



BEAUMONT-CHERRY VALLEY WATER DISTRICT
560 Magnolia Avenue, Beaumont, CA 92223

PERSONNEL COMMITTEE MEETING AGENDA
Monday, June 21, 2021 - 5:30 p.m.

TELECONFERENCE NOTICE

*This meeting is hereby noticed pursuant to
California Government Code Section 54950 et. seq. and
California Governor's Executive Orders N-08-21
Personnel Committee members will attend via Zoom video conference*

To access the Zoom conference, use the link below:
<https://us02web.zoom.us/j/84318559070?pwd=SXlzMFlZCMGh0YTFIL2tnUGlpU3h0UT09>

To telephone in, please dial: (669) 900-9128
Enter Meeting ID: 843 1855 9070
Enter Passcode: 113552

*For Public Comment, use the “**Raise Hand**” feature if on
the video call when prompted. If dialing in, please **dial *9**
to “**Raise Hand**” when prompted*

Meeting materials will be available on the BCVWD's website:
<https://bcvwd.org/document-category/personnel-committee-agendas/>

Call to Order: Chair Covington

Announcement of Teleconference Participation

Roll Call

	John Covington
	Andy Ramirez

	David Hoffman (alternate)
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Teleconference Verification

Public Comment

PUBLIC COMMENT: RAISE HAND OR PRESS *9 to request to speak when prompted. At this time, any person may address the Personnel Committee on matters within its jurisdiction which are not on the agenda. However, non-agenda matters that require action will be referred to Staff for a report and possible action at a subsequent meeting. **Please limit your comments to three minutes.** Sharing or passing time to another speaker is not permitted.

1. **Adjustments to the Agenda:** In accordance with Government Code Section 54954.2, additions to the agenda require a 2/3 vote of the legislative body, or if less than 2/3 of the members are present, a unanimous vote of those members present, which makes the determination that there is a need to take action, and the need to take action arose after the posting of the agenda.
 - a. Item(s) to be removed or continued from the Agenda
 - b. Emergency Item(s) to be added to the Agenda
 - c. Changes to the order of the agenda
2. **Acceptance of Personnel Committee Meeting minutes:**
 - a. May 17, 2021 (pages 4 - 8)

ACTION ITEMS

3. **Report from Human Resources Department** (pages 9 - 11)
4. **Update on the status of the Memorandum of Understanding (MOU) with the Employee Association** (no Staff Report)
5. **Report / Update from BCVWD Employees Association** (no Staff Report)
6. **Policies and Procedures Manual updates / revisions** (pages 12- 21)
 - a. Policy 3000 Employee Status
 - b. Policy 3001 Employee Information and Emergency Data
7. **Discussion of Training, Education, and Conferences Policy for the Board of Directors** (pages 22 - 69)
8. **District Residences and Emergency Facility Policy and Properties** (handout)
9. **Action List for Future Meetings**
 - *Employee Association topics*
 - *Policy manual updates*
 - *Safety updates and improvements, and new procedures*
 - *Workshop/Training options for staff and/or management to provide certification.*
10. **Next Meeting Date: July 19, 2021**

Adjournment

AVAILABILITY OF AGENDA MATERIALS - Agenda exhibits and other writings that are disclosable public records distributed to all or a majority of the members of the Beaumont-Cherry Valley Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Personnel

Committee of the Board of Directors are available for public inspection in the District's office, at 560 Magnolia Avenue, Beaumont, California ("District Office"). If such writings are distributed to members of the Board less than 72 hours prior to the meeting, they will be available from the District website: www.bcvwd.org.

REVISIONS TO THE AGENDA - In accordance with §54954.2(a) of the Government Code (Brown Act), revisions to this Regular Meeting Agenda may be made up to 72 hours before the Committee Meeting, if necessary, after mailings are completed. Interested persons wishing to receive a copy of the set Agenda may pick one up at the District's Main Office, located at 560 Magnolia Avenue, Beaumont, California, up to 24 hours prior to the Committee Meeting.

REQUIREMENTS RE: DISABLED ACCESS - In accordance with §54954.2(a), requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting, should be made to the District Office, at least 48 hours in advance of the meeting to ensure availability of the requested service or accommodation. The District Office may be contacted by telephone at (951) 845-9581, email at info@bcvwd.org or in writing at the Beaumont-Cherry Valley Water District, 560 Magnolia Avenue, Beaumont, California 92223.

CERTIFICATION OF POSTING

I certify that on or before 5:29 p.m. June 18, 2021, a copy of the foregoing notice was posted near the regular meeting place of the Board of Directors of Beaumont-Cherry Valley Water District and to its website at least 72 hours in advance of the meeting (Government Code §54956(a)).

William
Clayton

Digitally signed by William Clayton
DN: cn=William Clayton, o=Beaumont-
Cherry Valley Water District, ou,
email=william.clayton@bcvwd.org, c=US
Date: 2021.06.17 17:31:15 -07'00'

William Clayton
Acting Director of Finance and Administrative Services



BEAUMONT-CHERRY VALLEY WATER DISTRICT AGENDA

560 Magnolia Avenue, Beaumont, CA 92223

MINUTES OF THE PERSONNEL COMMITTEE MEETING

Monday, May 17, 2021 at 5:30 p.m.

*Meeting held via teleconference pursuant to
California Government Code Section 54950 et. seq. and
California Governor's Executive Orders N-29-20 and N-33-20*

CALL TO ORDER

Chair Covington called the meeting to order at 5:34 p.m.

Announcement of Teleconference Participation

Acting Director of Finance and Administrative Services William Clayton clarified that this meeting is conducted via teleconference pursuant to California Government Code Section 54953, and under Executive Order N-29-20 and N-33-20 of the Governor of California.

The teleconference capabilities of this meeting have been identified in the Notice and Agenda for this meeting, pursuant to the Brown Act and the Governor's Executive Order. Under the Governor's Executive Order and the Gathering Guidelines of the California Department of Health due to the danger of COVID-19, the teleconference locations are not publicly accessible. The public's right to comment and participate in the meeting is being assured via teleconference capabilities.

The Beaumont-Cherry Valley Water District (BCVWD) will use sound discretion and make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to meetings.

Attendance

<i>Directors present:</i>	<i>Ramirez, Covington</i>
<i>Directors absent:</i>	<i>None.</i>
<i>Staff present:</i>	<i>General Manager Dan Jagers Acting Director of Finance and Administrative Services William Clayton Human Resources Coordinator Sabrina Foley Assistant Director of Operations James Bean Administrative Assistant Erica Gonzales Field Superintendent Knute Dahlstrom</i>
<i>BCVWD Employee Association reps:</i>	<i>Erica Gonzales Julian Herrera</i>

Acting Director of Finance and Administrative Services William Clayton verified that all members of the Personnel Committee and staff have indicated that they are able to hear the other directors clearly on the teleconference. No committee members or staff

expressed any reason to believe, based on voice recognition or otherwise, that those persons representing themselves to be committee members are not truly so.

PUBLIC INPUT: *None.*

ACTION ITEMS

1. Adjustments to the Agenda: None. Mr. Jagers pointed to a handout for Item 7 that was emailed to Committee members and is available on the District's website.
2. Approval of the April 19, 2021 Meeting minutes

The Committee accepted the minutes of the April 19, 2021 Personnel Committee meeting by unanimous vote.

MOVED: Ramirez	SECONDED: Covington	APPROVED
AYES:	Covington, Ramirez	
NOES:	None.	
ABSTAIN:	None.	
ABSENT:	None.	

3. Update on the status of the Memorandum of Understanding (MOU) with the Employee Association

Ms. Foley advised the Committee that staff advised Koff and Associates after approval at the Board meeting last week that they would be awarded the contract for the classification study. The agreement is in process and work will begin as soon as possible, she reported.

The compensation survey request for proposals will be going out shortly, Foley added.

Chair Covington invited public comment. There was none.

4. Policies and Procedures Manual updates / revisions

- a. Policy 3000 Employee Status
- b. Policy 3001 Employee Information and Emergency Data
- c. Policy 3002 Employee Groups

Human Resources Coordinator Sabrina Foley noted that work is ongoing on the policy manual and pointed to the tracking sheet. The three policies presented are in highly regulated areas with extensive input from legal counsel, she indicated.

Ms. Foley explained changes and additions to the policies. She responded to questions from the directors.

Chair Covington requested that some clarifications be made to the Policy 3000 related to GM discretion and procedures related to the introductory period. Director Ramirez suggested that the introductory period should be one year, or waived at the discretion of the GM. Ms. Foley indicated this can be brought up as part of the MOU negotiation.

Ms. Foley introduced the new Employee Information and Emergency Data policy and responded to questions. Directors Ramirez and Covington directed that for inquiries from prospective employers, it should be District policy not to respond to employee eligibility questions.

In response to questions, Ms. Foley explained the confidentiality or disclosure of personnel files and related Government Code.

Ms. Foley noted that proposed Policy 3002 Employee Groups was primarily drafted by legal counsel and explained that it aligns with Government Code 3500.

Chair Covington pointed to the Representation Proceedings. Ms. Foley explained the procedure.

The Committee members reached consensus that section 3002 was ready for the full Board. Ms. Foley will bring back sections 3000 and 3001 with edits.

Chair Covington invited public comment. There was none.

5. Report from Human Resources Department

Ms. Foley reviewed the report. Chair Covington invited comment. There was none.

6. Report / Update from BCVWD Employees Association

Ms. Erica Gonzales reported that she is finalizing the list of concerns from the office employees in order to prioritize heading into negotiations.

Mr. Julian Herrera reported that the field staff is going through the MOU and once finalized, he will meet with the GM.

7. District Residences and Emergency Facility Policy and Properties

General Manager Jagers introduced the item and attachments and noted this is a different approach that simplifies the cost perspective.

Jagers reviewed the Scope of Work (SOW) for which employee-occupants would be responsible and noted it is open for comment by the Committee members. Chair Covington posited that the security model used by the Beaumont-Cherry Valley Recreation and Park District works but is not comparable to the needs of BCVWD. He acknowledged the efforts of BCVWD staff as an unarmed security force.

Chair Covington also noted that he had pointed out that the residences were in disrepair as per visual perception he believed they could be better maintained.

There have been unguided policies, Covington continued, and this is the reason for this policy revision and better effort to maintain facilities and provide a livable domicile is the goal. Jagers acknowledged that maintenance needed to improve and said the District is working on that.

Jagers introduced two versions of a formula for determination of the monthly maintenance fee. The simplified version is based on real estate rules of thumb for

budgeting annual residential maintenance, he explained. Jagers detailed the formula and values. He noted that from 2013 to present the average annual expenditure on maintenance is \$400 to \$1,000 per house while collecting \$2,400 per year. As of May 1, the fund balance collected and not expended totals approximately \$73,457, he said.

Jagers pointed to the potential renovation plan and noted it may be overly aggressive, but if the Board wants to rehab the houses, this targets one renovation per year. Money would be taken from reserves, but money would be collected to fund the activity, he said. The plan would displace employee-occupants which may not be desired, and assessments of the houses are moving forward, he noted. Staff estimates the cost not to exceed \$100,000 per house, he explained. He noted the potential for inconveniencing the employee-occupants and the option of providing a temporary mobile home.

Jagers provided calculations for the monthly maintenance fee based on 1 percent and 2.5 percent of the home value. The model varies from approximately \$450 to \$800.

Jagers explained the financing of the house rehabilitation and compared costs to a monthly mortgage payment of \$600.

Chair Covington said his preference is to allow the Committee a month to digest the information. He said he liked the idea of streamlining the maintenance fee calculation. Covington indicated that he would prefer the District proceed with inspection of the houses and bring the reports to the Committee at the June 21 meeting. The work of the Committee does not preclude the determination of the level of maintenance and risk of the houses, and the GM has the authority to address the needs prioritizing safety and necessity, Covington noted.

Jagers assured that inspections would move forward, and safety issues would be addressed. He indicated that an Oak Glen residence needs a new roof and staff would proceed with obtaining bids and performing roof inspections.

Director Ramirez opined that this approach is more clear and said this is a better formula and is getting closer to the goals of fairness to the District and employee-occupants and being good stewards.

Chair Covington reminded that current information on values should be included in any formulas.

Covington opened the floor for comment by employees. There were none. Director Ramirez acknowledged the responsibility of and expressed appreciation for the employee-occupants.

8. Action List for Future Meetings

- *Employee Association topics (none added)*
- *Policy manual updates (ongoing)*
- *Safety updates and improvements, and new procedures*
- *Workshop/Training options for staff and/or management to provide certification*
- *District Residences and Facility Emergency Policy*
- *Recruitment plan for the vacant executive level position*
- *Revised Accounting Technician job description (to the Board of Directors)*

9. Next Meeting Date: Monday, June 21, 2021 at 5:30 p.m.

ADJOURNMENT: 7:05 p.m.

Attest:

DRAFT UNTIL APPROVED

John Covington, Chairman
to the Personnel Committee of the Beaumont-Cherry Valley Water District

DRAFT



**Beaumont-Cherry Valley Water District
Personnel Committee Meeting
June 21, 2021**

HUMAN RESOURCES REPORT

TO: Board of Directors Personnel Committee

FROM: Sabrina Foley, Human Resources Coordinator

SUBJECT: Human Resources Department Report for the Period of May 10, 2021 – June 10, 2021

Personnel

Total Current Employees (Excluding Board Members)	39
Part Time	4
Temporary	4
Interns	0
Separations	1
Retiring Employees	0

New Hires

The District hired two Temporary Water Utility Person for the AMR/AMI grant project.

The District hired two Temporary Part-Time Customer Service Representatives for the AMR/AMI grant project.

Anniversaries*

Employee Name	Job Title	Years of Service
Sandra Delgadillo	Customer Service Representative III	4
Andrew Becerra	Water Utility Person II	3

**Work Anniversaries for the purposes of this report are calculated from the most recent hire date and do not determine employment conditions or terms. This report does not include elected officials.*

Promotions

N/A

Employee Communications

On May 13, HR announced two internal job openings for the position of Water Utility Person III and solicited internal applications.

On May 19, HR shared information about the CalPERS 457 Plan.



On May 25, HR shared information about a free webinar from the Employee Assistance Program about mental health post-pandemic.

On May 27, HR published the June District calendar.

On June 2, HR announced an internal job opening for the position of Accounting Technician and solicited internal applications.

On June 2, HR shared a social media post from the CSDA (California Special Districts Association) recognizing BCVWD.

Pending Legislation

This legislation has been introduced but not yet chaptered.

Bill/Legislation	Title	Description	Effective Date
AB 95	Employees: Bereavement Leave	Would require employers to provide 10 days of unpaid bereavement leave, subject to certain exclusions.	Failed deadline. May be acted upon Jan. 2022
AB 444	State and Local Employees: Pay Warrants: Designees	Currently, government employees may designate an individual to receive their final paycheck ("warrant") in the event of their death. The bill would require employers to issue the final paycheck in the designee's name.	Passed and ordered to the Senate; sent to Senate appropriations committee
AB 237	Public Employment: Unfair Practices: Health Protection	Would make it an unfair practice for a public agency employer to fail or refuse to maintain or pay for medical coverage for an enrolled employee or their dependents during the employee's participation in an authorized strike.	Re-referred to committee
AB 684 (amended to AB 654)	COVID-19 Exposure: Notification	Would require the State Department of Public Health to make information available which would allow the public to track the number of COVID-19 cases and outbreaks by both workplace and industry.	Third reading
AB 995 (SB 95 is similar)	Paid Sick Days: Accrual and Use	Would change the alternate sick leave accrual rate from a minimum of 24 hours per year to a minimum of 40 hours per year.	Failed deadline; may be acted upon Jan. 2022
AB 1119	Employment Discrimination	Would expand protected characteristics to include family	Failed deadline; may



		responsibilities, meaning the obligation of an employee to provide care for a minor child or care recipient.	be acted upon Jan. 2022
AB 1179	Employer Provided Benefit: Backup Childcare	Would require an employer with 30 or more employees to provide up to 60 hours of paid backup childcare benefits to be used when the employee's regular childcare provider cannot be utilized.	Failed deadline; may be acted upon Jan. 2022
AB 1033	CFRA Update: Parents-in-law	Would amend CFRA to include leave to care for a parent-in-law within the definition of family care and medical leave.	Re-referred to Committee
AB 1041	Leave to care for "Designated Person"	Would expand the population that employees could take leave to care for to a "designated person" to mean a person identified by the employee at the time of a leave request.	Re-referred to Committee

Prepared by Sabrina Foley, Human Resources Coordinator



**Beaumont-Cherry Valley Water District
Personnel Committee
June 21, 2021**

Item 6

STAFF REPORT

TO: Personnel Committee of the Board of Directors
FROM: Sabrina Foley, Human Resources Coordinator
SUBJECT: Policies and Procedures Manual Updates/Revisions

Staff Recommendation

Recommend the updated policies for Section 3000 Personnel to the Board of Directors for adoption.

Background

At the July 23, 2018 Personnel Committee Meeting, Committee members directed staff to review, revise and update the District's Policies and Procedures. The project has been addressed by staff in sections. At the July 27, 2020 meeting, an overview of the proposed changes to the organization of the document was presented, and the Committee requested "redlined" versions of changes in order to thoroughly review each item. Policy Approval Tracking (**Attachment 1**) is provided as an overview of the project thus far.

Summary

Staff consulted several sources to update the content and verbiage of the District's Policy Manual, including sample policies from the California Special Districts Association, articles published by the California League of Cities and Institute for Local Government, the District's HR Consultant, and recently updated manuals of other special districts. The aim of reorganization of the Policy Manual is to introduce consistency and modernize the document to align with the organizational goals of the District.

The proposed policies are presented side-by-side with the current versions, with redline edits shown for clarity (**Attachments 2-4**). Policy 3001, "Employee Information and Emergency Data," would be a new policy and therefore does not have a current counterpart.

The drafted policies have been reviewed by the District's legal counsel, who have provided significant guidance since this grouping of policies is highly regulated by government code.

Fiscal Impact

No fiscal impact.

Attachments

1. Policy Approval Tracking
2. Proposed Policy 3000 Employee Status



3. Existing Policy 8 Employee Status
4. Proposed Policy 3001 Employee Information and Emergency Data

Staff Report prepared by Sabrina Foley, Human Resources Coordinator

Proposed Policy

BEAUMONT-CHERRY VALLEY WATER DISTRICT

PERSONNEL

POLICY TITLE: EMPLOYEE STATUS

POLICY NUMBER: 3000

3000.1 **At Will.** All employment at the District is "at will." This means that either the employee or the District may end the employment relationship at any time, with or without advance notice and with or without cause. Provided, however, that discipline, grievance, layoff, and other similar procedures in an ~~an~~ MOU Memorandum of Understanding (MOU) or written employment agreement will apply while in force, but are not intended to alter the at-will nature of the employment relationship. The at-will nature of the employment relationship can only be changed by a clear and unambiguous intent to alter the at-will nature of employment made in an an MOU or written employment agreement approved by the District Board and signed by or on be ~~behalf~~ of the employee involved. Any reference in this Manual to discipline is not intended to change the at-will nature of the employment relationship or to restrict either the employee's or the District's options under the "at-will" employment policy.

3000.2 **Regular Full-Time Employee.** A "Regular" employee is one who has been hired to fill a regular position in any job classification and has completed ~~their~~ his/her introductory period except as otherwise required by law. Full-Time Employment is defined as a 40-hour average workweek. Regular employees are compensated according to the District Salary Schedule as approved by the Board of Directors. Regular, Full-Time Employees will be eligible for benefits in accordance with their classification and employee group.

3000.3 **Introductory Employee.** All newly hired employees serve an introductory period. The introductory period is intended to give new employees the opportunity to demonstrate their ability to achieve a satisfactory level of performance and to determine whether the new position meets their expectations. The District uses this period to evaluate employee capabilities, work habits, and overall performance. Either the employee or the District may end the employment relationship at will at any time during or after the introductory period, with or without cause or advance notice. All new (including rehired) employees work on an introductory basis for the first ~~six (6)~~ months after their date of hire. Any significant absence will automatically extend an introductory period by the length of the absence. If the District determines that the designated introductory period does not allow sufficient time to thoroughly evaluate the employee's performance, the introductory period may be extended one or more times at the discretion of the General Manager or their designee.

3000.4 Upon successful completion of the introductory period, full-time employees enter the "regular" employment classification. Successful completion of the introductory period does not guarantee employment for any specific duration or change the at-will status of regular employment.

3000.5 Current employees who are promoted or transferred to a new classification will serve an introductory period for the first 6 months after their date of appointment. Employees who are reclassified will not serve an introductory period for an updated job title. In the event that a promoted or transferred employee is not able to satisfactorily complete their introductory period in the new role, they may resume their former position if it is vacant. However, the District reserves the right to fill vacant positions, and the option to resume a former position is not guaranteed. If the position is not available, the introductory period may be extended at the discretion of the General Manager or their designee, or the employee may be terminated from employment. [REDACTED] Additionally, if the employee is not able to satisfactorily complete their introductory period due to violation(s) of policy, they will not be eligible to resume their former position, and may experience disciplinary action, up to and including termination of employment.

3000.6 **Introductory Evaluation.** At the conclusion of the introductory period, employees will receive a performance evaluation to assess whether the introductory period is successfully completed. The introductory period

Adopted by Resolution 20-XX, Date

Current Policy

- iv. All discussions resulting from said investigation shall be kept confidential by all informed of said investigation.
- v. The person initiating the complaint has the right to be accompanied by advocate when discussing alleged incidents. Said person shall be advised of this right prior to the commencement of such discussions.
- v. All parties concerned will be advised of the results of the investigation.

F. **Disciplinary Procedures and Sanctions.** Upon conclusion of the investigation of an alleged sexual harassment, appropriate action shall be taken by the General Manager against the harasser where sexual harassment is found, including mandatory sexual harassment training to prevent future incidents. The complainant will be advised once the investigation is complete and will be provided with a summary of the results of the investigation, including whether corrective action was taken and the general nature of that action. The complainant will not be entitled to a copy of the confidential investigation report or the specific details of corrective action, consistent with employee privacy and confidential personnel matters. Others involved in the investigation may also be advised once the investigation is complete and provided with a summary of other information appropriate to their involvement.

- i. Appropriate action shall be taken to remedy the victim's loss, if any, resulting from the harassment. Making the employee whole may involve reinstatement, back pay, etc.
- ii. Action taken to remedy a sexual harassment situation shall be done in a manner so as to protect potential future victims. An employee involved in a confirmed incident shall be removed from supervision of a person verified to have committed a harassment activity.
- ii. Employees complaining of sexual harassment shall be protected thereafter from any form of reprisal and/or retaliation.

8. EMPLOYEE STATUS

A. **At Will.** All employment at the District is "at will." This means that either the employee or the District may end the employment relationship at any time, with or without advance notice and with or without cause. Provided, however, that discipline, grievance, layoff and other similar procedures in an MOU or written employment agreement will apply while in force, but are not intended to alter the at-will nature of the employment relationship. The at will nature of the employment relationship can only be changed by a clear and unambiguous intent to alter the at will nature of employment made in a MOU or written employment agreement approved by the District Board and signed by or on half of the employee involved. Any reference in this Manual to discipline is not intended to change the at will nature of the employment relationship or to restrict either the employee's or the District's options under the "at will" employment policy.

Proposed Policy

BEAUMONT-CHERRY VALLEY WATER DISTRICT

PERSONNEL

is not eligible for a merit increase. See Policy 3010 Employee Performance Evaluation and Procedure.

3000.7 **Temporary Employee.** A temporary employee is defined as anyone hired for a period of ~~six (6)~~ months or less. Employees hired to replace a regular employee who is on a leave of absence shall be hired as temporary employees unless said leave of absence is in excess of one hundred eighty (180) days. Temporary Employees may not work more than 1,000 hours or 125 days in a CalPERS fiscal year (July 1-June 30). Retired Annuitants from CalPERS may not work in excess of 960 hours in a CalPERS fiscal year.

1. Part-Time, Temporary Employee. A temporary employee working less than 40 hours per week on average in a temporary position is a Part-Time, Temporary Employee. Part-Time, Temporary Employees may work in their positions for up to 12 months but may not work in excess of 1,000 hours (960 hours for Retired Annuitants) in a CalPERS fiscal year (July 1-June 30).

3000.8 **Part-Time Employee.** A "Part-time" employee is one who is hired to work within any job classification, but whose position is not regular in nature. The part-time employee works whenever the District's workload increases to a level that a regular employee cannot accommodate or when other factors make part-time employment advantageous. On average, part-time employees may not work more than 20 hours per week. He/She also works standby as discussed in Section 19, ("WORK HOURS, OVERTIME AND STANDBY PROGRAM"). They may also work standby as discussed in Policy 3055 if required by their job classification.

1. A temporary or part-time employee will not be eligible for fringe benefits including holiday pay, vacation pay, jury duty pay, health insurance coverage, bereavement pay, or items of a similar nature, nor will ~~he/she~~ they accrue seniority or leave of absence rights except where required by Temporary law. Temporary or Part-Time employees are eligible for the Employee Assistance Program (EAP), standard life insurance, standard Accidental Death & Dismemberment (AD&D) insurance, and may be eligible to purchase dental and vision insurance or ancillary benefits at their own option and cost.
2. Following the Health Workplace Healthy Family Act of 2014 (AB 1522), in accordance with the California Labor Code, a temporary or part-time employee will accrue paid sick leave as of the first day of employment at a rate of ~~one (1)~~ hour for every ~~thirty (30)~~ hours worked provided that the employee has worked for 30 or more days within a year from the beginning of employment. The temporary or part-time employee will be eligible to take paid sick leave after the 90th day of employment. The employee shall be limited to an annual accrued sick leave limit of ~~twenty-four (24)~~ hours annually.

Adopted by Resolution 20-XX, Date

Current Policy

- B. **Regular Full Time Employee.** A "Regular" employee is one who has been hired to fill a regular position in any job classification and has completed his/her introductory period except as otherwise required by law.
- C. **Introductory Employee.** All newly hired employees serve an introductory period. The introductory period is intended to give new employees the opportunity to demonstrate their ability to achieve a satisfactory level of performance and to determine whether the new position meets their expectations. The District uses this period to evaluate employee capabilities, work habits, and overall performance. Either the employee or the District may end the employment relationship at will at any time during or after the introductory period, with or without cause or advance notice.
All new (Including rehired) employees work on an introductory basis for the first six (6) months after their date of hire. Any significant absence will automatically extend an introductory period by the length of the absence. If the District determines that the designated introductory period does not allow sufficient time to thoroughly evaluate the employee's performance, the introductory period may be extended one or more times.

Upon satisfactory completion of the introductory period, full-time employees enter the "regular" employment classification. Successful completion of the introductory period does not guarantee employment for any specific duration or change the at-will status of regular employment.

- D. **Temporary Employee.** A temporary employee is defined as anyone hired for a period of six (6) months or less. Employees hired to replace a regular employee who is on a leave of absence shall be hired as temporary employees unless said leave of absence is in excess of one-hundred-eighty (180) days.

Part-Time Employee. A "Part-time" employee is one who is hired to work within any job classification, but whose position is not regular in nature. The part-time employee works whenever the District's workload increases to a level that regular employee cannot accommodate or when other factors make part-time employment advantageous. He/she also works standby as discussed in Section 19, ("WORK HOURS, OVERTIME AND STANDBY PROGRAM").

- i. A temporary or part-time employee will not be eligible for fringe benefits including holiday pay, vacation pay, insurance coverage, jury duty pay, bereavement pay or items of a similar nature, nor will he/she accrue seniority or leave of absence rights. Following the Healthy Workplace Healthy Family Act of 2014 (AB 1522), a temporary or part-time employee will accrue paid sick leave as of the first day of employment at a rate of one (1) hour for every thirty (30) hours worked provided that the employee has worked for 30 or more days within a year from the beginning of employment. The temporary or part-time employee will be eligible to take the paid sick leave after the 90th day of employment. The employee shall be limited to an annual accrued sick leave limit of twenty-four (24) hours annually.

9. COMPENSATION

- A. **Compensation at Hiring.** This policy shall apply to all District employees:

Proposed Policy

No Current Policy

BEAUMONT-CHERRY VALLEY WATER DISTRICT

PERSONNEL

POLICY TITLE: EMPLOYEE INFORMATION AND EMERGENCY DATA

POLICY NUMBER: 3001

3001.1 It is the policy of the District to maintain accurate and vital personal contact information for each employee and Director of the District. This information is needed to maintain accurate payroll, benefits, and emergency information for all employees and Directors. All such information shall be maintained as confidential to the extent allowed by law.

3001.2 It is important that employees promptly notify the District of any changes to their personal information, including:

1. Name
2. Home and Mailing Address
3. Home and Cell Phone Telephone Numbers
4. Change of Emergency Contact Information
5. Educational Accomplishments, such as relevant water certifications
6. Marital or Registered Domestic Partner Status, if necessary for benefits purposes
7. Any dependents the employee wishes to include for benefits purposes
8. Driver's License Status
9. Payroll Deductions and Direct Deposit Information
10. Benefit Plan Beneficiary

3001.3 Employees are responsible for notifying the Human Resources Department in the event of a change in vital information as described above or any other District policy or procedure. A Change of Name/Address form may be obtained from Human Resources.

3001.4 Per California Government Code §3100-3109, an employee must file a new loyalty oath, also known as a Disaster Service Worker and Loyalty Oath, with the District within 10 calendar days of a change of name.

3001.5 The District shall not be responsible in the event of failure of an employee to provide this information in a timely manner for a loss of benefits or services by the employee or dependents.

3001.6 Each employee is also responsible for providing the District with records concerning any licenses or certificates required in the performance of their job, as well as any documents showing that education or training relevant to employment has been completed.

3001.7 **Release of Information.**

1. Personnel records are considered confidential and are the property of the District.
2. Except as required by law, no information from an employee's personnel file will be released verbally or in writing other than job title, ~~and dates of employment, and eligibility for rehire for employment verifications.~~ Internal inquiries from other District departments and inquiries from law enforcement agencies are exceptions to this policy.

Adopted by Resolution 20-XX, Date

Proposed Policy

No Current Policy

BEAUMONT-CHERRY VALLEY WATER DISTRICT

PERSONNEL

3. Inquiries from prospective employers should be directed to the Human Resources Department. The only information to be provided will be the employee's job title, employment dates, employment end date (if no longer employed by the District), and total time of employment with the District, and ~~eligibility for rehire, if applicable.~~
4. An employee may authorize the release of salary information (e.g., for purposes of credit evaluation) by providing specific authorization.
5. Human Resources will notify the employee (if currently employed) if a verification of employment request is received.
6. All subpoenas served to obtain information contained in District personnel files must be directed immediately to the General Manager or their designee for submission to District legal counsel. It is the District's policy to comply fully with a properly issued subpoena including proof of service to the employee and absent written objection by the employee or document (i.e., Motion to Quash) from the employee's attorney.
7. Employees may examine the allowable contents of their own personnel records by contacting Human Resources and providing a Personnel Records Request form, which is obtainable from Human Resources.
 - a. Employees must review their personnel files in the presence of a Human Resources employee, the General Manager, or their designee.
 - b. Employees may not remove from the office any part of the personnel file.
 - c. The employee may request copies of the file or portions of the file. Within reason, Human Resources will provide copies. For extensive copying, the District's regular Public Records Act copying charges will apply.
 - d. In the event an employee wishes to dispute a document in their personnel file, in the presence of Human Resources the employee may write an explanation or clarification and attach it to the disputed document. Under no circumstances will Human Resources or the employee alter the original document.
8. Employees may authorize the release of their own personnel records by executing a written request identifying the records to be released and the person or entity to which they may be released. Ordinarily, no information on past or present employees shall be provided by the District, other than employment dates and job title, and ~~rehire eligibility~~, unless such requests for information are accompanied by a signed authorization by the employee to release the information requested.

3001.8 For additional information about electronic records see IT Policy 7050 Personally Identifiable Information.

Adopted by Resolution 20-XX, Date

Policy Approval Tracking
BCVWD Policies and Procedures Manual Project

Policy Number	New Policy Number	Section	Policy Name	Drafted by BCVWD Staff	Approved by Legal Counsel	Presented to Personnel Committee	Approved by Personnel Committee	Presented to Board of Directors	Approved by Board of Directors	Adoption Date
1	1000	General	Definitions	Yes	2/16/2021	2/22/2021	2/22/2021	4/14/2021	4/14/2021	4/14/2021
2	1005	General	Contractual Provisions	Yes	2/16/2021	2/22/2021	2/22/2021	4/14/2021	4/14/2021	4/14/2021
N/A	1010	General	Policy Manual	Yes	2/16/2021	2/22/2021	2/22/2021	4/14/2021	4/14/2021	4/14/2021
3	2000	Administration	Equal Opportunity	Yes	3/15/2021	3/22/2021	3/22/2021	4/14/2021	4/14/2021	4/14/2021
4	2005	Administration	Affirmative Action	Yes	Recommend to Remove	3/22/2021	3/22/2021	4/14/2021	4/14/2021	4/14/2021
5	2010	Administration	Access to Personnel Records	Yes	3/15/2021	3/22/2021	3/22/2021	4/14/2021	4/14/2021	4/14/2021
6	2015	Administration	Harassment	Yes	3/15/2021	3/22/2021	3/22/2021	4/14/2021	4/14/2021	4/14/2021
7	2020	Administration	Sexual Harassment	Yes	3/15/2021	3/22/2021	3/22/2021	4/14/2021	4/14/2021	4/14/2021
N/A	2025	Administration	Whistleblower Protection	Yes	3/15/2021	3/22/2021	3/22/2021	4/14/2021	4/14/2021	4/14/2021
8	3000	Personnel	Employee Status	Yes	4/12/2021	6/21/2021	Committee requested edits on 5/17/2021			
N/A	3001	Personnel	Employee Information and Emergency Data	Yes	4/12/2021	6/21/2021	Committee requested edits on 5/17/2021			
N/A	3002	Personnel	Employee Groups	Yes	4/12/2021	5/17/2021	5/17/2021			
9	3005	Personnel	Compensation	Yes						
N/A	3006	Personnel	Prevailing Wage	Yes						
10 & 49	3010	Personnel	Employee Performance Evaluation and Procedure	Yes						
11	3015	Personnel	Performance Evaluation-General Manager	Yes						
12	3020	Personnel	Health and Welfare Benefits	Yes						
13	3025	Personnel	Pay Periods	Yes						
14	3030	Personnel	Gift Acceptance Guidelines	Yes						
15	3035	Personnel	Outside Employment	Yes						
16	3040	Personnel	Letters of Recommendation	Yes						
17	3045	Personnel	Executive Officer	Yes						
18	3050	Personnel	Volunteer Personnel Workers' Compensation Insurance	Yes						
19	3055	Personnel	Work Hours, Overtime, and Standby Program	Yes						
20	3060	Personnel	Continuity of Service	Yes						
20 (incorrect numbering)	3065	Personnel	Reduction in Force	Yes						
21	3070	Personnel	Holidays	Yes						
22	3075	Personnel	Vacation	Yes						
23	3080	Personnel	Pre-Employment Physical Examination	Yes						
24	3085	Personnel	Sick Leave	Yes						
25	3090	Personnel	Family and Medical Leave	Yes						
26	3095	Personnel	Pregnancy Disability Leave	Yes						
N/A	3096	Personnel	Lactation Accommodation	No						
27	3100	Personnel	Bereavement Leave	Yes						
28	3105	Personnel	Personal Leave of Absence	Yes						
29	3110	Personnel	Jury and Witness Duty	Yes						
N/A	3111	Personnel	Leave for Crime Victims and Family Members	No						
30	3115	Personnel	Return to Work Policy	Yes						
31	3120	Personnel	Occupational Injury and Illness Prevention Program	Yes						
N/A	3121	Personnel	Infectious Disease Control	Yes						
N/A	3122	Personnel	Workplace Violence	Yes						
N/A	3123	Personnel	Theft	No						
32	3125	Personnel	Uniforms and Protective Clothing	Yes						
33	3130	Personnel	Conferences	Yes						
34	3135	Personnel	Occupational Certification Assistance	Yes						
35	3140	Personnel	Respiratory Protection Program	Yes						

Policy Approval Tracking
BCVWD Policies and Procedures Manual Project

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36	3145	Personnel	Driver Training and Record Review	Yes						
37	3150	Personnel	District Vehicle Usage	Yes						
38	3151	Personnel	Personal Vehicle Usage							
39	3160	Personnel	HIPAA Compliance and Security Officer	Yes						
40	3165	Personnel	Tobacco Use	Yes						
41	3170	Personnel	Smoke Free Workplace	Yes						
42	3175	Personnel	Disciplinary Action or Terminations	Yes						
43	3180	Personnel	Nepotism-Employment of Relatives	Yes						
44	3185	Personnel	Confidentiality Regarding Resignations	Yes						
45	3190	Personnel	Internet, E-Mail, and Electronic Communication Ethics, Usage and Security	Yes						
N/A	3191	Personnel	Electronic Signature Policy	No						
46	3195	Personnel	Cellular Telephone Usage	Yes						
47	3200	Personnel	Grievance Procedures	Yes						
48	3205	Personnel	Substance Abuse (In Conformance with Department of Transportation Guidelines)	Yes						
N/A	3206	Personnel	FMCSA Clearinghouse Registration	No						
50	3215	Personnel	Personnel Action Form (PAF)	Yes						
51	3220	Personnel	Recruitment, Selection and Onboarding	Yes						
N/A	3225	Personnel	Employee Leave Donation Program and Policy	Yes						
N/A	3230	Personnel	Workers' Compensation	Yes						
N/A	3231	Personnel	Accommodations for Disability	No						
N/A	3235	Personnel	Military Leave	Yes						
N/A	3240	Personnel	Dress Code and Personal Standards	Yes						
N/A	3245	Personnel	Non-Solicitation and Political Speech	No						
N/A	3250	Personnel	Telecommuting	No						
N/A	3255	Personnel	Time off for School Activities	No						
N/A	3260	Personnel	Time off to Vote	No						
1	4005	Board of Directors	Basis of Authority	Yes						
2	4010	Board of Directors	Members of the Board of Directors	Yes						
3	4015	Board of Directors	Committees of the Board of Directors	Yes						
4	4020	Board of Directors	Board President	Yes						
5	4025	Board of Directors	Board Meetings	Yes						
6	4030	Board of Directors	Board Meeting Agendas	Yes						
7	4035	Board of Directors	Board Meeting Conduct	Yes						
8	4040	Board of Directors	Board Actions and Decisions	Yes						
9	4045	Board of Directors	Attendance at Meetings	Yes						
10	4050	Board of Directors	Minutes of Board Meetings	Yes						
11	4055	Board of Directors	Rules of Order for Board and Committee Meetings	Yes						
12	4060	Board of Directors	Training, Education and Conferences	Yes						
13 & 16	4065	Board of Directors	Remuneration, Director Per Diem Fees	Yes						

Policy Approval Tracking
BCVWD Policies and Procedures Manual Project

Policy Number	New Policy Number	Section	Policy Name	Drafted by BCVWD Staff	Approved by Legal Counsel	Presented to Personnel Committee	Approved by Personnel Committee	Presented to Board of Directors	Approved by Board of Directors	Adoption Date
14	4070	Board of Directors	Payment of Expenses Incurred on District Business	Yes						
15	4075	Board of Directors	Expenditure Reimbursement	Yes						
17	4080	Board of Directors	Membership in Associations	Yes						
18	4085	Board of Directors	Ethics Training	Yes						
N/A	4086	Board of Directors	Anti-Harassment Training	No						
19	4090	Board of Directors	Code of Ethics	Yes						
20	4095	Board of Directors	Ethics Policy	Yes						
1	5005	Operations	Emergency Preparedness	Yes						
2	5010	Operations	Emergency Response Guideline for Hostile or Violent Incidents	Yes						
3	5015	Operations	Computer and Business Continuity Security	Yes						
4	5020	Operations	Environmental Health and Safety Compliance Program	Yes						
5	5025	Operations	Illness and Injury Prevention Program	Yes						
6	5030	Operations	Budget Preparation	Yes						
7	5035	Operations	Fixed-Asset Accounting Control	Yes						
8	5040	Operations	Fixed-Asset Capitalization	Yes						
9	5045	Operations	Investment of District Funds	Yes						
10	5050	Operations	Customer Payment Arrangements	Yes						
11	5055	Operations	Employment of Consultants and Professional Services	Yes						
12	5060	Operations	Employment of Outside Contractors	Yes						
13	5065	Operations	Easement Abandonment	Yes						
14	5066	Operations	Easement Acceptance	No						
15	5070	Operations	Encroachment Permits	Yes						
16	5075	Operations	Credit Card Usage	Yes						
17	5080	Operations	Purchasing	Yes						
N/A	5081	Operations	Contract Review Policy	No						
18	5085	Operations	Disposal of Surplus Property or Equipment	Yes						
19	5090	Operations	Records Retention	Yes						
N/A	5095	Operations	District Residences and Facility Emergency Policy	Yes	7/21/2020	5/17/2021				
N/A	5100	Operations	Press Relations and Social Media	No						
1	6005	Miscellaneous	Purpose of Board Policies	Yes						
2	6010	Miscellaneous	Adoption, Amendment of Policies	Yes						
3	6015	Miscellaneous	Public Complaints	Yes						
4	6020	Miscellaneous	Claims Against the District	Yes						
5	6025	Miscellaneous	Copying Public Documents	Yes						
6	6030	Miscellaneous	District Standards for the Furnishing of Materials	Yes						
7	6035	Miscellaneous	Environmental Review Guidelines	Yes						
8	6040	Miscellaneous	Annexation	No						
9	6045	Miscellaneous	Construction Requirements	No						
N/A	7000	Information Technology	Acceptable Use	Yes						
N/A	7005	Information Technology	Accessibility	Yes						
N/A	7010	Information Technology	Electronic Communications	Yes						
N/A	7015	Information Technology	Passwords	Yes						
N/A	7020	Information Technology	Remote Access/VPN	Yes						
N/A	7025	Information Technology	Datacenter Physical Security	Yes						
N/A	7030	Information Technology	Wireless Communications	Yes						

Policy Approval Tracking
BCVWD Policies and Procedures Manual Project

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N/A	7035	Information Technology	Mobile Device Security	Yes						
N/A	7040	Information Technology	Internet Use	Yes						
N/A	7045	Information Technology	Information Systems Backup & Data Retention	Yes						
N/A	7050	Information Technology	Personally Identifiable Information	Yes						
N/A	7055	Information Technology	Drones Use	No						
N/A	7060	Information Technology	Security and Technology Access for Independent Contractors	No						



**Beaumont-Cherry Valley Water District
Personnel Committee Meeting
June 21, 2021**

Item 7

STAFF REPORT

TO: Board of Directors

FROM: Dan Jagers, General Manager

SUBJECT: Discussion of Training, Education, and Conferences Policy for the Board of Directors

Staff Recommendation

Direct staff as desired.

Background

After review, discussion and amendment via the Personnel Committee, revised District Policies and Procedures Manual Part II pertaining to the Board of Directors and staff was adopted on December 18, 2019 by Resolution 2019-16. Included in this adoption were:

Section 12 – Training, Education and Conferences

Section 13 – Remuneration / Per Diem Fees

Section 14 – Payment of Expenses Incurred on District Business

Section 15 - Expenditure Reimbursement

To produce / revise the policies, staff consulted publications from the California Attorney General, the Institute for Local Government (ILG), the California Special Districts Association (CSDA) and others, and reviewed policies of other agencies. Reimbursement of expenditures and payment of per diem fees are governed by law as detailed below and in the attachments.

Summary

A review of current policies related to authorization of expense reimbursement (including payment of registration or other fees for attending events and activities) and pre-authorized activities for payment of per diem fees has been requested by a Board member. Staff presents the attached information for review and discussion. (See Attachments 5, 6 and 7.)

Once direction has been received from the Personnel Committee, staff will produce revisions with redline versions for Committee review.

Although related, this report discusses the Per Diem Fees and Expense Reimbursement topics as separate policies.



Per Diem Fees – Government Code 61047 (Attachment 2)

Per Diem fees are payable to directors for a “day of service” to the District. In addition to regular meetings, a “day of service” means any of the following:

- 61047 (e) 2 - Representation of the District at a public event, **provided that the Board of Directors has previously approved the member’s representation at a board of directors’ meeting** and that the member delivers a written or oral report to the board of directors regarding the member’s representation at the next board of directors’ meeting following the public event.
- 61047 (e) (5) Participation in a training program on a topic that is directly related to the District, **provided that the Board of Directors has previously approved the member’s participation at a board of directors’ meeting**, and that the member delivers a written report to the board of directors regarding the member’s participation at the next board of directors meeting following the training program.

The current District policy as adopted in December 2019 enumerates several types of meetings and activities that are pre-approved as a “day of service” for per diem payment. The Board may choose to revisit this pre-approved list within the policy, or consider adopting a more comprehensive list on an annual basis (see Mission Springs Water District sample, Attachment 3).

There is no provision in the law for a director to claim a per diem for attendance at an event, conference, seminar, or any activity that has not been pre-approved by the Board (Government Code 53232.1 (b)). However, BCVWD Policy section 12 G Requests contains a provision for après-event per diem claims that staff has not seen in any other sampled agency’s policies:

Section 13 G - Requests

In the event that circumstances prevent the per diem request from being considered in the manner described herein, a Director may submit a request to the Board for a per diem for having attended a meeting or conference with the understanding that the Board may or may not approve the request.*

**Referring to the pre-approval process*

In addition, those events for which a per diem is claimed require a written or oral report to be presented. Other agencies provide a more specific opportunity on a regular meeting agenda for such reports, and BCVWD could do the same. Preliminary research by staff shows that the authorizations often appear as Consent Calendar items on the agency agenda once per month. Directors are afforded an opportunity to provide a written or oral report on events attended later in the meeting. The associated staff reports can be brief or extensive, with documentation up to and including each director’s individual expense report(s).

Travel and Expense Reimbursement – Government Code 53232 (Attachment 4).

BCVWD Policy as adopted in December 2019 provides that the District may reimburse directors for actual and necessary expenses incurred in the performance of official duties. The law requires a written policy specifying the types of occurrences that qualify a director to receive



reimbursement. BCVWD's policies were composed with both the law and the fiduciary duty of an elected official as guidelines (see Attachment 8).

BCVWD's policy was discussed in detail at the Personnel Committee and Board level during the adoption process in 2019. The policy provides a procedure for requesting reimbursement and a provision for requesting reimbursement in the absence of pre-authorization that staff has not seen in any other sample agency policies:

Section 14 A General

In the event that circumstances prevent an expense reimbursement request from being considered in the manner described herein, a Director or employee may submit an expense reimbursement request to the Board for having attended a meeting or conference with the understanding that the Board may or may not approve the request.

The Board may consider revising the policy to include new events being considered for director attendance such as specific trainings and conferences, and Chamber of Commerce or community events. See Attachment 5 for a sample policy.

Pre-approval for attendance at events, conferences, seminars and other activities could be obtained more timely by including a monthly item on the Board of Directors regular meeting agenda under which requests can be made.

Additionally, it has become common practice in the interest of transparency to adopt a policy that the Board of Directors will review all director expenses on an annual basis. By law, the District must track such expenses separately and make the report publicly available. Staff recommends adopting such a review policy as being consistent with the Board's fiduciary duty and the District's commitment to transparency.

Staff also believes that policy sections 12, 14 and 15 can be better organized and combined into one section, better separating the policy statements from the reimbursement procedures, consistent with the new practice recommended by HR Dynamics.

Given preliminary direction by the Personnel Committee, staff can perform additional research and bring back:

- Proposed policy revisions
- Options for meeting the written or oral report requirements
- Options for pre-authorization of event attendance

Fiscal Impact

To be determined.



Attachments

1. Current BCVWD Policies and Procedures Manual, Part II:
 - a. Section 12 – Training, Education and Conferences
 - b. Section 13 – Remuneration / Per Diem Fees
 - c. Section 14 – Payment of Expenses Incurred on District Business
 - d. Section 15 - Expenditure Reimbursement
2. Government Code 61047
3. Mission Springs Water District Annual Update of Board Affiliation List 2021
4. Government Code 53232
5. ILG Understanding the Basics of Public Service Ethics Laws – Compensation Issues
6. ILG Understanding the Basics of Public Service Ethics Laws – Reimbursement of Expenses
7. ILG Sample Reimbursement Policy
8. ILG Fiduciary Duties and Public Service

Staff Report prepared by Lynda Kerney, Administrative Assistant

12. TRAINING, EDUCATION AND CONFERENCES

- A. **Policy.** The Beaumont-Cherry Valley Water District takes its stewardship over the use of limited public resources seriously. Public resources should only be used when there is a substantial benefit to the District.
- i. Educational conferences and professional meetings are considered to provide substantial benefit. Members of the Board of Directors are encouraged to attend educational conferences and professional meetings when the purposes of such activities are to improve District operation. Hence, there is no limit as to the number of Directors attending a particular conference or seminar when it is apparent that their attendance is beneficial to the District. Such benefits include:
 - a. The opportunity to discuss the community's concerns with state and federal officials;
 - b. Participating in regional, state and national organizations whose activities affect the District;
 - c. Attending educational seminars designed to improve officials' skill and information levels;
 - d. Promoting public service and morale by recognizing such service.
 - ii. "Junkets" (a tour or journey for pleasure at public expense), however, will not be permitted.
- B. **Expenses.** It is the policy of the District to encourage Board development and excellence of performance by reimbursing actual expenses incurred for tuition, travel, lodging and meals as a result of training, educational courses, participation with professional organizations, and attendance at local, state and national conferences associated with the interests of the District.
- i. Staff as assigned by the General Manager is responsible for making arrangements for Directors for conference and registration expenses.
 - ii. Reimbursement shall include expenses for meals, lodging, authorized incidentals (see Section 14H) and travel. All expenses for which reimbursement is requested by Directors, or which are billed to the District by Directors, shall be submitted to the assigned staff member within 30 days of the incurred expense on a District-supplied Expense Form, together with original, valid receipts in accordance with State law.
 - iii. Attendance by Directors of seminars, workshops, courses, professional organization meetings, and conferences shall be approved by the Board of Directors prior to incurring any reimbursable costs.
 - iv. Expenses to the District for Board of Directors' training, education and conferences should be kept to a minimum by utilizing recommendations

for transportation and housing accommodations put forth, if any, by the event sponsor and by:

- a. Utilizing hotel(s) recommended by the event sponsor in order to obtain discounted rates or using other less expensive nearby lodging.
 - b. Directors traveling together whenever feasible and economically beneficial.
 - c. Requesting reservations sufficiently in advance, when possible, to obtain discounted air fares and hotel rates.
- C. **Notice.** A Director shall not attend a conference or training event for which there is an expense to the District, if it occurs after the Director has announced his/her pending resignation, or if it occurs after an election in which it has been determined that the Director will not retain his/her seat on the Board. A Director shall not attend a conference or training event when it is apparent that there is no significant benefit to the District.
- D. **Reimbursement.** Upon returning from seminars, workshops, conferences, etc., where expenses are paid and/or reimbursed by the District, Directors will either prepare a written report for distribution to the Board or make a verbal report during the next regular meeting of the Board. Said report shall detail what was learned at the session(s) that will be of benefit to the District. Materials from the session(s) may be delivered to the District office to be included in the District library for the future use of other Directors and staff.

13. REMUNERATION / DIRECTOR PER DIEM FEES

- a. **Remuneration.** Members of the Board of Directors shall be eligible to receive a “per diem” for each day of service rendered as an officer of the Board. The “per diem” amount shall be established by the Board and be consistent with applicable state law.
- b. **Limit.** Per diem compensation is limited to no more than 10 days per month.
- c. **Attendance.** For purposes of this section, attendance includes:
 - i. Physical presence at the majority of a meeting, event, conference or occurrence listed in subdivision D (below), unless presence for a lesser period is authorized by the Board President, or, for a committee meeting, by the committee chair;
 - ii. Participation by teleconference at the majority of a meeting pursuant to California Government Code 54953;
 - iii. Participation in an approved home study or online Ethics course to meet the requirements of Government Code Sections 53234-53235.5 when participation has been authorized by the Board President.

- d. **Eligibility.** Matters of District Business eligible for per diem shall include, but not be limited to:

1. **General Board Member Preapproved Activities/Events.** The following activities/events are preapproved for all Board members:

a. Board and Committee Meetings

All regular and special board meetings and committee meetings for appointed members

b. Conferences

(1) ACWA and ACWA-JPIA conferences, trainings and webinars and ACWA Region 9 meetings

(2) CSDA Conferences, trainings and webinars

c. Other Agencies

(1) San Geronio Pass Water Agency Board or Committee meetings.

(3) Beaumont Basin Watermaster

(4) City of Beaumont

Any official city meeting.

(5) City of Banning

Any official city meeting

(6) LAFCO meetings in which District business is discussed or affected as part of the LAFCO agenda

d. Training Seminars

(1) State mandated ethics training

a. The entire two-hour course counts as ONE day of service, even if the coursework is completed over more than one 24-hour period.

(2) State mandated sexual harassment training

a. The entire course counts as ONE day of service, even if the coursework is completed over more than one 24-hour period.

(3) Brown Act training

2. Specific Board Member Authorization

The following activities/events are preapproved for Board members designated to represent the District by the Board President.

- a. ACWA Committees
- b. Meetings of a legislative body of another government agency, or an official event sponsored by another government agency, when attendance has been authorized by the President,
- c. Meetings with members of the legislative executive or judicial branch of the state or federal government when attendance is directed by the President,
- d. Meetings with the General Manager, District Counsel, or Board President on matters of District business
- e. Other meetings or events for Board members appointed by the President to attend such meeting or event on behalf of the District

3. Other Activities/Events, Authorization

Board members may seek authorization to attend other functions that constitute the performance of official duties, including, but not limited to, tours of Beaumont-Cherry Valley Water District facilities, tours of other agency facilities, dedication ceremonies, open houses, groundbreaking ceremonies, receptions for officials, retirement celebrations for other agency officials, anniversary celebrations, ribbon-cutting ceremonies, legislative roundtables, public hearings, project update meetings, meetings of ACWA Regions 1 through 10, and association dinners and lunches. Board members desiring to attend events of this nature should obtain approval from the Board in order to receive a per diem and expense reimbursement.

4. New Board Members Orientation

New Board members may receive one (1) per diem and expense reimbursement for an orientation program that meets the following criteria:

- a. Is part of a planned orientation schedule
- b. The orientation meeting is at least two (2) hours in duration
- c. The per diems for this purpose must be claimed during the first two (2) ~~six (6)~~ months of service on the Board
- d. New Board members may also attend a formal harassment awareness training seminar for District employees

e. Non-authorized Activities/Events

The following activities/events are not eligible for per diem or expense claims:

- a. Retirement receptions for Beaumont-Cherry Valley Water District employees/Board members
- b. Beaumont-Cherry Valley Water District picnics or other social functions
- f. **Travel.** Per diem shall include travel days to and from business meetings as appropriate. Board members shall not count travel to meetings within the Counties of Riverside or San Bernardino as a reimbursable per diem travel day.
- g. **Requests.** In the event that circumstances prevent the per diem request from being considered in the manner described herein, a Director may submit a request to the Board for a per diem for having attended a meeting or conference with the understanding that the Board may or may not approve the request.
- h. **Reports.** A Director who requests compensation ("per diem") for attendance at a meeting other than a regular, special, or committee meeting of the Board shall provide a brief report of the meeting to the Board at a regular meeting of the Board of Directors following the meeting that was attended. If multiple Board members attended, a joint report may be made.
- i. **Review.** Directors' per diem fees shall be reviewed by the Board annually in October of each year with said increase (if any) to be effective January 1 of the next calendar year.

14. PAYMENT OF EXPENSES INCURRED ON DISTRICT BUSINESS

- a. **General.** Directors may be allowed actual and necessary travel, meals, lodging and other actual and necessary incidental expenses incurred in the performance of official business of the District as approved by the Board. Such business may include: a meeting at which the interest of the District is the major purpose of the meeting, or attending a conference of an organization as authorized in this Manual, or by Board action, or otherwise representing the District at an approved civic or community function. The expenses incurred by reason of attendance at such meeting, conference, or other function may be reimbursed by the District in accordance with the rules set forth in this Section. In the event that circumstances prevent an expense reimbursement request from being considered in the manner described herein, a Director or employee may submit an expense reimbursement request to the Board for having attended a meeting or conference with the understanding that the Board may or may not approve the request.
- b. **Non-reimbursables.** The following expenses are not reimbursable: alcoholic beverages, parking or traffic violation fines, in-room movies, laundry service, and personal telephone calls. Rental car expenses are not reimbursable unless use of a rental car is authorized

prior to travel.

- c. **Cost Control.** To conserve District resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are uncured which exceed these guidelines, the cost borne or reimbursed by the District will be limited to the costs that fall within the guidelines.
- d. **Spousal Expenses.** Under no circumstances shall the District prepay or reimburse expenses for a spouse.
- e. **Transportation.** The most economical mode of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route.
 - i. **Automobile.** If travel is by automobile, a District vehicle shall be used if available. If the General Manager determines that a District vehicle is not available, the rate of reimbursement for mileage shall be the Internal Revenue Service standard mileage for business mileage. Parking, bridge, and road tolls are also reimbursable. If automobile travel is used in lieu of air travel, the transportation expense to be paid by the District will be limited to the total related costs, for duration of travel and ground transportation at the destination, that would have resulted had air travel been used, including, but not limited to, air fare, transportation to and from airports, and airport parking.
 - ii. **Rental car.** Charges for rental vehicles and applicable insurance may be reimbursed when a District elected official or employee attending a conference, business meeting, or other engagement on District business due to a District vehicle not made available, or the use of District vehicle would not be justifiable. If more than one District elected official is attending, the rental vehicle shall be shared if reasonable. Rental vehicle shall only be of adequate size, and proportional to accommodate the immediate need of passengers. Only receipted fuel expenses for rental cars will be reimbursed.
 - iii. **Taxis, Shuttles, or Ride Share.** Taxi, shuttle or ride share (Uber or Lyft) fares may be reimbursed when such transportation is required for time efficiency.
 - iv. **Airfare.** Airfares booked should be the most economical and reasonable available for purposes of reimbursement under this policy. At the discretion of the General Manager, higher cost (e.g. fully refundable) airfare may be used if staff analysis shows such flexibility in scheduling is warranted and costs can be justified.
- f. **Lodging.** When traveling on District business and an overnight stay is reasonably required, District personnel shall engage a room at a good commercial hotel or motel. Government rates should be obtained when available. No suites, oversized rooms, or upgraded rooms will be permitted. If accompanied on the trip by another person who is not District personnel, and the room is shared, the District shall be charged only for that

portion of the room charge, which would have been made for single occupancy. A receipted bill stating occupants and length of stay shall be submitted with the claim for expense reimbursement. If a room is occupied by more than one person, the rate for single occupancy shall be noted on the receipted statement.

- g. **Meals.** Reimbursable meal expenses will not exceed the U.S. Department of General Services per diem rates. Meals included with conferences, seminars and / or business meetings are not reimbursable.
- h. **Incidental Expenses.** Expense allowance while attending authorized functions shall include, in addition to transportation, lodging, and meals: business telephone expense, stenographic expense, auto parking, internet access, baggage fees, and other disbursements on behalf of the District. No reimbursement shall be made of expenditures for personal services or needs. If an automobile is used for transportation when air transportation would be required, expenditures for meals and incidental expenses chargeable to the District shall be those which would have resulted had air transportation been used.
- i. **Lodging payment.** Lodging expenses for employees or Board members may be reserved and paid in one of the following manners:
 - i. By individual director's District-issued credit card or employee's District-issued credit card
 - ii. In advance by Finance Department staff using a District credit card
 - iii. Via submission of a check request for pre-payment to the hotel
 - iv. Charges made to an employee's or Director's personal credit card. Such charges shall be reimbursed upon submission of an approved expense report form (See Section 12D) which shall include itemized original receipts and a copy of the applicable credit card statement.
- j. **Travel Advance.** A travel advance, equal to the estimated expenditures chargeable to the District, may be made upon a written detailed estimate of the amount needed, submitted to and approved by the General Manager and by the Board of Directors.
- k. **Use of District Credit Cards.** The District shall make credit cards available to Board members and employees as deemed necessary for payment for District-related expenses. Board member credit cards shall be retained by the District until such time as they are needed. All Board member credit cards shall be used primarily for travel expenses. Board member credit cards will have a cap of \$2,500. The following rules shall apply to the use of District credit cards:
 - i. District credit cards will be used only for actual and necessary expenses incurred in performance of work-related duties and District business.

- ii. A District credit card shall not be used for personal expenses. Any personal charges appearing on a District credit card must be immediately reimbursed to the District. The charge of personal expenses by a District employee (staff) to a District credit card may result in revocation of card privileges and disciplinary action up to and including termination.
 - iii. District credit cards will be used only by duly authorized Board members and District employees.
 - iv. Purchases and expenditures will be charged and reconciled to the proper account on each monthly statement.
 - v. Itemized, original receipts must be presented to the District business office for each expenditure made by credit card. Each expenditure must document the purpose of said expenditure, the person(s) involved and the business conducted.
 - vi. If a Board member or District employee loses a District-issued credit card, or has a District-issued credit card stolen, the employee or Board member must immediately report the loss or theft to the card-issuing bank and to the Finance Department.
- I. **Report of Expenses for Reimbursement.** District Directors and personnel shall submit a District-provided form, "Record of Expenses / Claim for Reimbursement (Conferences, Meetings, Travels)" which must include all expenses incurred while acting in the interest of the District, to which will be attached the associated vouchers and/ or original, itemized receipts. The form shall be submitted within fifteen (15) days of the conclusion of the transaction. Each expenditure item shall include a detailed description of the function and the nature of the District business conducted. The statement shall also indicate the travel advance, if any, credits for expenses apportioned to personal needs, services, or expenses incurred to the District. Balances owing the District shall be paid on submission of the expenses statement. Amounts due to District personnel shall be paid after the expense statement is reviewed and approved by the General Manager.

15. EXPENDITURE REIMBURSEMENT

- a. **Purpose.** The purpose of this policy is to prescribe the manner in which District employees and directors may be reimbursed for expenditures related to District business.
- b. **Scope.** This policy applies to all employees and members of the Board of Directors and is intended to result in no personal gain or loss to an employee or director.
- c. **Implementation.** Whenever District employees or directors desire to be reimbursed for out- of-pocket expenses for item(s) or service(s) appropriately relating to District business,

they shall submit their requests on a reimbursement form approved by the General Manager and the Board of Directors respectively. Included on the reimbursement form will be an explanation of the District-related purpose for the expenditure(s), and receipts evidencing each expense shall be attached.

- i. The Treasurer and/or the General Manager will review and approve reimbursement requests. Reimbursement requests by the Treasurer and General Manager will be reviewed and approved by the Finance and Audit Committee and/or the Board of Directors.
- ii. All expenses must be reasonable and necessary, and employees and directors are encouraged to exercise prudence in all expenditures.
- iii. The most economical mode and class of transportation reasonably consistent with scheduling requirements will be used. In the event a more expensive class of transportation is used, the reimbursable amount will be limited to the cost of the most economical class of transportation available. Reimbursement for use of personal vehicles will be at the applicable IRS-approved rate.
- iv. Expenditures for food and lodging will be moderate and reasonable.

State of California

GOVERNMENT CODE

Section 61047

61047. (a) The board of directors may provide, by ordinance or resolution, that each of its members may receive compensation in an amount not to exceed one hundred dollars (\$100) for each day of service. A member of the board of directors shall not receive compensation for more than six days of service in a month.

(b) The board of directors, by ordinance adopted pursuant to Chapter 2 (commencing with Section 20200) of Division 10 of the Water Code, may increase the amount of compensation that may be received by members of the board of directors.

(c) The board of directors may provide, by ordinance or resolution, that its members may receive their actual and necessary traveling and incidental expenses incurred while on official business. Reimbursement for these expenses is subject to Sections 53232.2 and 53232.3.

(d) A member of the board of directors may waive any or all of the payments permitted by this section.

(e) For the purposes of this section, a "day of service" means any of the following:

(1) A meeting conducted pursuant to the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5.

(2) Representation of the district at a public event, provided that the board of directors has previously approved the member's representation at a board of directors' meeting and that the member delivers a written report to the board of directors regarding the member's representation at the next board of directors' meeting following the public event.

(3) Representation of the district at a public meeting or a public hearing conducted by another public agency, provided that the board of directors has previously approved the member's representation at a board of directors' meeting and that the member delivers a written report to the board of directors regarding the member's representation at the next board of directors' meeting following the public meeting or public hearing.

(4) Representation of the district at a meeting of a public benefit nonprofit corporation on whose board the district has membership, provided that the board of directors has previously approved the member's representation at a board of directors' meeting and the member delivers a written report to the board of directors regarding the member's representation at the next board of directors' meeting following the corporation's meeting.

(5) Participation in a training program on a topic that is directly related to the district, provided that the board of directors has previously approved the member's participation at a board of directors' meeting, and that the member delivers a written

report to the board of directors regarding the member's participation at the next board of directors' meeting following the training program.

(Added by Stats. 2005, Ch. 249, Sec. 3. Effective January 1, 2006.)

AGENDA STAFF REPORT
REGULAR BOARD MEETINGS OF JANUARY 14 & 19, 2021

FROM: General Manager Arden Wallum
BY: Executive Assistant Dori Petee
FOR: ☒ ACTION ☐ Direction ☐ Information

ANNUAL UPDATE OF BOARD AFFILIATION LIST

STAFF RECOMMENDATION

Approve the 2021 Affiliation List.

SUMMARY

Per MSWD Resolution 2009-2, Section 2.B.2e., a Director is entitled to a daily stipend for each day of attendance at District-related activities if designated by the Board as a representative on the Affiliate List.

Each January, the President of the Board may suggest the appointment of representatives to attend various meetings on behalf of the District, subject to approval of the full Board.

FISCAL IMPACT

The addition of approved meetings and events may result in increased costs to the District.

ATTACHMENT(S)

Proposed Affiliate List for 2021

Board of Directors 2021 Affiliate List

Conferences, Workshops, Meetings & Tours

ACWA and ACWA/JPIA
Building Industry Association
California Special Districts Association
Coachella Valley Economic Partnership
CORBS Annual Awards Dinner
Chamber & Municipal Breakfast & Luncheons
Desert Contractors Association
Desert Valleys Builders Association (DVBA)
Groundwater Foundation Annual Conference
Palm Springs Chamber State of the City Luncheon
Riverside County Annual Water Symposium
Riverside County Board of Supervisors
Riverside County Water Task Force
Special Districts Association of Riverside County
UWI - Urban Water Institute
WEF - Water Education Foundation

**All Directors are
pre-approved to
attend these
functions**

2020 designees

Meetings, Workshops (compensable)	Primary	Alternate
CSDA Professional Development Committee		
CVWD and DWA Regular Board meetings	Duncan	Martin
DHS City Council Observer	Martin	Wright
DHS Groundwater Guardian Team - Liaison	Sewell	Wright
DHS Hoteliers' Assn.	Sewell	Wright
County Wide Oversight Board	Martin	
Groundwater Guardian - Affiliate Team	Wright	Sewell
San Geronio Pass Regional Water Alliance	Martin	Wright
Legislative Representation: Travel and meetings in Washington D.C. and California	Duncan	Wright
Greater Coachella Valley Chamber of Commerce	Sewell	Martin

2021 designees

Primary	Alternate

Informational Meetings (non-compensable)	Primary	Alternate
Riverside County Flood Control	Sewell	

Primary	Alternate

Voting Delegates	Primary	Alternate
ACWA Region 9	President	VP
ACWA Conferences	President	VP
ACWA/JPIA	Wright	Duncan
CV Conservation Commission (CVAG)	Wright	Duncan
Energy/Environmental Resources Committee (CVAG)	Wright	Duncan
Special District Association of Riverside County	President	VP

Primary	Alternate

RES. 2009-2, Section 2.B.2e., a Director is entitled to a daily stipend for each day of attendance at district-related activities if designated by the Board as the District's primary representative on the Affiliations Listing, which shall be approved in advance by Board action.


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GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57607] (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821] (Division 2 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 2. Officers and Employees [53200 - 53299] (Chapter 2 added by Stats. 1949, Ch. 81.)

ARTICLE 2.3. Compensation [53232 - 53232.4] (Article 2.3 added by Stats. 2005, Ch. 700, Sec. 3.)

53232. For the purposes of this article, the following terms have the following meanings:

(a) "Governing body" means the board of supervisors in the case of a county or a city and county, the city council or board of trustees in the case of a city, and the board of directors or other governing body in the case of a special district.

(b) "Legislative body" has the same meaning as specified in Section 54952.

(c) "Local agency" means a city, county, city and county, charter city, charter county, charter city and county, or special district.

(d) "Meeting" has the same meaning as specified in subdivision (a) of Section 54952.2.

(Added by Stats. 2005, Ch. 700, Sec. 3. Effective January 1, 2006.)

53232.1. (a) When compensation is otherwise authorized by statute, a local agency may pay compensation to members of a legislative body for attendance at the following occurrences:

(1) A meeting of the legislative body.

(2) A meeting of an advisory body.

(3) A conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234).

(b) A local agency may pay compensation for attendance at occurrences not specified in subdivision (a) only if the governing body has adopted, in a public meeting, a written policy specifying other types of occasions that constitute the performance of official duties for which a member of the legislative body may receive payment.

(c) This section shall not apply to any local agency that pays compensation in the form of a salary to members of a legislative body, including, but not limited to, those local agencies whose legislative bodies' compensation is subject to Section 36516 or 36516.1, subparagraph (B) or (C) of paragraph (2) of subdivision (a) of Section 21166 or Section 22840 of the Water Code, Section 11908.1 of the Public Utilities Code, Section 6060 of the Harbors and Navigation Code, or subdivision (b) of Section 1 or Section 5 of Article XI of the California Constitution.

(Added by Stats. 2005, Ch. 700, Sec. 3. Effective January 1, 2006.)

53232.2. (a) When reimbursement is otherwise authorized by statute, a local agency may reimburse members of a legislative body for actual and necessary expenses incurred in the performance of official duties, including, but not limited to, activities described in Article 2.4 (commencing with Section 53234).

(b) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then the governing body shall adopt a written policy, in a public meeting, specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses.

(c) The policy described in subdivision (b) may also specify the reasonable reimbursement rates for travel, meals, and lodging, and other actual and necessary expenses. If it does not, the local agency shall use the Internal Revenue Service rates for reimbursement of travel, meals, lodging, and other actual and necessary expenses as established in Publication 463, or any successor publication.

(d) If the lodging is in connection with a conference or organized educational activity conducted in compliance with subdivision (c) of Section 54952.2, including, but not limited to, ethics training required by Article 2.4 (commencing with Section 53234), lodging costs shall not exceed the maximum group rate published by the conference or activity sponsor, provided that lodging at the group rate is available to the member of a legislative body at the time of booking. If the group rate is not available, the member of a legislative body shall use comparable lodging that is consistent with the requirements of subdivisions (c) and (e).

(e) Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.

(f) All expenses that do not fall within the adopted travel reimbursement policy or the Internal Revenue Service reimbursable rates as provided in subdivision (c), shall be approved by the governing body, in a public meeting before the expense is incurred, except as provided in subdivision (d).

(g) If a member of a legislative body chooses to incur additional costs that are above the rates established pursuant to this section and those costs have not been approved pursuant to subdivision (f), then the member of a legislative body may do so at his or her own expense.

(h) This section shall not supersede any other laws establishing reimbursement rates for local agencies.

(Amended by Stats. 2006, Ch. 643, Sec. 10. Effective January 1, 2007.)

53232.3. (a) If a local agency reimburses members of a legislative body for actual and necessary expenses incurred in the performance of official duties, then a local agency shall provide expense report forms to be filed by the members of the legislative body for reimbursement for actual and necessary expenses incurred on behalf of the local agency in the performance of official duties. Reimbursable expenses shall include, but not be limited to, meals, lodging, and travel.

(b) Expense reports shall document that expenses meet the existing policy, adopted pursuant to Section 53232.2, for expenditure of public resources.

(c) Members of a legislative body shall submit expense reports within a reasonable time after incurring the expense, as determined by the legislative body, and the reports shall be accompanied by the receipts documenting each expense.

(d) Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

(e) All documents related to reimbursable agency expenditures are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(Added by Stats. 2005, Ch. 700, Sec. 3. Effective January 1, 2006.)

53232.4. Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies may include, but are not limited to, the following:

(a) The loss of reimbursement privileges.

(b) Restitution to the local agency.

(c) Civil penalties for misuse of public resources pursuant to Section 8314.

(d) Prosecution for misuse of public resources, pursuant to Section 424 of the Penal Code.

(Added by Stats. 2005, Ch. 700, Sec. 3. Effective January 1, 2006.)

Compensation Issues

Basic Rules

Typically there is a legal limit on public official compensation levels, either in state or local statutes. Public officials, particularly elected ones, may only receive such compensation that the law allows.¹ Any extra compensation must be refunded.² Moreover, as protectors of the public purse, courts generally take a strict approach to public official compensation limits.³

WITH MONEY COMES EDUCATION

If a local agency provides any type of compensation or payment of expenses to members of a legislative body, then all of the members must have two hours of ethics training within one year of entering public service. Subsequent trainings must occur every two years after that.⁴

For more information on these requirements, see www.ca-ilg.org/AB1234compliance.

Counties

County boards of supervisors set their salaries; supervisors' salaries are subject to referendum.⁵



Special Districts

California law sets the salaries for members of special district governing boards—typically in the law that creates the particular kind of special district.⁶ Salaries usually are tied to the days a public official spends participating in meetings or other district-related work, with a maximum number of compensated days per month. The chart below contains examples.

Special Districts		
Type of District	Per Day Maximum	Maximums
Park and recreation districts	\$100	\$500 per month ⁷
Sanitation districts	\$100 per day for board meetings or service provided at the request of the board	Not to exceed six days per month ⁸
Harbor districts	No per day salary	\$600 per month ⁹
Utility districts	\$100 per day	\$600 per month ¹⁰
Irrigation Districts		
Irrigation districts of less than 500,000 acres	\$100 per day	Not to exceed six days of compensated service ¹¹
Irrigation districts of less than 500,000 acres that produce or deliver electricity	\$100 per day OR \$600 per month	An annual cap of \$15,000 ¹²
Irrigation districts of 500,000 acres or more	No per day salary	Salary to be fixed by ordinance and subject to referendum but cannot exceed the salary of a member of the Imperial County Board of Supervisors ¹³

Water Districts		
Type of District	Per Day Maximum	Maximums
Water district directors (as defined)	\$100 per day	Not to exceed 10 days of compensated service per month ¹⁴
California water district officials (as defined)	\$100 per day	No maximum ¹⁵
County water district directors (as defined)	\$100 per day	Not to exceed 6 days of compensated service per month ¹⁶
Contra Costa County Water District directors (as defined)	\$100 per day	Not to exceed 10 days of compensated service per month ¹⁷
Municipal water district directors (as defined)	\$100 per day	Not to exceed 6 days of compensated service per month ¹⁸

What kinds of meetings and days of work may a district official be compensated for? Typically:

- » A meeting of any “legislative body” as defined by California’s open meeting laws;
- » A meeting of an advisory body; and
- » Conference attendance or educational activities, including ethics training.¹⁹

Agencies may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.²⁰ Note that these parameters don’t apply when the district does not pay compensation based on number of days doing district business, but instead pays a more salary-like form of compensation.²¹



Cities

Charter Cities

For charter cities, elected official compensation is a matter of local concern which may be addressed in the city’s charter.²²

General Law Cities

Broadly speaking in general law cities, city council members’ baseline compensation is set by ordinance; such compensation is tied to parameters established in California law in the 1980s.²³ The starting points are:²⁴

General Law Cities	
City Size by Population	Baseline Per Month Salary
Up to and Including 35,000	\$300
Over 35,000 Up to and Including 50,000	\$400
Over 50,000 Up to and Including 75,000	\$500
Over 75,000 Up to and Including 150,000	\$600
Over 150,000 Up to and Including 250,000	\$800
Over 250,000 Population	\$1,000

General law cities may increase these amounts by up to five percent per year from the date of any prior adjustments.²⁵ When a city council votes to increase compensation, the increase takes effect in the future—not during the deciding council members’ current terms.²⁶

Elected mayors may receive additional compensation.²⁷

These amounts compensate city council members for their service on the council, including any commission, committee, board, authority, or similar body on which the city council member serves, unless California law authorizes additional compensation.²⁸ If California law provides for additional council member compensation for serving on a commission—but that statute does not specify an amount of compensation—the compensation is \$150 per month.²⁹

DISCLOSURE REQUIREMENTS WHEN MAKING COMPENSATED APPOINTMENTS

From time to time, a decision-making body will be asked to appoint one or more of its members to certain positions. If that appointment involves additional compensation, the agency must make a special disclosure.³⁰

The disclosure is on a form provided by the Fair Political Practices Commission and must be posted on the agency's website.³¹

Local Agency Chief Executives and Staff

Governing bodies must approve all contracts with local agency chief executives (as defined) in open session, which must be reflected in the minutes.³² In addition, salaries, salary schedules and fringe benefits must be approved at a regular (as opposed to a special) meeting of the body.³³

Copies of contracts are public documents must be made available on request³⁴ (although some agencies elect to post these documents on their websites in the spirit of transparency).

Beginning in 2012, California law prohibits local agencies³⁵ from approving contracts for chief executives or department heads (as defined³⁶) that contain automatic renewal clauses that provide for automatic compensation adjustments that exceed the cost of living.³⁷

Contracts must also comply with California law restrictions on the amount of severance an agency pays if it becomes necessary to terminate a contract with a local agency employee.³⁸ Copies of severance agreements are public documents.³⁹

If an employee is subsequently convicted of abuse of position (as defined⁴⁰), the employee must reimburse 1) any severance payments paid,⁴¹ and 2) any paid leave provided pending charges.⁴²



FOR MORE INFORMATION

On executive compensation issues, see www.ca-ilg.org/post/executive-compensation-issues.

For specific questions, please contact agency counsel.

Reimbursement of Expenses

Basic Rules

California law contains certain requirements and restrictions on local agency practices relating to reimbursing local elected and appointed officials' expenses.

When May Expenses Be Reimbursed?

The core test on whether an expense is reimbursable is whether the expense was "actual and necessary" in the official's performance of official duties.⁶⁰ Local agencies must adopt



expense reimbursement policies that specify which kinds of activities are reimbursable for decision-making body members.⁶¹ Many also have policies that govern employee reimbursements. Such policies are an opportunity for a local agency to make findings on why reimbursable activities are necessary to the individual's performance of their duties.⁶²

Of course, if one has already received a cash advance or other form of payment for an expense, one may not request reimbursement. Double-charging a public agency for expenses misappropriates public resources and is a crime.⁶³

Process Requirements

For decision-making body member reimbursements, local agencies must:

- » Use expense report forms;⁶⁴
- » Identify a "reasonable time" within which these forms must be submitted;⁶⁵ and
- » Require that all expenses be documented with receipts.⁶⁶

Those requesting reimbursement must show their request falls within the agency's parameters for use of public resources.⁶⁷ Many local agencies have also adopted similar policies for employee reimbursements.

All expense reimbursement requests and supporting documentation are public records.⁶⁸

Amounts

Local reimbursement policies may specify what constitutes reasonable rates for travel, meals, lodging and other expenses. For decision-making body reimbursements, if a local policy does not specify reimbursement rates, then the reimbursable rates default to Internal Revenue Service guidelines.⁶⁹

If a public official wants to seek reimbursement for levels of expenses not otherwise authorized under the agency's reimbursement policy, then the official may seek prior approval for such reimbursement from the governing body (before incurring the expense).⁷⁰ Officials who spend more than allowed under their agencies' reimbursement policies have the option of simply paying the extra costs themselves.⁷¹

California law requirements relating to expense reimbursement policies and restrictions on reimbursement rates only apply to "reimbursements of members of a legislative body."⁷² Although charter cities may not be subject to this requirement given their home rule authority, many charter cities have such policies as a matter of good practice.⁷³

Again, many local agencies have adopted policies that govern reimbursements for staff as well as elected and appointed officials. Another option is to have the policies address expenses other than those are, strictly speaking, "reimbursed" (for example, those expenses that are paid by the agency in the first instance).



FOR MORE INFORMATION

See the following resources:

- » “Buying Meals for Others on the Public’s Dime,” available at www.ca-ilg.org/dime
- » “Expense Reimbursement Frequently Asked Questions,” available at www.ca-ilg.org/ExpenseReimbursementFAQs
- » Sample reimbursement policies available at www.ca-ilg.org/SampleReimbursementPolicies

For specific questions, please contact the Fair Political Practices Commission or agency counsel.

Penalties

California Law Penalties

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting policies include:

- » Loss of reimbursement privileges;⁷⁴
- » Restitution to the local agency;⁷⁵
- » Civil penalties of up to \$1,000 per day and three times the value of the resource used;⁷⁶ and
- » Criminal prosecution and a lifetime bar from public office.⁷⁷

At some point, personal use of public resources becomes embezzlement—a form of theft.⁷⁸ Embezzlement may constitute “willful misconduct” which warrants the removal from office of a public officer, or it may be prosecuted as a felony violation. A public officer convicted of embezzlement is guilty of a felony punishable by imprisonment; in addition, that person is ineligible thereafter to hold public office within California.⁷⁹



Federal Law Penalties

Federal prosecutors have been known to treat the receipt of illegitimate expense reimbursements or advances as income to the official. Because the official has not typically reported these payments as such on the official’s tax returns, the official then becomes subject to an action for income tax evasion.

The Internal Revenue Code is notoriously complex and its penalty sections are no exception. The general penalty for willful income tax evasion is a fine of up to \$100,000 and up to five years in prison, or both. Those convicted are also responsible for paying the costs of prosecution.⁸⁰ Failure to report information to the tax authorities is punishable by fines of up to \$25,000 and/or a year in federal prison, plus the costs of prosecution.⁸¹

If the postal service was used in any way, such use can also become the basis for a charge of mail fraud.⁸² Mail fraud is punishable by up to five years in federal prison per violation and/or a fine of the greater of 1) twice the gain to the violator or 2) \$250,000 per violation.⁸³

If the program has any degree of federal funding, the federal criminal laws against corruption and embezzlement will also apply.⁸⁴



FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.



Sample Expense and Use Of Public Resources Policy Statement¹

01/04/2006

Findings

Whereas, _____ *[insert public agency name]* takes its stewardship over the use of its limited public resources seriously.

Whereas, public resources should only be used when there is a substantial benefit to the *city/county/special district*.

Whereas, such benefits include:

1. The opportunity to discuss the community's concerns with state and federal officials;
2. Participating in regional, state and national organizations whose activities affect the *city/county/district*;
3. Attending educational seminars designed to improve officials' skill and information levels; and
4. Promoting public service and morale by recognizing such service.

Whereas, 1) legislative and other regional, state and federal agency business is frequently conducted over meals; 2) sharing a meal with regional, state and federal officials is frequently the best opportunity for a more extensive, focused and uninterrupted communication about the *city/county/district's* policy concerns; and 3) each meal expenditure must comply with the limits and reporting requirements of local, state and federal law.

Whereas, this policy provides guidance to elected and appointed officials on the use and expenditure of *city/county/district* resources, as well as the standards against which those expenditures will be measured.

DRAFTING NOTES

¹ Local agencies that have authority to reimburse legislative body members for expenses incurred in the performance of their official duties must adopt, in a public meeting, written expense policies that specify the types of occurrences which will be reimbursable. *See* Cal. Gov't Code § 53232.2(b). The policy may also specify rates or default to Internal Revenue Service rates. *See* Cal. Gov't Code § 53232.2(c).

[For non-charter cities] Whereas, this policy satisfies the requirements of Government Code sections 53232.2 and 53233.3. *[For charter cities: Whereas, this policy would satisfy the requirements of Government Code sections 53232.2 and 53233.3 in the event such requirements could be constitutionally applied to charter cities.]*

Whereas, this policy supplements the definition of actual and necessary expenses for purposes of state laws relating to permissible uses of public resources.²

Whereas, this policy also supplements the definition of necessary and reasonable expenses for purposes of federal and state income tax laws.³

Whereas, this policy also applies to any charges made to a *city/county/district* credit card,⁴ cash advances or other line of credit.

² See also Cal. Gov't Code §1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties); § 1091.5 (finding no impermissible interest in a contract if officer or employee is reimbursed actual and necessary expenses in performance of official duty); Cal. Water Code § 34741 ("Each director shall receive...expenses incurred in the performance of his duties required or authorized by the board."); Cal. Health & Safety Code § 32103 (allowing travel and incidental expenses incurred hospital district board members in the performance of their official duties as approved by the board); Cal. Gov't Code § 25008 (county supervisors are allowed expenses associated with traveling outside county on county business and to state association meeting); § 25305 (county may purchase automobiles for use of county officers and employees in lieu of mileage; county board may allow officers and employees using county automobiles their actual and necessary expenses when traveling on county business); See Cal. Gov't Code § 36514.5 (city council members); 65 Cal. Op. Att'y Gen. 517, 521 (1982) (interpreting Government Code section 36514.5); Cal. Health & Safety Code § 33114 (similar authority as to expenses of redevelopment agency members).

³ See, e.g., 26 U.S.C. § 162.

⁴ Because of the potential for confusing an agency credit card with a personal card, a number of agencies have concluded it is wiser not to issue officials credit cards. This is consistent with state law that appears not to forgive inappropriate public agency expenses if they are reimbursed. In the prosecution of one county supervisor for personal use of public resources, the court concluded that reimbursement was not a defense. See *People v. Bishop*, 2000 WL 520878 (2000) (conviction for personal and campaign use of county facilities and personnel). The court cited to *People v. Dillon*, 199 Cal. 1 (1926), a case in which convictions were upheld on facts demonstrating that the city was reimbursed for money improperly disbursed by the defendant. While *Dillon* did not expressly reject a reimbursement defense, the court said the decision cannot be reconciled with such a defense.

Authorized Expenses⁵

City/County/District funds, equipment, supplies (including letterhead), titles,⁶ and staff time must only be used for authorized *city/county/district* business.⁷ Expenses incurred in connection with the following types of activities generally constitute authorized expenses, as long as the other requirements of this policy are met:

1. Communicating with representatives of regional, state and national government on *city/county/district* adopted policy positions;⁸
2. Attending educational seminars designed to improve officials' skill and information levels;⁹
3. Participating in regional, state and national¹⁰ organizations whose activities affect the *city's/county's/district's* interests;
4. Recognizing service to the *city/county/district* (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);¹¹
5. Attending *city/county/district* events;¹²

⁵ This section is designed to satisfy Government Code section 53232.2(b), which requires local agencies to specify what types of occurrences qualify for reimbursement.

⁶ Some agencies allow elected officials to use their titles "for identification purposes only" as long as the communication makes it clear that the use of the title does not imply agency participation in or endorsement of a communication.

⁷ State law prohibits personal use of public resources. *See, e.g.*, Cal. Gov't Code § 8314 (making it unlawful for state or local officials to use public resources for personal or campaign purposes).

⁸ *See* Cal. Gov't Code §§ 50023 (legislative bodies of cities and counties may directly or through a representative attend legislative bodies and meet with representatives of executive agencies, and present information; cost and expense incident to such meetings are proper charges against the local agency); 53060.5 (cost of "attending" the Legislature and presenting information are proper charges against special districts; each district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

⁹ *See Madden v. Riley*, 53 Cal. App. 2d 814, 823, 128 P.2d 602, 607 (1942) (propriety of conference expenses for networking purposes).

¹⁰ Some agencies may want to limit pre-approved travel to in-state travel only. This may be accomplished in the section that follows by requiring pre-approval for all out-of-state-travel.

¹¹ Counties have specific statutory authority to honor those who have performed unique or noteworthy public service. *See* Cal. Gov't Code § 26206 (specifying that such honors must be of nominal value and cost). *See also* 10 Cal. Op. Att'y Gen. 18 (1947) (school district may issue recognition pins).

¹² Agency officials may wish to consider whether attending certain agency events are expenses that officials should bear personally (or through their officeholder accounts under the Political Reform Act), particularly if attendance at such events is politically advantageous.

6. Implementing a *city/county/district*-approved strategy for attracting or retaining businesses to the *city/county/district*, which will typically involve at least one staff member; and¹³

7. *[For those agencies that pay meeting stipends, for example, water districts]*
Meetings such as those listed above for which a meeting stipend is expressly authorized under this policy.

All other expenditures require prior approval by the *city/county/district* governing body.¹⁴

The following expenses also require prior governing body approval:

1. International *[and out-of-state]*¹⁵ travel;
2. Expenses which exceed the annual limits established for each office holder;¹⁶
and
3. Expenses exceeding \$_____ per trip.¹⁷

Examples of personal expenses that the *city/county/district* will not reimburse include, but are not limited to:

1. The personal portion of any trip;
2. Political or charitable contributions or events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children- or pet-related expenses;¹⁸

¹³ A consensus among the peer reviewers was that such meetings typically ought to involve the agency's economic development staff or chief administrative officer to insure the meetings are maximally productive.

¹⁴ Any expense not authorized by the agency's expense reimbursement policy must be approved in advance at a public meeting of the governing body. *See* Cal. Gov't Code §53232.2(f).

¹⁵ For some agencies, pre-approval of out-of-state travel may not make sense, given the frequency with which such travel occurs or the proximity of state lines.

¹⁶ Some jurisdictions find it useful to set an annual per office holder "budget" for such expenses. Such a budget does not, however, excuse agency officials from making a determination that each expense complies with the agency's policy, the law and ethical considerations. A strong argument can be made that, effective January 1, 2006, agencies may not pay flat monthly mileage allowances without requiring a mileage log or other proof of travel. *See* Cal. Gov't Code §53232.3(a)-(c).

¹⁷ The threshold for pre-approval of travel over a certain amount for any kind of travel is subject to community standards.

¹⁸ 75 Cal. Op. Att'y Gen. 20 (1992) (concluding there is no substantial public purpose associated with a public agency paying for spouse travel expenses).

4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other cultural events;
5. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
6. Personal losses incurred while on *city/county/district* business. Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

Meeting Stipends¹⁹

General

Consistent with _____,²⁰ directors receive \$ _____²¹ per day (“daily

¹⁹ This section should only be included for those local agencies whose enabling acts provide for per-day meeting stipends.

²⁰ Insert relevant code section establishing meeting stipend amounts and limits for type of agency.

²¹ Insert amount that does not exceed statutory limits. State law limits direct compensation for some local officials. These limits do not apply to any local agency that pays compensation in the form of a salary, including members of the board of directors of irrigation districts which provide electricity, directors of utility districts with boards having seven members and harbor district directors. The limits apply primarily to officials of independent districts who do not fall within these last two exceptions. With regard to nonsalaried officials, a stipend for attending a meeting or for a day of service can be paid for: a meeting of any “legislative body” of the agency (as Government Code section 54952 defines that term), a meeting of an advisory body (such as a less-than-a-quorum, temporary, *ad hoc* advisory subcommittee of a legislative body), and conference attendance including ethics training conferences, assuming that the stipend is authorized by another statute. Cal. Gov’t Code § 53232.1(a). If the agency wishes to compensate officials for attendance at other events, it may do so “only if the governing body has adopted, in a public meeting, a written policy specifying” the other events which constitute “the performance of official duties” allowing compensation. Cal. Gov’t Code § 53232.1(b).

City councils fix the compensation of all appointive officers and employees by resolution or ordinance. Cal. Gov’t Code § 36506. We believe this statute provides authority to compensate city appointive officers and employees and reimburse expenses. For counties, the board of supervisors prescribes the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees. Except as otherwise required by Article XI of the California Constitution, such action may be taken by resolution of the board of supervisors as well as by ordinance. Cal. Gov’t Code § 25300.

Note, however, that unless specifically authorized by another statute, a city council may not enact an ordinance providing for compensation to elected city council members in excess of the schedules authorized under the Government Code. *See* Cal. Gov’t Code § 36516(d). If a statute provides for additional council member compensation for serving on a commission--but that statute does not specify an amount of compensation-- the compensation is \$150 per month. *See* Cal. Gov’t Code § 36516(d). If a community development commission is formed to oversee redevelopment functions, commissioner compensation may not exceed \$75 per commissioner per meeting, with a maximum of two meetings (\$150) per month. *See* Cal. Health & Safety Code §34130.5(b). If a community development commission is

meeting stipend”) for each day’s attendance at meetings, as defined in this policy. Such compensation is in addition to any reimbursement for meals, lodging, travel and expenses consistent with this policy.

Meetings and Service Subject To Daily Stipend

To be entitled to a daily stipend under this policy, the event in question must constitute one of the following:

1. A meeting of the district board within the meaning of Government Code section 54952.2(a);²²
2. A meeting of a district committee within the meaning of Government Code section 54952(b);²³
3. An advisory body meeting within the meaning of Government Code section 54952(b);²⁴ or
4. A conference or organized educational activity conducted in compliance with Government Code section 54952.2(c), including ethics training required by Government Code sections 53234 and following.²⁵
5. A meeting of any multi-jurisdictional governmental body on which the district

formed to oversee both redevelopment and housing authority functions, commissioner compensation may not exceed \$150 per commissioner per meeting, with a maximum of two meetings (\$300) per month. *See* Cal. Health & Safety Code §34130.5(c).

²² *See* Cal. Gov’t Code § 53232.1(a)(1) (authorizing that compensation be paid at meeting of a legislative body and tying it to the definition of meeting in section 54952.2(a), which reads as follows:

As used in this chapter, “meeting” includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.)

²³ That section reads as follows:

A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

See Cal. Gov’t Code § 53232.1(a)(2).

²⁴ *See* Cal. Gov’t Code § 53232.1(a)(2) (authorizing that compensation be paid at meeting of an advisory body). *See also* Cal. Gov’t Code § 54952(b) (“advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body”).

²⁵ *See* Cal. Gov’t Code § 53232.1(a)(3) (authorizing that compensation be paid at conferences or organized educational activities).

director serves as the district's designated representative.²⁶

6. Any meeting attended or service provided on a given day at the formal request of the district board and for which the district board approves payment of a daily meeting stipend.²⁷

Aggregate Limits

The number of days for which a district director receives a daily stipend will not exceed the aggregate limits established by state law.²⁸

Cost Control²⁹

To conserve *city/county/district* resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the *city/county/district* will be limited to the costs that fall within the guidelines.

Transportation³⁰

²⁶ See Cal. Gov't Code § 54952.2(a). That section reads as follows:

(a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

Note that this is the test for meeting suggested by the Association for California Water Agencies in its sample policy on directors' compensation and expense reimbursement. See Cal. Gov't Code § 53232.1(a)(3).

²⁷ Check to make sure your district's enabling act includes authorization for payment of a daily stipend for non-meeting expenses.

²⁸ See footnote 19 above for examples.

²⁹ Some agencies have chosen (usually through a request for proposals process) to work with a single travel agency to promote cost control and accountability on airline flights and lodging. Another option is to limit the number of staff who can contact the travel agency to book or change travel plans.

³⁰ The sample policy reflects the requirement that local reimbursement policies either specify reasonable reimbursement rates or use IRS rates for travel, meals, lodging and other authorized expenses. See Cal.

The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental vehicles may be reimbursed under this provision if more than one *city/county/district* official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.³¹

Airfare. Airfares that are equal or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities (www.cacities.org/travel), the California State Association of Counties (<http://www.csac.counties.org/default.asp?id=635>) and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.³²

Automobile. Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect (*see* www.irs.gov). For 2006, the rate is 44.5 cents per mile. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle.³³ This amount does not include

Gov't Code § 53232.2(c). This requirement, as well as the requirement that expenses be reimbursed after the fact based on receipts supports the view that vehicle allowances are not permitted. *See* Cal. Gov't Code § 53232.3. Nevertheless, a statute that permits a vehicle allowance still exists. *See* Cal. Gov't Code § 1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties). Even if the validity of vehicle allowances was not in question, however, using the more typical Internal Revenue Service Code mileage rate for distance actually traveled avoids questions over the amount of any such allowance. *See Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975) (successful challenge to a flat expense allowance for non-itemized expenses that was not supported by an ordinance or resolution finding such expenses were actual, necessary or beneficial to the public). The court found the allowance violated the law as an unlawful gift of public funds. *See* Cal. Const. art. XVI, § 6. Note that there is a special statutory reimbursement rate for special district directors traveling on legislative business. *See* Cal. Gov't Code § 53060.5 (cost of "attending" the Legislature and presenting information are proper charges against special districts; each special district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

³¹ *See* Cal. Gov't Code § 53232.2(e) ("Members of the legislative body shall use government and group rates offered by a provider of transportation or lodging services for travel and lodging when available.").

³² Those rates can be accessed from the state's website without being a member of these programs by going to <http://www.catravelmart.com/default.htm> and clicking on "Discount Travel Fares for Official Business."

³³ The sample policy reflects the requirement that local reimbursement policies either specify reasonable reimbursement rates or use Internal Revenue Service rates for travel, meals, lodging and other authorized expenses. *See* Cal. Gov't Code § 53232.2(c). This requirement, as well as the requirement that expenses be reimbursed after the fact based on receipts supports the view that vehicle allowances are not permitted. *See* Cal. Gov't Code § 53232.3. Nevertheless, a statute that permits a vehicle allowance still exists. *See* Cal. Gov't Code § 1223 (allowing an allowance or mileage rate for state, county, judicial district, or city officer's automobile owned, rented or used in performance of duties). Even if the validity of vehicle

bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.

Car Rental. Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelsmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

Taxis/Shuttles. Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

Lodging³⁴

Lodging expenses will be reimbursed or paid for when travel on official *city/county/district* business reasonably requires an overnight stay.³⁵

Conferences/Meetings. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking.³⁶ If the group rate is not available, see next section.

Other Lodging. Travelers must request government rates, when available.³⁷ A listing

allowances was not in question, however, using the more typical Internal Revenue Service Code mileage rate for distance actually traveled avoids questions over the amount of any such allowance. *See Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 118 Cal. Rptr. 901 (1975) (successful challenge to a flat expense allowance for non-itemized expenses that was not supported by an ordinance or resolution finding such expenses were actual, necessary or beneficial to the public). The court found the allowance violated the law as an unlawful gift of public funds. *See* Cal. Const. art. XVI, § 6. Note that there is a special statutory reimbursement rate for special district directors traveling on legislative business. *See* Cal. Gov't Code § 53060.5 (cost of "attending" the Legislature and presenting information are proper charges against special districts; each special district board member is allowed \$.11 per mile for automobile travel and actual traveling expenses when traveling by public conveyance).

³⁴ A local expense reimbursement policy may specify what constitutes reasonable rates for lodging. If the policy does not, then the reimbursable rates default to those specified in the Internal Revenue Service guidelines. *See* Cal. Gov't Code §53232.2(c). *See also* Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem. An agency may want to provide guidance on what some circumstances reasonably requiring an overnight stay (for example, by distance or hours of travel from the agency's location).

³⁵ An agency may want to provide guidance on what some circumstances reasonably requiring an overnight stay (for example, by distance or hours of travel from the agency's location).

³⁶ *See* Cal. Gov't Code §53232.2(d). If those rates are not available at the time the lodging is booked, the lodging rates must be comparable to those allowed by the Internal Revenue Service or government rates. *Id.*

³⁷ Local agency officials must use group or government rates for non-conference-related lodging and transportation services. *See* Cal. Gov't Code §53232.2(e). The Internal Revenue Service establishes per

of hotels offering government rates in different areas is available at <http://www.catravelsmart.com/lodguideframes.htm>. Lodging rates that are equal or less to government rates are presumed to be reasonable and hence reimbursable for purposes of this policy.

*Option #1 (Median Hotel Cost):*³⁸ In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the median retail price for lodging for that area listed on websites like www.priceline.com or an equivalent service shall be considered reasonable and hence reimbursable.³⁹

Option #2 (Flat Cap). In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed \$150 per night⁴⁰ are presumed reasonable and hence reimbursable.

Option #3 (IRS Rates). In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.⁴¹

Meals

Reimbursable meal expenses and associated gratuities will not exceed the following rates per person:⁴²

diem thresholds for employees; any amounts in excess of the per diem for a given area is treated as additional wages for tax purposes. For example, for 2006, the standard per diem rate for lodging in the continental United States is \$60. However the rate for the San Francisco area (as defined) is \$130.

³⁸ Select the option that best works for your agency.

³⁹ With www.priceline.com, one has the option of specifying what quality of hotel (for example, “3 Star, Moderate—Upscale”); and agency’s policy could specify maximum quality thresholds to provide further guidance.

⁴⁰ Or any other threshold that meets community standards.

⁴¹ See Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem). The site also has references to hotels that have government rates at or below Internal Revenue Service per diem limits. For example, for 2006, the standard per diem rate for lodging in the continental United States is \$60. However the rate for the San Francisco area (as defined) is \$130.

⁴² AB1234 allows a local expense reimbursement policy to specify what constitutes reasonable rates for meals. If the policy does not, then the reimbursable rates default to those specified in the Internal Revenue Service guidelines. See Cal. Gov’t Code §53232.2(c). See also Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem. The Internal Revenue Service establishes per diem thresholds for employees; any amounts in excess of the per diem for a given area is treated as additional wages for tax purposes. For example, for 2006, the standard per diem rate for meals and incidental expenses in the continental United States is \$39. However the rate for Los Angeles, San Francisco, and San Diego areas (as defined) is \$64.

The issue of how high or low to set per meal rates is strictly a matter of community standards. For example, state senators and staff are reimbursed according to the General Services Administration rates: by

Breakfast \$____

Lunch \$____

Dinner \$____⁴³

[The city/county/district will not pay for alcohol/personal bar expenses.]⁴⁴

[For group meal events organized by others (for example, conferences and other types of activities that fall within the list of “authorized expenditures” above), the city/county/district recognizes that the per person cost may exceed these maximums.]

Telephone/Fax/Cellular⁴⁵

Officials will be reimbursed for actual telephone and fax expenses incurred on city/county/district business. Telephone bills should identify which calls were made on city/county/district business. For cellular calls when the official has a particular number of minutes included in the official’s plan, the official can identify the percentage of calls made on public business.

geographic area; the web address for these rates is:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2006&contentType=GSA_BASIC&contentId=17943&queryState=California&noc=T.

⁴³ The policy can also provide that such amounts can be annually adjusted to reflect changes in the cost of living in accordance with statistics published by the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, all urban consumers for the _____ Metropolitan Area.

⁴⁴ Alcohol-related expenses should or should not be reimbursed according to community standards. An alternative to an all or nothing policy on alcoholic beverages is to give specified management-level employees authority to engage in “third policy hosting expenses” for alcoholic beverages.

⁴⁵ Note that it may be an effective cost control measure to provide elected officials with access to agency telephones and faxes for official business and not to reimburse for calls and faxes made on personal equipment.

Internet

Officials will be reimbursed for Internet access connection and/or usage fees away from home, not to exceed \$15.00 per day, if Internet access is necessary for *city/county/district*-related business.

Airport Parking

Long-term parking must be used for travel exceeding 24-hours.⁴⁶

Other

Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which *city/county/district* officials receive reimbursement from another agency are not reimbursable.

Cash Advance Policy

From time to time, it may be necessary for an official⁴⁷ to request a cash advance to cover anticipated expenses while traveling or doing business on the *city/county/district's* behalf. Such request for an advance should be submitted to the *[indicate whom]*⁴⁸ _____ days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. The benefits of such expenditure to the residents of *city/county/district*;
3. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
4. The dates of the expenditure(s).

Any unused advance must be returned to the *city/county/district* treasury within two⁴⁹

⁴⁶ The point has been made that long-term parking at some airports can involve extensive waits for shuttle buses, etc. Again, the agency has discretion to set parameters that meet local practicalities and community standards.

⁴⁷ Some agencies limit cash advances. One approach is to make cash advances only available for line (less well compensated) staff and elected and appointed officials in the amount of the recommended Internal Revenue Service per diem for the area being traveled to. Another is to offer partial cash advances.

⁴⁸ For example, agency manager for elected officials and supervising department heads for staff.

⁴⁹ Other time thresholds may be appropriate.

business days⁵⁰ of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

In the event *[indicate who will be processing such requests]* _____ is uncertain as to whether a request complies with this policy, such individual must seek resolution from the *city/county/district* governing board.

Credit Card Use Policy

City/county/district does not issue credit cards to individual office holders but does have an agency credit card for selected *city/county/district* expenses.⁵¹ *City/county/district* office holders may use the *city/county/ district's* credit card for such purposes as airline tickets and hotel reservations by following the same procedures for cash advances. Receipts documenting expenses incurred on the *city/county/district* credit card and compliance with this policy must be submitted within five business days of use.⁵²

City/County/District credit cards may not be used for personal expenses, even if the official subsequently reimburses the *city/county/district*.⁵³

⁵⁰ Choose a time period that is practical, but also is mindful of legal restrictions that exist with respect to having extended access to agency cash. This issue is analogous to the "float" issue when officials use agency credit cards for personal purposes. See Cal. Penal Code § 424.

⁵¹ The decision on whether to issue agency credit cards to individuals is a policy determination. Many experienced administrators advise against issuing agency credit cards to either elected officials or staff because of the potential for inadvertent use for personal purposes and the legal questions about whether one can be protected from civil and criminal liability by reimbursing the agency. (See footnote 3). An alternative used by some public agencies is the Cal-Card program, which provides for specific dollar limits per card holder and can be restricted for use with certain kinds of vendors. The Cal-Card provides a clear audit/documentation trail. The program is administered through a master contract with the State of California. For more information, see www.documents.dgs.ca.gov/pd/calcard/calcardreq.pdf. Potential alternative language if an agency does issue credit cards is as follows:

City/County/District officials with *city/county/district* credit cards may only use those cards for official agency business consistent with this expense policy. Credit card expenses will be periodically reviewed by the governing body or its designee. Each credit card holder will, as a part of that individual's expense report, document compliance with this expense policy.

⁵² Choose a time period that is practical, but enables agency financial staff to verify charges on the credit card monthly bill.

⁵³ Note that this provision can be useful even if an agency does not issue credit cards to individuals because it establishes that using a central credit card for personal purposes is impermissible.

Expense Report Content and Submission Deadline

All cash advance expenditures, *[credit card expenses]* and expense reimbursement requests must be submitted on an expense report form provided by the *city/county/district*. *[This form shall include the following advisory:*

All expenses reported on this form must comply with the city/county/ district's policies relating to expenses and use of public resources. The information submitted on this form is a public record. Penalties for misusing public resources and violating the city/county/ district's policies include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability.]

Expense reports must document that the expense in question met the requirements of this policy.⁵⁴ For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the *city/county/ district's* adopted legislative positions and priorities.

Officials must submit their expense reports within 30 days of an expense being incurred, accompanied by receipts documenting each expense.⁵⁵ Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation.

Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

Audits of Expense Reports

⁵⁴ Local agencies must use expense report forms. See Cal. Gov't Code §53232.3(a). All expenses must be documented with receipts. See Cal. Gov't Code §53232.3(c). These documents are, of course, public records subject to disclosure. See Cal. Gov't Code §53232.3(e).

⁵⁵ An expense reimbursement policy must specify what constitutes a "reasonable time" within which requests for reimbursement must be submitted. See Cal. Gov't Code §53232.3(c). If the deadline for expense reimbursement requests is too long or non-existent, it may be difficult to remember why certain expenses were incurred. Moreover, there may be audit issues in terms of recognizing the expense in the proper year.

Finally, the Internal Revenue Service requires that expenses that are reimbursed after 60 days be reported as income to reimburse. Under an "accountable plan," expense reimbursements are not taxable to the employee; however, if the employee does not submit their substantiated claim for reimbursement within 60 days of the expenditure, then the reimbursement is taxable to the employee and reported in Box 1 of Form W-2. See discussion beginning on page 10 http://www.irs.gov/pub/irs-pdf/p15_05.pdf, discussion beginning on page 27 <http://www.irs.gov/pub/irs-pdf/p463.pdf>, and discussion beginning on page 48 <http://www.irs.gov/pub/irs-pdf/p535.pdf>.

All expenses are subject to verification that they comply with this policy.

Reports to Governing Board

At the following *city/county/district* governing body meeting, each official shall briefly report on any Brown Act meetings attended at *city/county/district* expense⁵⁶ [as well as any conferences, educational seminars or meetings with legislators or other governmental officials].⁵⁷

If multiple officials attended, a joint report may be made.⁵⁸ The report may be made orally or in writing.

⁵⁶ AB 1234 requires members of a legislative body to report on “meetings” attended at public expense at the next meeting of the legislative body. Cal. Gov’t Code § 53232.3(d). “Meetings” for purpose of this section are tied to the Brown Act meaning of the term, Cal. Gov’t Code § 53232.3(d): any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains. *See* Cal. Gov’t Code § 54952.2.

An example would be when a city council member or supervisor represents his or her agency on a joint powers agency board and pays for the official’s expenses in serving in that representative capacity.

The report must be made at the next meeting of the legislative body that paid for its member to attend the meeting. Cal. Gov’t Code § 53232.3(d).

The report should be agendized in some manner, both to remind the official of the obligation to report and to comply with Brown Act requirements.

⁵⁷ Some public agencies have also voluntarily adopted requirements that any time an official attends a conference or similar gathering at public expense that a report be provided back to the body. Again, the report typically can be written or oral.

⁵⁸ In making a joint report, officials should be mindful about open meeting laws governing communications among members of a legislative body. There is a conference exception to the Brown Act, as long as a majority of the members of a legislative body does not discuss among themselves business that is within the subject matter jurisdiction of the local agency (other than as part of the scheduled program). *See* Cal. Gov’t Code § 54952.2(c)(2). Officials should not discuss among themselves the content of a joint report in advance of a public meeting. Simply asking one official to be the lead on the report during the public meeting and then asking others if anything was omitted should avoid Brown Act issues.

Compliance with Laws

City/County/District officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws.⁵⁹ All agency expenditures are public records subject to disclosure under the Public Records Act *[and other laws]*⁶⁰

Violation of This Policy

Under state law, use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following: 1) loss of reimbursement privileges, 2) a demand for restitution to the *city/county/district*, 3) the agency's reporting the expenses as income to the elected official to state and federal tax authorities, 4) civil penalties of up to \$1,000 per day and three times the value of the resources used, and 5) prosecution for misuse of public resources.⁶¹

⁵⁹ For example, meals are considered "gifts" to legislators that must be reported by them if the total value of gifts given from the agency exceeds \$50 in a year; there also is an annual gift limit. In 2003-2004, this limit is \$340. *See* Cal. Gov't Code § 87103(3). Registered lobbyists, by contrast, are limited to gifts of \$10 per month. *See* Cal. Gov't Code §§ 86201-86204.

⁶⁰ *See generally* Cal. Gov't Code §§ 6250 et seq. (California Public Records Act). Special districts have an additional obligation to prepare and annual summary of expense reimbursements over \$100 and make those available for public disclosure. Cal. Gov't Code § 53065.5.

⁶¹ *See* Cal. Gov't Code § 53232.4.



Everyday Ethics for Local Officials

Fiduciary Duties and Public Service

February 2008

QUESTION

As the chief executive for a local government agency, I have seen elected officials become bogged down in the details of various ethics laws. Instead of examining the proper thing to do in a specific situation, the focus shifts to whether a certain course of action will get an official in trouble with the law.

*It occurs to me that it might be easier if those of us who care about public service ethics started speaking in broader terms. For example, what if we just spoke in terms of public servants owing a **fiduciary duty** to the public they serve? Doesn't that concept underlie most if not all ethics laws? Wouldn't that be a simpler way to look at a public servant's ethical obligations?*

ANSWER

You pose an intriguing question. There are indeed a number of parallels between ethics laws and fiduciary responsibilities. In addition, the notion of having a fiduciary duty also touches on some of the higher obligations of public service above and beyond the minimum requirements of most public service ethics laws. Thinking about the parallels between fiduciary duties and public service ethics offers a good opportunity to think broadly about the obligations of public service.

What Is a Fiduciary?

How might concepts underlying fiduciary duty relate to the public's expectations of public officials? First, let's look at the term "fiduciary." It derives from the Latin terms *fides* or *fiducia*, both of which mean trust and confidence.

Certainly when the public chooses an elected official, the public is putting its trust and confidence in him or her to act in the public's best interests. The same can be said when one becomes an employee of a public agency. The agency trusts everyone on its team to put the public's interests first. Indeed, always putting the public's interests first is the essence of public service ethics.

A fiduciary is also someone who acts for another. That is why trust and confidence are so important.

In a representative democracy, the public elects officials to act in their interests.¹ Elected officials make important decisions on behalf of the public, including how to spend taxpayer and other public monies on infrastructure and services.

Public officials also exercise the power of the collective will when they adopt and enforce regulations. Regulations intrude on individuals' prerogatives. Essentially, in a given situation, what an individual wants to do must yield to the concept of the greater good of the community.

Wielding the power of the public purse as well as the power to regulate are certainly weighty responsibilities.

Duties of a Fiduciary

Because a fiduciary has the power and obligation to act for another, the law imposes on fiduciaries strict standards of diligence, responsibility and honesty.

These are very similar to federal law standards for public officials, which impose on public officials the broad obligation to serve the public honestly. What does that mean? According to federal prosecutors, honest public service means being conscientious, loyal, faithful, disinterested and unbiased. Honest public service is performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.² As the following discussion of fiduciary duty obligations illustrates, the standards are very similar.

Diligence: The Duty to Do a Good Job

The law speaks in terms of a fiduciary using his or her "best efforts" on behalf of those served. This typically means using all possible skill, care and diligence when acting on behalf of those served. In the case of public servants, the task is for public officials to use their best skills, care and diligence in serving the public.

That means educating oneself about the issues facing the community -- talking to the community, staff and other experts, as well as reading relevant reports and studies. It also means being diligent in preparing for and attending meetings. Ultimately, it means making decisions that reflect one's best judgment on what course of action will produce positive results for the community.

Of course, public officials sometimes face very hard decisions, with difficult trade-offs among what seem to be equally important goals. Determining what the "best" decision is

in terms of the public's interests is easier said than done. However, there are tools to help public officials sort through arduous choices.

Sometimes laws provide guidance in a given situation. For example, in some situations the law states that preserving the environment is of primary importance; in other situations, the priority may be considerations of fairness and fair processes.

Speaking of fairness, your own values provide another source of guidance. Values relevant to public service decision-making include trustworthiness, fairness, responsibility, loyalty, compassion and respect. Sometimes officials translate one or more of these values into decisions that they perceive offer the most benefits for the most people. Sometimes that approach yields when a decision would pose an unfair burden on a particular segment of the community.

Hearing directly from the public about what people believe to be in their best interests is another helpful tool for local officials. The challenge is to make sure an agency uses processes appropriate to the issue and the type of input desired. Officials who emphasize greater inclusiveness and public engagement in public service view themselves as stewards of a decision-making process as much as (or sometimes even more than) the actual decision-makers.

Responsibility and Loyalty: Putting Others' Interests First

A fiduciary is forbidden from acting in any manner adverse or contrary to the interests of those he or she serves. This means not putting one's own financial or political interests ahead of the public's. Put another way, as a public servant, your *loyalty* must be to the entity you serve and the public's interests, not your own interests.

The most egregious way a public official might put his or her own interest ahead of the public's is by engaging in graft -- the misuse of one's position to acquire personal financial gain.³ That can occur when a public official makes a decision because he or she receives a bribe to decide an issue a certain way. Another example is when an official receives payment (sometimes known as a kickback) for steering contracts to certain vendors.

The law prohibits public officials from using public resources for personal gain. The laws against embezzlement and theft are one such example. However, there are even more subtle forms of misusing public resources; for example, using public resources to enhance one's visibility in the community and, hence, chances for re-election. Such uses may well be illegal and certainly conflict with the ethical obligation to spend limited public resources in a way that benefits the public.

In our political culture, we are so sensitive to the *possibility* that decision-makers might put their financial interests ahead of those of the public that some laws are designed to

avoid even the *perception* that personal financial gain motivated a decision. Conflict-of-interest laws are an example of such laws.

The premise underlying conflict-of-interest laws is that when decision-makers are in a position where they might reasonably be *tempted* to put their own interests ahead of the public, the best course of action is for them to step aside from the decision-making process. This avoids any perception that a decision-maker's interests may have influenced his or her decision.

Do the conflict-of-interest laws have a cost? Yes. From time to time, conflict-of-interest laws prevent certain people from participating in the decision-making process. Those individuals may be smart, and they may have constituents who very much want them to participate in that decision. They were also elected to participate on the public's behalf as part of our representative democracy. They may even be motivated solely by the public's interests. Despite all this, they cannot participate. The goal is to have the balance fall so the public can be most assured its interests always come first.

This is because the law determines that the public's trust and confidence in its decision-makers is more important than the decision-makers' participation in every decision. Even the potential *appearance* of impropriety damages the public's trust and confidence enough to justify preventing a decision-maker from participating in important decisions.

Honesty: Being Open and Transparent

A person acting in a fiduciary capacity is held to a high standard of honesty and full disclosure.

When the public places power in the hands of its public officials, the public relies on officials to exercise that power prudently. Indeed, the definition of "trust" is to rely on the integrity, strength and ability of a person or thing.⁴

Former President Ronald Reagan's statement "trust but verify" resonated because, among other things, people feel most confident their trust won't be betrayed if there is a way to ensure that bad things aren't happening. President Reagan used the phrase in the context of foreign relations and weapons monitoring, but the same can be said of transparency in general.

Governmental transparency laws are an example of the public's trust-but-verify attitude toward public institutions. Such transparency laws include open meeting requirements that decision-making must occur in meetings where the public can attend and participate. Another example is the requirement that public records be open and accessible to public review.

Limits of the Fiduciary Duty Concept in Public Service

Although the concept of fiduciary duty can help public servants think through the legal and ethical obligations of public service, it's important to note that this concept has limits in the public service context. For fiduciaries, the courts are the ultimate source of accountability. Although public officials are answerable to the courts in certain situations, they must also answer to the public.

In general, the courts are more likely to second-guess the decisions of true (or formal) fiduciaries when there is a dispute over whether they met their obligations. The courts are also the ultimate enforcer of obligations for more traditional fiduciaries.

The courts play a role in enforcing the obligations of public officials, of course, by making sure public decisions and decision-making processes satisfy the requirements of various laws, including ethics-related laws. As already noted, there are laws related to graft, conflicts of interest, use of public resources, transparency and fair processes. Sometimes the law defines what types of considerations cannot enter into a decision (for example, discrimination against certain groups) or others that must be given certain weight (for example, environmental considerations or the need for affordable housing).

However, the courts will not substitute their judgment about what constitutes the public's best interests when an elected official has made his or her best judgment on what serves the public's interest. In our system of separated powers, the exercise of policy-making discretion ultimately resides with policy-makers when they are acting in a legislative capacity. Activities involved in implementing the law also involve some exercise of discretion with which the courts will not interfere. The theory is that the electorate is the ultimate check upon unwise, less than fully diligent or unethical decision-makers.

However, as federal law related to public officials' obligations to engage in "honest" services indicates, it can be a risky strategy for public officials to focus closely on the fine distinctions under specific state law that divide lawful from unlawful conduct.

Public officials should develop the habit of asking whether their outside interests, duties or affiliations actually detract or appear to detract from their ability to exercise an undivided duty of loyalty to the public's interest and the organization they serve. This standard gets to the core of the issue and prevents nitpicking over close calls or loopholes in imperfectly written laws.

This strategy also goes beyond the minimum requirements of the law by focusing on the public's trust and confidence in the decision-making process, and encourages public officials to avoid conduct that may be, strictly speaking, legal but not ethical.

Conclusion

Does the concept of public officials owing a type of fiduciary duty to the public help simplify what public service ethics is about? Simplification is frequently in the eye of the beholder, so we will let our readers be the judge. Certainly the core concept of acting for the benefit of others as opposed to oneself is equally important to both public service ethics and fiduciary obligations.

Perhaps something like the Marine Corps motto of *Semper Fi* or "Always Faithful" (*Semper Fidelis*) can simplify the way one thinks about public service ethics. Public officials, however, must be faithful to the concept of all actions being about the public's interests. *Semper pro Populus* means "Always for the Public" -- the core message of both a fiduciary approach to public service and the concept underlying public service ethics laws.

Special Cases: Investing Money and Public Pension Boards

In some situations, the nature of public officials' fiduciary obligations is more explicit.

Investing Money: California law⁵ specifically says that local governing bodies are fiduciaries when it comes to investing public money. This means officials have a legal duty to invest according to the "prudent investor" standard, which generally requires public officials to make investment decisions with care, skill, prudence and diligence. The statute goes on to specify that preserving the value of the funds invested must be the primary objective of such investments.⁶ Liquidity and return on investment must be the second and third objectives, respectively.

Public Pension Plans: Pension boards for public pension plans are another variation on the fiduciary duty theme. Such pension board members are fiduciaries, and the duty they owe is to pension plan participants⁷ -- not the public as a whole. This means decisions must be in the plan participants' best interests. Pension board members also have a duty to invest pension plan monies in the interests of plan participants, using care, diligence and skill.

Some public agency counsel also believe that failure to accurately and completely report pension fund obligations under the new General Accounting Board Standards (known as GASB 43 and 45) may also violate fiduciary responsibilities if the plan is underfunded.

Loyalty to the Entity You Serve

When you join an organization's governing board, typically your role includes an obligation to act with the organization's best interests in mind. As noted in the June 2004 "Everyday Ethics" column, this can create conflicting loyalties when you serve on a regional body and your city's or county's interests conflict with what's best for the region.

A variation on that theme occurs when what's best for the city or county as a whole conflicts with what your supporters want you to do or what's best for your district. As an ethical matter, when you become a member of a governing board, you take on the responsibility to do what's generally best for the jurisdiction as a whole. You can argue for measures that mitigate unfair burdens on sub-areas of the city or county or spread burdens more equitably (since fairness is another ethical value), but pursuing parochial interests at the expense of the general welfare of the organization as a whole conflicts with your ethical duties to the organization.

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Endnotes:

¹ *U.S. v. Randall Harold Cunningham*, No. 05cr2137 LAB (filed Nov. 28, 2005) page 4 (available at <http://fl1.findlaw.com/news.findlaw.com/cnn/docs/crim/uscnnghm112805cinf.pdf>).

² graft. Dictionary.com. *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. <http://dictionary.reference.com/browse/graft> (accessed: Nov. 11, 2007).

³ trust. Dictionary.com. *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. <http://dictionary.reference.com/browse/trust> (accessed: Nov. 11, 2007).

⁴ See Cal. Gov't Code §53600.3.

⁵ See Cal. Gov't Code §53600.5.

⁶ See *Hittle v. Santa Barbara County Employees Retirement*, 39 Cal.3d 374, 392-93, 216 Cal. Rptr. 733, 743-44 (1985) (noting the fiduciary relationship between plan boards and participants).

⁷ See, for example, Cal. Corp. Code § 7231(a) (fiduciary obligations of nonprofit mutual benefit corporation directors).