



# DOWNTOWN LONG BEACH ALLIANCE

Downtown Long Beach Alliance

Code of Ethics and Conduct

Approved by the Board of Directors

September 16, 2009

## Table of Contents

<b>Preamble</b> .....	<b>1</b>
<b>Article I: Purpose</b> .....	<b>1</b>
<b>Article II: Code of Ethics</b> .....	<b>2</b>
<b>Article III: Fiduciary Duty of Members of the Board</b> . . .	<b>3</b>
<b>Article IV: Conflicts of Interest</b> .....	<b>4</b>
<b>Article V: Open Meeting Laws</b> .....	<b>5</b>
<b>Article VI: Public Records</b> .....	<b>8</b>
<b>Article VII: Form 700</b> .....	<b>8</b>

## **Preamble**

The Downtown Long Beach Associates recognizes that mutual success is achieved through the collaboration and good will of the Board of Directors, staff, stakeholders, and community at large. The Code of Ethics and Conduct reinforces the organization's dedication to valuing the following: respect for one another, communication with one another, public support of the Board's decisions after they have been rendered, and sincere service on behalf of the public's best interest. At times, there may be disagreement about strategy or priorities in building a better Downtown due to passionate interest and committed concern, which are appropriately voiced during meetings at which such topics are discussed. However, our central goal remains the same—to improve Long Beach's central business district.

### **Article I. Purpose**

The Downtown Long Beach Associates (DLBA) is a private, non-profit organization dedicated to the improvement of Long Beach's central business district. The composition of the DLBA's Board of Directors was purposely formed to allow for, and to seek, input from a variety of property and business owners as well as residents and other community organizations within the Downtown area. The mission of the DLBA is to serve as a non-profit, tenant- and property-based business improvement district, which is dedicated to the management, marketing, advocacy, and economic and community development of the assessment district in cooperation with the City of Long Beach and the private sector.

The Board of Directors and staff therefore are responsible for promoting DLBA's mission and organizational values by upholding the Code of Ethics and Conduct, the purpose of which is as follows:

- to set forth the duties and responsibilities of the DLBA's Board and staff
- to define a common Code of Ethics and Conduct and the protocol when an allegation of ethical violation is tendered
- to explicate laws governing public meetings to ensure legal compliance
- to protect the DLBA's interest when it is contemplating entering into a transaction or arrangement that might benefit the private financial interest of a DLBA Director or staff member

This policy is intended to supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit organizations.

## **Article II. Code of Ethics**

### Section I

The Code of Ethics requires that all DLBA Directors and staff shall pledge:

- When conducting DLBA business, to place the best interests of the DLBA above all other interests
- To uphold all laws, regulations, and policies
- To take no action for the purpose of personal benefit or private inurement
- To make every effort to avoid a conflict of interest
- To adequately identify and disclose a conflict of interest if such arises
- To adequately address a conflict of interest once identified
- To avoid disclosure of confidential information obtained in the performance of his or her duties or in his or her official capacity
- To exercise prudence and good judgment at all times
- To be fair, impartial, and unbiased in the decision-making process
- To treat each other and the public with respect

### Section II: Violation of Code

If a Director is suspected of violating any portion of the Code of Ethics or Conduct, a written report must be submitted to the Board Chair for review by the Executive Committee. The Director shall have the opportunity to address the Executive Committee at such time as a review occurs. Should the Executive Committee determine that a Director has violated the Code, a recommendation will be made to administer disciplinary action commensurate with the level and manner of ethical violation, which may include but is not limited to a public apology and acknowledgement of wrongdoing or (should the Director be unwilling to adhere to the recommendation of the Board) removal from the Board of Directors. It is the Executive Committee's responsibility to make a report to the Board within 30 days of receipt of the written report alleging wrongdoing.

Should a staff member be suspected of violation of the Code, a written report must be given to the President and CEO, unless the President and CEO is suspected, in which case the report must be given to the Board Chair. The President and CEO is responsible for managing DLBA staff in a manner consistent with the Code.

The Board Chair is directed to convene the Executive Committee to address allegations of violation by the President and CEO within 30 days of receipt of the written report alleging wrongdoing.

**Article III. Fiduciary Duty of Members of the Board**

Each Board member owes a fiduciary duty to the DLBA and shall comply with the California Corporations Code (Section 5231), which reads as follows:

(a) A Director shall perform the duties of a Director, including duties as a member of any committee of the board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: (1) One or more officers or employees of the corporation whom the Director believes to be reliable and competent in the matters presented; (2) Counsel, independent accountants or other persons as to matters which the Director believes to be within such person's professional or expert competence; or (3) A committee of the board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence, so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) Except as provided in Section 5233, a person who performs the duties of a Director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a Director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

**Article IV. Conflicts of Interest**

As a general rule, Board members and staff should avoid situations where professional actions may affect or appear to affect one's private interests, financial or non-financial.

## **Section 1: What is a Conflict of Interest?**

Directors and staff have a conflict of interest if public actions as a DLBA representative affect one's personal financial interests or the interests of one's immediate family members. It does not matter whether the action has a negative or positive effect on the interest. Furthermore, the DLBA is prohibited from engaging in contracts with Board members or their immediate family members.

The Internal Revenue Service's definition of a conflict of interest is as follows: A conflict of interest arises when a person in a position of authority over an organization, such as an officer, director, or manager, may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated. For this purpose, a conflict of interest does not include questions involving a person's competing or respective duties to the organization and to another organization, such as by serving on the boards of both organizations, that do not involve a material financial interest of, or benefit to, such person.

## **Section 2: How Does One Know If There Is a Conflict?**

One may have a conflict of interest if one:

- Is an officer, Director, partner, employee, trustee, or manager of a company with business before the Board.
- Has an investment of \$2,000 or more in a company with business before the Board.
- Has an interest in real property of \$2,000 or more and that real property is the subject matter of an item before the Board. This includes leasehold interests that are longer than a "month-to-month" tenancy.
- Owns or leases an interest in real property that is located within 500 feet of a property which is the subject matter of a decision before the Board. (An "interest in real property" does not include a "month-to-month" tenancy.)
- Receives any income within the prior 12 months from a person or entity with business before the Board. Income includes loans or forgiveness of indebtedness. Receives a gift or gifts within the prior 12 months from a person or entity with business before the Board (gifts include rebates, discounts, free meals, free tickets, or travel).
- Or someone that is a source of income to one (\$500 or more within the prior 12 months) is the subject of a proceeding before the Board.
- Or one's immediate family (spouse, domestic partner, mother, father, sister, brother, aunt, uncle, step-mother, step-father, step-brother, step-sister, grandmother, grandfather, child, step-child) will increase or decrease their personal finances in any manner as a result of a decision before the Board.

- Uses or authorizes the use of DLBA offices, stationery, telephones, vehicles, equipment, or any other DLBA property for any political campaign activity.
- Endorses a political candidate or initiative on behalf of the DLBA. One may perform volunteer work, endorse candidates, and take a position on ballot measures, as long as one makes clear that one is acting as an individual and not on behalf of the DLBA.

**Section 3: How Does One Determine Whether a Conflict of Interest Exists?**

After disclosure of the financial interest and any material facts to the non-interested Directors, one shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon by the Board or committee. If one disputes the existence of a conflict of interest, the decision by a majority of the non-interested Directors shall be the final determination.

**Section 4: How Does One Disqualify Himself or Herself if a Conflict of Interest Exists?**

If disqualification on a meeting agenda item is required, one must publicly disclose the interest which is the subject of the potential conflict as well as the fact that one is disqualifying one's self from any participation in that decision. The disclosure may be made orally at the public meeting and/or in writing to the Board Secretary and must be made a part of the DLBA's official records (i.e., the minutes of the meeting).

**Article V. Open Meeting Laws**

Meetings of the DLBA and its committees are subject to extensive regulations known as the Brown Act, which are designed to ensure that all deliberations and decisions take place in public. It is important for Board members and staff to understand these requirements because a violation may either void the proposed action or subject the Board members and staff to criminal liability.

**Section 1: What Bodies Are Covered by the Brown Act?**

All meetings of standing committees (those which have continued responsibility over a particular subject matter, as well as those with fixed meeting schedules) are covered by the Brown Act. It may not include temporary advisory committees (or "ad hoc" committees) which consist solely of less than a quorum of the members of the Board. These will typically be committees assigned to investigate and report back on a single issue.

**Section 2: What is a Meeting?**

A "meeting" of the Board or committee includes a gathering of at least a majority of the members (i.e., a quorum) at the same time and in the same place to hear, discuss, or act on one or more matters under the jurisdiction of the Board or committee. Such

meetings may lawfully be held *only* if the notice and other requirements discussed below are followed.

Informal social gatherings of Board members are *not* meetings and need not comply with the Brown Act, as long as there is no discussion of any subject matter under the Board's jurisdiction. If these informal gatherings will involve discussions among a majority of the members relating to the Board's official business, the meeting should be properly noticed, and an agenda of the business items that will be discussed must be posted. The public must be allowed to attend and participate.

The Brown Act prohibits the use of direct or indirect communications, intermediaries, or technical devices used by a majority of a Board to assist them in arriving at any decision, which is called a "serial meeting." For instance, the Chair may not call two other members of a five-member Board to discuss an agenda item. Nor may one member contact a second member, who then calls a third member. The same is true for the use of forwarded e-mails, blanket faxes, and the like for communication among a majority of members.

### **Section 3: May a Majority of Board Members Attend a Conference or a Meeting of a Private Group?**

Members *may* attend a conference or a meeting of a private group (e.g., a homeowner's association or a City commission), even if the conference or meeting will discuss matters of general interest to the community. However, a majority of the members may attend such an event at the same time *only* if:

- The conference or meeting is open to attendance by the public
- If the event is a meeting of a private group, it has to be publicized
- The members do not discuss among themselves, other than as part of the scheduled program, business that is within the subject matter jurisdiction of the Board.

Otherwise, a conference attended by a majority of members must be open to the public. The Brown Act does not require the organizers to allow members of the public to attend free of charge if others are charged an admission.

### **Section 4: What Are the Brown Act's Notice and Agenda Requirements?**

The agenda of a regular meeting of the Board or committee must be posted at least 72 hours before the start of the meeting. With the exceptions described below, all matters that will be discussed or acted on by the Board must be listed on the agenda.

- **Requirements for Special Meetings:** A "special meeting" of the Board may be called by posting a notice/agenda and by delivering (by mail or personal delivery) the notice/agenda to all members and to all media outlets that have requested to be so notified 24 hours before the meeting. The notice/agenda



must state the place and time of the meeting, as well as the matters that will be discussed and/or decided.

- **Exceptions to the Agenda Requirement:** Under almost all circumstances, a matter may not be discussed at Board meetings unless it is listed on the agenda. A Board may discuss a matter that is not on the agenda at a regular meeting *only* if one of the following requirements are met:

- By majority vote, the Board determines that the issue to be discussed constitutes an emergency. This discussion must be held in open session.

- By a two-thirds vote of the entire membership, the Board determines that there is a need to act immediately, that the Board's consideration of the matter cannot await the next meeting, and that the need for immediate action arose after the posting of the agenda.

### **Section 5: What Information Must an Agenda Contain?**

The agenda must list *all* of the matters that will be considered at the meeting. Each item on the agenda should be described by a brief but informative summary of the nature of the matter to be discussed and/or decided. That description should inform interested members of the public about the matter so that they can decide whether to attend and participate.

### **Section 6: What Rights Do Members of the Public Have at Meetings?**

Except when closed sessions are permitted (see below), all Board and committee meetings *must* be held in public. Members of the public who choose to do must be allowed to attend; they may not be asked to sign in or provide any information as a condition of attending. Also, members of the public must be allowed to record a meeting on video or audio tape or to broadcast the proceedings, unless the Board makes a reasonable finding that the activity would disrupt the meeting.

Members of the public must be allowed to present testimony of otherwise address the Board about each item on the agenda. The Board may not act on an agenda item until it has allowed for public comment on that item. At regular meetings, the public must also be given an opportunity to address the Board on any matter under its jurisdiction, even if the matter is not on the agenda. Boards may adopt reasonable rules governing the amount of time for such public comment on each item on the agenda as well as the time each member of the public will be allowed to speak. The public may discuss information relating to specific matters and must be allowed to criticize the policies, procedures, or programs of the DLBA. However, disruptions of a meeting need not be tolerated.

Meetings may not be held in facilities which are inaccessible to disabled persons. If a Board holds a meeting in an unusual location, such as a restaurant, the public must be allowed to attend without the need to pay any price for entry (e.g., if the meeting is held in a restaurant, they must be able to attend without buying lunch). They must be able to hear the proceedings and must be allowed to present public testimony.

**Section 7: Under What Circumstances May Closed Sessions Be Held?**

Under certain circumstances specifically allowed by the Brown Act, a Board is allowed to meet in closed session. If a meeting is closed to the public, it is not permissible to allow some interested persons to attend while denying access to others. Generally, the only persons who may attend closed sessions are the members of the Board and any staff necessary to assist the Board in its deliberations. Persons without official roles should not attend. In order for a Board to be able to meet in closed session, the item must be listed on the agenda, or one of the exceptions to the agenda requirement must be applicable. **Such exceptions are extremely limited.** These exceptions are:

- Personnel discipline and evaluations
- Discussion of pending or threatened litigation
- Real estate negotiations
- Labor negotiations

**Section 8: What Are the Penalties for Violating the Brown Act?**

It is a misdemeanor for a member of a Board to attend a meeting at which action is taken in violation of the Brown Act, if the member intends to deprive the public of information to which the member knows (or has reason to know) the public is entitled. Violations of the Brown Act may also result in the issuance of injunctions and writs of mandate to correct violations, prevent future violations, or void actions taken by a Board in violation of the Brown Act.

**Article VI: Public Records**

California law requires that, with very few exceptions, all records of the DLBA be made available for public inspection upon request. All written notes, memos, letters, and electronic records (such as e-mails and documents saved on computer drives) must be copied and made available to the public upon request. The law requires disclosure of a record, even if the sender is unaware that it was retained in the DLBA's files. Therefore, treat all correspondence with the DLBA as if it were immediately available to the public.

**ARTICLE VII: FORM 700**

DLBA Directors (except Advisors) are required to complete and submit Form 700: Statement of Economic Interests as required by the California Fair Political Practices Commission.