.A. NOW

SOUTHERN CALIFORNIA -- THIS JUST IN

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Santa Fe Springs official took bribes while lying to FBI

June 28, 2012 | 3:08 pm

Aa Comments Tweet Like

Santa Fe Springs Councilman Joseph Serrano Sr. repeatedly shook down a medical marijuana dispensary owner who was working as an FBI informant, taking a total of $11,500 in payments in 2010 and 2011, according to a plea agreement released Thursday by the U.S. attorney's office.

Serrano has agreed to plead guilty to one federal count of felony bribery.

The 28-page agreement is the latest example of corruption in a small Los Angeles County town -- and shows the brazen extent to which the Santa Fe Springs official negotiated the cash bribes even after he had been interviewed by FBI agents probing allegations of corruption in the city.

WHAT IS A GIFT?

- Political Reform Act
  - A gift is anything of value for which the recipient did not provide payment or services of equal or greater value to the donor

GIFTS DON'T ALWAYS HAVE BOWS

- Meals, food and drink (including receptions)
- Tickets to entertainment events (concerts and sporting)
- Raffles
- Travel and lodging
- Holiday gifts
- A rebate or discount in the price of anything of value

GIFT REPORTING AND GIFT LIMIT

- Report:
  - All gifts worth $50 or more from a person or entity (unless the person qualifies for an exception)
  - Can be several gifts from same source given within one calendar year
- Do not accept:
  - Gifts from a single person / entity worth more than $520
  - Again, several gifts given in same calendar year count
- This limit is raised every odd-numbered year to account for inflation

GIFTS FROM OUTSIDE THE CITY'S JURISDICTION

- Gifts do not have jurisdictional boundaries

VARIETY OF EXCEPTIONS – PREEXISTING RELATIONSHIPS

- Existing personal or business relationships
- Long term friendship -BFF's
- Bona fide dating relationships

FAMILY EXCEPTION TO GIFT RULES

- Spouse
- Child
- Parent
- Grandparent
- Grandchild
- Brother
- Sister
- Parent-in-law
- Brother-in-law
- Sister-in-law
- Nephew
- Niece
- Aunt
- Uncle
- First cousin
- Spouse of any of the above

HOLIDAY EXCEPTION TO GIFT RULES

- Gifts exchanged between Form 700 Filers and another individual, other than a lobbyist, on holidays, birthdays, or similar occasions
- Gifts exchanged must not be substantially disproportionate in value

OTHER EXCEPTIONS TO GIFT RULES

- Bereavement offerings
- Prizes/Awards in Contests
- Awards or trophies
- Benefits of Attending Wedding
- Disaster Assistance
- Leave credits
- Home hospitality
- Acts of Neighborliness or Human Compassion
- Inheritances
- Informational materials at conferences, etc.
- Free admission to conferences
- Catch-All

WATCH OUT FOR GIFTS IN DISGUISE

- Watch out for gifts in disguise:
  - Gifts to your family that benefit you
  - Events honoring you
  - Official or ceremonial functions

SPECIAL RULES APPLY!

RETURNED OR DONATED GIFTS

- Item is not deemed accepted or received if, within 30 days after receipt:
  - the gift not used and is returned to donor;
  - the donor is reimbursed; or
  - the gift is donated to charitable organization or federal, state or local government agency without claiming a tax deduction

DISCLOSE, REFUSE AND DISQUALIFY

Disclose	Refuse	Disqualify
• $50 or more only if the source is not exempt	• More than $520	• Decisions affecting any sources of gifts exceeding $520

DON NOT ACCEPT FREE OR DISCOUNTED TRANSPORTATION PASSES ON PRIVATE TRANSPORTATION CARRIERS

- No free travel from transportation companies

  - Cal. Const. art. XII § 7

- Only applies to officers of the City and not just an employee

- Exclusion for frequent flyer mileage and discounts given unrelated to your official position

DO NOT USE PUBLIC RESOURCES FOR POLITICAL/PERSONAL PURPOSES

- No Mass Mailings
- No Personal Use of Staff
- No Personal Purposes
- No Campaign Use

GETTING HELP

- City Staff
- City Attorney's Office – call me
- Seek advice from the FPPC
  - 1-866-ASK-FPPC
  - Request a formal advice letter, if time permits

"If in doubt, sit it out."

THANK YOU.

KEVIN G. ENNIS, CITY ATTORNEY'S OFFICE

4.27.21