

# "Don't Take My House! Don't Take My Car!"

## "Serving Your Neighborhood While Protecting Your Assets"

[2009 CIVIL & CRIMINAL LIABILITY TRAINING FOR NEIGHBORHOOD COUNCILS]  
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### SESSION I – EQUAL OPPORTUNITY ISSUES AND POTENTIAL CIVIL LIABILITY

#### RULES TO WORK BY:

1. Watch out for pre-conceived attitudes. Check your attitudes at the door.
2. Fair Employment and Housing Act (FEHA), City Policy, and Protected Categories.
  1. Race
  2. Age
  3. National Origin
  4. Color
  5. Marital Status
  6. Sexual Orientation
  7. Gender/Sex
  8. Religion
  9. Physical Disability
  10. Mental Disability
  11. Ancestry
  12. Medical Condition/HIV/AIDS

#### WHAT ABOUT MY CAR?

- **Discrimination - Employment practice or decision that results in unequal treatment of an individual or group in a protected class that is not job related.** Individual employees [or agents of the City] are not personally liable for discrimination under FEHA. Your house, your car, your boat are safe. *Reno vs. Baird* (1998) 18 Cal.4th 640; *Janken vs. Hughes Electronics* (1996) 46 Cal.App. 4th 55.
- **Harassment - Conduct outside the scope of necessary job performance based on one of the protected classes, including slurs, derogatory jokes, etc.** Since 1999 courts have held "supervisors" personally liable for harassment. In 2001, the legislature changed the FEHA to make co-workers who harass personally liable for their harassing acts. Neighborhood Council (NC) Board members should presume liability and act in a manner designed to protect yourself from civil liability.
- **Sexual Harassment – Harassing conduct, based on sex, which is unwelcome and sufficiently severe or pervasive to alter the terms and conditions of employment (volunteer work).** Includes Quid Pro Quo (Latin for "this for that") harassment. Sexual favoritism and Board member dating are other considerations.
- **Retaliation - Taking negative action against someone because they have complained of discrimination or harassment (based on a protected class).** The California Supreme Court has held (3/08) supervisors who engage in retaliation are NOT personally liable. However, federal courts have concluded otherwise. NC

board members/officers must be careful not to retaliate, regardless of whether you "supervise" anyone or not, since federal courts may find personal liability.

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### TRIAL & ERROR

In the four scenarios, below, is there civil or criminal liability?

#### Scenario No. 1

Arthur is a NC President. During an NC monthly meeting, you, a member of the Council, mention that the next regularly scheduled meeting will fall on a Muslim religious holiday, and will interfere with the ability of some board members and stakeholders to attend. Arthur angrily says "We're not going to accommodate terrorists, are we?" **At this point, you should..... Is there any potential civil liability and, if so, for who?**

#### Scenario No. 2

You are running for a position on your local neighborhood council. Your competitor is an elderly woman who walks with a cane and appears to be in poor health. Both of you are qualified, but you believe that because you are much healthier and younger you should get the position. **Should you print up flyers (using your own money) saying this? Why or why not? Is there any civil liability for you if you do so?**

#### Scenario No. 3

Marie is a female member of Any Neighborhood Council, serving for the last six months. After her second monthly meeting, a male Council member, John, whistled at her as she walked by. The next meeting, she noticed John and a male stakeholder stare at her, lick their lips, and stick out their tongues suggestively when she was around, then laugh after doing it. This continued for the next three meetings, and last week Marie mentioned it to another council member, Sandy, but said she didn't want to make a big deal about it. Sandy advised her to "tough it out" and is now telling you about it at the next Council meeting. **What can or should be done? Is there any liability here?**

## SESSION II – WORKPLACE VIOLENCE AND POTENTIAL LIABILITY

1. **What is workplace violence?**
  - **Violence/Credible threat of violence**
    - Violence = assault or battery
    - Credible threat of violence = knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety
  - OR**
  - **Course of Conduct**
    - Course of Conduct = pattern of conduct over a period of time that would place a reasonable person in fear
  - PLUS**
  - **Nexus to the workplace**

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2. **Take workplace violence seriously** - *City v. Sooy*, Fire Department, L. A. Sup. Ct.
3. **The serious vs. the seriously annoying**
4. **The Citywide Workplace Violence Policy**

Behavior covered by City WV Policy

- Violent physical acts
- Direct or implied threats to do harm to person or property
- Verbally abusive or intimidating language or gestures
- Threatening, abusive, or harassing communications (all kinds)
- Unauthorized possession of a weapon at the workplace
- Destructive or sabotaging acts against property
- Engaging in pattern of unwanted or intrusive behavior towards another
- Violating a restraining order

5. **The Citywide Threat Assessment Team** - Seven Members
6. **Handling and Results of the Serious Threat**

Administrative Action

- Loss of position on Board (*Check your bylaws!*)
- Decertification

TRO/Corporate Restraining order - Code of Civil Procedure Section 527.8

- Nexus to Workplace
- Future conduct or future harm
  - *Scripps Health v. Marin*, 72 Cal.App.4th 324 (1999)
- Intent - Intent to cause fear only - Not an intent to carry out the threat
  - *People v. Carron*, 37 Cal.App.3d 1230 (1995)
- Reasonable person standard
- Actual fear (required)

Criminal Liability

- Criminal Threats (Penal Code 422)
- Gun/weapon charges (search warrant)
- Annoying phone calls (Penal Code Section 653m)
- Assault/battery (Penal Code Sections 245/242)

7. **First Amendment Issues** - (Freedom of speech and association) – public persons

8. **Civil Liability for Engaging in Workplace Violence – Who can be sued???**

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**SERIOUS OR SERIOUSLY ANNOYING??**

**Scenario No. 1**

You are one of 25 members of the Dysfunctional Neighborhood Council Board (DNCB). Another member, Fahid, comes to you and tells you he overheard the DNCB President, Robert, threaten to shoot two other council board members. Fahid is not a dependable member (absenteeism and poor performance), and Robert is well liked. You are aware that Robert was the primary backer of a recommendation for voting Fahid off the Council made only two weeks before, and you are aware Fahid knows this. **You should.....**

**Scenario No. 2**

You find yourself waiting, alone at night, for a Council committee meeting, on which you are a member, to begin. A homeless woman comes on the property and asks to use the restroom. She has clearly been drinking, is swaying on her feet, and has a half full beer bottle in her hand. You recognize her as someone who frequents the area and who has caused trouble in the past by screaming and yelling and cursing at council members. When you tell the woman the restrooms are locked, she responds by yelling "You b----!! What's the matter, I'm not good enough for your precious Neighborhood?!!!" then swings the beer bottle and throws it at you. As the bottle breaks on the wall behind you, the woman staggers unsteadily towards the street after yelling "B----!!" **You should..... Is there civil or criminal liability here?**

**Scenario No. 3**

You were recently elected president of your neighborhood council. At the first meeting with you as president, a council member, Bill, becomes angry over a minor issue, and loudly yells at another Neighborhood Council member "I know you're the one behind all this!!" while slapping her in the face with a stack of papers in his hand. He then stalks off, and over his shoulder yells, "You better watch your back!!!" The other Council members tell you that's just how Bill is. **How should you deal with the situation? Is there any civil or criminal liability here and, if so, for who? Would it make a difference if you found out Bill's wife is terminally ill?**

**SESSION III – FINANCES – CIVIL & CRIMINAL LIABILITY**

1. **Checks and Balances** – Two signatures on checks helps protect you from liability.
2. **Keep Accurate Financial Records** – Accurate and consistent record keeping avoids liability pitfalls – civil and criminal!! Public Records Act opens your books!!! Avoid the appearance of impropriety!!!
3. **Nepotism** (using your position, power, or influence to confer job benefits to a relative or someone with whom you have a close personal relationship) - Even if legitimate, nepotism creates an appearance of impropriety and conflict of interest.
4. **Possible Criminal Liability** – Theft, embezzlement charges – misdemeanor & felony.

5. **Possible Civil Liability** – For both you personally AND the City.

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**SESSION IV – SPEECH AND PRIVACY CONCERNS**

1. **Constitutional Right to Privacy** – U.S. Constitution prohibits government intrusions into the private lives of citizens, but California Constitution, Article I, Section 1, specifically guarantees a right of privacy. But right is NOT absolute, as noted below.
2. **Fourth Amendment** (Right to be free from unreasonable search & seizure) – However, employer may have access to employee work areas in the pursuit of its business. *O'Connor v. Ortega*, 480 U.S. 709 (1987). Can include computer hard drives, network servers, and email storage hardware.
3. **Public Records Act** – Request can be made by media, stakeholders, public.
4. **Tape Recording** – Public recording allowed, but not secret, private recording (Penal Code Section 632).
5. **Phone Records** (includes cell phone records and blocked calling) – Can be subject to the City or the PRA if paid for with NC funds. Always potentially subject to subpoena in civil or criminal actions, or criminal investigations.
6. **Freedom of Speech** – Stakeholders or board members may sometimes push the limits of tolerance, and a NC is a free speech arena, but criminal speech is not protected speech.
7. **Defamation** – Speech that constitutes defamation can create liability for board members AND for stakeholders as well.
8. **Disruptive Behavior** – Penal Code Section 403 - “Willfully” disturbing or breaking up a meeting – WARN first!

**THINGS TO REMEMBER**

1. Leave pre-conceived attitudes at home.
2. Know your protected classes.
3. Take serious workplace violence allegations seriously.
4. Contact your DONE Project Coordinator and WV Coordinator with any concerns, except for imminent threats call 911.
5. Speak civility to avoid civil liability.
6. Keep your Neighborhood Council’s finances and records as organized as you would your bank’s.
7. Available resources:

DONE Project Coordinator or Empowerment Analyst

DONE WV Coordinator: Michael Vitkiewicz 213-485-1822

City Attorney’s Office: Vivienne Swanigan 213-978-7156

Hugo Rossitter 213-978-7153