



INSTITUTE FOR LOCAL GOVERNMENT

GETTING THE MOST OUT OF PUBLIC HEARINGS: AN IDEAS INVENTORY

- How can local officials ensure the fullest participation and opportunity for expression at public hearings?
- How can other public forums supplement the public hearing process?
- How can local officials effectively inform participants and the broader community about the issues at hand?
- How can public hearings provide more useful feedback that takes into account hard choices and trade-offs?
- How can local officials encourage clear, civil, and reasoned presentations and informed exchanges of views at the hearing?
- How do decision-makers ensure and demonstrate that public ideas and recommendations are taken seriously?

This pamphlet explores these questions and offers practical ideas to maximize the effectiveness of public hearings. It is not a sequential “how-to” list of steps for planning and holding public hearings. It is an inventory of ideas, each of which may be useful for some public hearings and inappropriate for others.

On that point, it’s important to distinguish the different types of public hearings. Hearings for legislative decisions – such as general plan adoptions – are quite flexible. Thus, most if not all of the suggestions here can be incorporated into appropriate legislative hearings to maximize public participation.

Quasi-judicial hearings, however, when the agency is applying general policies to specific facts or a permit application, can be more constrained. As the name suggests, in quasi-judicial hearings, the public agency

decision-makers are assuming a more judge-like role. Also, rules relating to fair process and fact-finding apply. Local agency officials and staff should consult with their agency’s attorney to determine the extent to which the ideas contained in this inventory may be incorporated into such procedures.

Additionally, some ideas in this inventory will have more relevance to the role of elected or appointed officials in public hearings, while others will apply more directly to the work of staff. In some cases, presiding and participating officials, as well as staff, may find that they need additional skills to put selected changes into practice.

Note: An annotated version of this pamphlet is available at the Institute for Local Government website: www.ca-ilg.org/publichearings.

PUBLIC HEARINGS: AN IMPORTANT STEP IN PUBLIC DECISION MAKING

The public hearing is a common vehicle through which public agencies receive public input on a proposed action. Public hearings typically provide the public an opportunity to offer their thoughts on a policy matter or a specific proposal that is before the agency for decision. The role of governing body members is to hear and consider those views when making a decision.

A typical hearing will involve:

- A report to a council, commission or board given by a staff member
- Questions of the staff from the decision-making body
- The opening of the public hearing
- A statement by the project/policy proponent or applicant
- Statements in support and opposition
- Rebuttals and closing statements
- An immediate or later decision by the decision-making body.

For more nuts and bolts information about public hearings, please see the *Planning Commissioner's Handbook*, available at www.ca-ilg.org/planners and jointly published by the **League of California Cities** and the **Institute for Local Government**.

QUALITIES OF MORE EFFECTIVE PUBLIC HEARINGS

How can local agencies take best advantage of the opportunities for the public engagement that such hearings represent? Public officials and the community will benefit if public hearings are:

- INCLUSIVE**
- INFORMED**
- INFLUENTIAL**

It is helpful to address each of these areas when planning for public hearings. Of course one size is unlikely to fit all. Some of the ideas are appropriate for most or all public hearings, while others are tools with more limited application.

1. FOR INCLUSIVE PUBLIC HEARINGS

Public hearings are often attended by the “vocal few” alone. Many voices in the community are not heard from at these hearings – even when they have interests at stake. Striving for more inclusive participation at public hearings will lead to better decisions and more support for the decisions or policies that are ultimately adopted. It will also add to the democratic skills and practices of residents.

The following ideas can help to achieve attendance goals and ensure the fullest expression by hearing participants:

A. Maximizing Attendance

- Prepare and distribute informational materials ahead of time, in translation as appropriate, that explain the purposes and objectives of the hearing, the subjects to be covered, details of time and location, and guidelines for participation.
- Ensure that notices are provided to public interest groups, businesses, neighborhood groups and other stakeholders who are likely to be concerned about the hearing topic.
- Publicize hearings through multiple media outlets, including those media reaching ethnic, younger and any typically less involved populations and communities. Have notices appear in the languages used by the residents in your communities.
- Include notice on the agency website and other places easily available to online users.
- Be prepared for the needs of those with disabilities.
- Schedule meetings at times and places that are convenient for all those who you wish and expect will attend. Also, consider multiple meetings at different sites, perhaps co-sponsored by community groups, as a way to increase attendance.

“Legally required methods of public participation in government decision making...often pit citizens against each other, as they feel compelled to speak of the issues in polarizing terms to get their points across. This pattern makes it even more difficult for decision makers to sort through what they hear, much less to make a choice using public input.”¹

B. Encouraging Fuller Expression

- ❑ For communities with a particular interest in the hearing topic but with little experience in such participation, provide instruction through respected intermediaries on how to prepare and participate in the public hearing process.
- ❑ If consistent with any security concerns, consider changing the physical setting of the meeting room to reduce feelings of distance between public officials and participants, thereby underscoring your welcoming of public comments.
- ❑ Provide access to audio-visual materials and/or staff reports that are to be part of agency presentations.
- ❑ Provide translation services as needed.
- ❑ Provide food, paper, pencils, and name tags to underscore the agency's respect for participants and interest in their views. A table at the hearing room can also provide meeting guidelines, background information and other relevant materials.
- ❑ Toward the end of a hearing, ask if others are present who have not yet spoken but would like to do so.

GET THE SKILLS YOU NEED

Local officials and staff who plan, preside or participate in public hearings and that apply the ideas in this pamphlet may find it useful to acquire additional skills. You can find local training or other sources of information among groups and individuals who do facilitation, mediation or public involvement work. You may also search the League of California Cities bookstore (www.cacities.org/citybooks) or contact the Collaborative Governance Initiative at the Institute for Local Government.

2. FOR INFORMED PUBLIC HEARINGS

While honest disagreements will always occur, many residents who attend public hearings may be poorly informed about the proposed policy or action. Additionally, the nature of the communication at these hearings can shed more heat than light. Public hearings will be more effective and useful when participants are better informed on the issues at hand, and when reasoned and knowledgeable presentations and exchanges take place at the hearing. As with more inclusive and influential public hearings, more informed hearings will lead to better decisions and more support for those decisions or policies that are ultimately adopted.

A. Informing Participants

- ❑ Use local papers and other media, as well as government online resources, to provide information on the topic in advance of the hearing. A recent study suggests that more successful hearings were accompanied by a greater number of educational methods.²
- ❑ When possible, have on hand relevant explanatory materials developed by respected and impartial sources.
- ❑ As practical, make use of visual aids such as PowerPoint, graphs, maps, models, etc., as well as presentations, to aid understanding.
- ❑ Ensure that the staff person giving the initial presentation is well prepared to launch the meeting,³ with complex background information organized and presented clearly.
- ❑ In appropriate instances, consider opening the hearing with people seated five or six to a table, with each table discussing information about one particular theme or aspect of the hearing topic. Ground rules would be required. This approach encourages joint information sharing at the table – often among people with different points of view – as well as relationship building. This would be followed by “typical” public testimony, with perhaps better-informed participants and more readily “heard” presentations. (Note that advanced information about the process, and effective facilitation, will be required.)

- ❑ Prior to a formal public hearing, there are many forms of dialogue and deliberation that may be used to inform the public about the hearing issues. Agencies should approach public participation from a strategic standpoint rather than considering any one method.⁴ For information on other approaches, please see the ILG website at www.ca-ilg.org/cgi.
- ❑ Also see The Public Hearing Checklist at www.ca-ilg.org/publicparticipation.

B. Improving Communications at the Hearing

- ❑ Initial staff presentation(s) should clearly describe the agenda, frame the issue(s) and clarify the process and procedures for the meeting, including how citizen input will be managed and captured.⁵ Have materials at the hearing that suggest how participants should structure their comments, guiding them to express not only positions but reasons and perhaps the values behind their reasons.
- ❑ To ensure good communication, the presiding official must manage the speaking time of hearing participants. However, through prepared materials, introductory remarks and actions, demonstrate that public officials wish to listen and learn as well as enforce time limits. Showing fairness and respect will enhance communication at all levels and advance hearing goals.
- ❑ Consider the use of a facilitator, who is not a member of the public body convening the hearing, to help design group process and manage the meeting. This is especially important if an interactive hearing component is designed to encourage dialogue among attendees, or between officials and the public. (As with some other ideas presented here, this would more likely be appropriate at quasi-legislative public hearings where some flexibility of format is possible.)
- ❑ Consider holding question and answer sessions before or after the session (perhaps online in some cases) to answer questions raised by the public that cannot be addressed at the hearing.

Local agencies have a number of options when it comes to engaging the public in the decision-making process. Exploring those options and their respective strengths and weaknesses is a major focus of the Institute for Local Government's Collaborative Governance Initiative (www.ca-ilg.org/cgi).



- ❑ Thank participants after they finish their remarks, and perhaps summarize what has been heard from each speaker (this can be done verbally or on chart paper or a large screen). Officials can also ask clarifying or follow-up questions.
- ❑ While it is typical and wise to have common time limits for speakers, consider asking participants to stick with one theme or thread of the discussion at a time to enhance information sharing and reduce duplication of points made.
- ❑ Encourage participants to identify and express the values that drive their feelings and opinions on an issue. There are few problems facing agencies that don't entail choices in values. Listen for those values in public testimony; ask about them; and help name them. This inclusion of "values talk" can help clarify speakers' intents and interests and improve communication and understanding in hearings."⁶ (Please see sidebars on Values and Public Hearings on pages 5 and 7.)
- ❑ For very contentious issues, it may be helpful to design a broader and more interactive public process that precedes the public hearing. Hearings that occur late in the decision-making process can create the impression that local officials do not want meaningful public input. Possible approaches for public engagement include community dialogues, consensus building sessions, charrettes and other collaborative planning processes, visioning workshops, and more. The best specific approach depends on the issue in contention, desired goal(s) of the process, community context, and available resources. For more information on options, please see the ILG website at www.ca-ilg.org.

3. FOR INFLUENTIAL PUBLIC HEARINGS

Public policy choices can involve hard choices and trade-offs on issues and values that community members often care deeply about. Public trust is eroded if hearings appear to be just “going through the motions.”

Particularly in quasi-judicial decision-making, sound decision-making and due process involve making reasoned decisions after having considered to all the evidence and argument presented.⁸ An ideal result of any public hearing is that participants believe that decision-makers respectfully heard and carefully considered their perspectives, whether or not decision-makers agreed with their perspectives.

Such an approach will also lead to better decisions and more support for the decisions or policies that are ultimately adopted.

A. Confronting Hard Choices

- ❑ The presiding official should clearly explain the purpose of the hearing, and emphasize the key questions, choices and/or values that underlie the proposed action or policy.
- ❑ Guidance for participant testimony should encourage remarks that are specific in nature, tied closely to the topic, and address hard choices and trade-offs.
- ❑ Ensure that officials have the time to ask follow up and clarifying questions. This can be an effective way to encourage speakers to clarify comments, go beyond vague or general statements, surface reasons and values, and/or more clearly comment on real trade-offs. (This can be tricky and if handled poorly can sound like a challenge rather than a request for more information.)



- ❑ A facilitator can also be used to listen to each speaker and ask follow-up questions that “drill down” to more specifics or the consideration of hard choices.
- ❑ Use flip charts or other recording mechanisms to summarize points as they are made.
- ❑ In addition to improving communication generally (see above) a discussion of the respective and (at times) competing values associated with different public actions or policy directions can help clarify and validate the real trade-offs that may be at issue. (Please see sidebar on Values and Public Hearings.)

VALUES AND PUBLIC HEARINGS

Public hearings can highlight divisions within the community about how the community's interests will be best served. For example, many conventional decision-making forums push the discussion of public issues to positional points of good/bad and yes/no. How can public officials counteract the contentious and divisive nature of the public hearing process and encourage participants to engage in a more constructive analysis and discussion?

One way is to encourage participants to focus on the core values at stake in a decision. Examples of core values include fairness, community, economic prosperity, compassion, responsibility, and environmental stewardship. Most public policy dilemmas involve tensions between at least two values. People are more likely to find a “good” solution if they understand decisions are less about “good” and “bad” and more about how to do a good thing without jeopardizing another good thing.⁷

Whatever values come into play and no matter what they are called, recognizing them will help people understand their differences. It will also help them talk more clearly and constructively about what they want. Greater clarity, understanding and respect regarding agreements and differences usually result.

- ❑ Consider breaking the hearing up into two parts. In the first, take comments as usual. Then, following a break (perhaps with food and social interaction), present a visual and oral summary of points made so far (perhaps organized around implied or explicit values) and ask for clarifying or rebuttal points in specified areas. (Of course the hearing process will typically require that all comments be taken – consult your local agency attorney to look at how a two-part hearing might be done.)

B. Developing Public Trust in the Decision-Making Process

- ❑ The presiding official's introductory remarks should describe how local officials will use the information and ideas offered at the hearing.
- ❑ Each public official present should have a common understanding of the purpose of the public hearing, the timing of decision-making, and how the decision will be communicated.
- ❑ As appropriate, provide a word for word or summary record of the hearing and make it available to all participants. In some cases an audio or video recording of the hearing may be made available online. This can greatly expand the number of people informed about the issue, enhance government transparency, and help legitimize decisions.
- ❑ If within capacity, ask participants if they want to receive follow-up information on the hearing topic, either by mail or e-mail, as it becomes available, including opportunities for further input.
- ❑ Send letters of appreciation to all participants with information on any official decisions made subsequent to testimony, stating the importance of their hearing participation.
- ❑ Strive for decisions that are clear, consistent with applicable legal standards, and broadly disseminated. Where appropriate, help explain a decision in light of the value or values tension that the decision represents as a way to further illuminate the reasons for its adoption.



- ❑ Consider open follow-up meetings to discuss hearing findings and conclusions. Post-hearing feedback can help build critical citizen trust and foster ongoing public participation.⁹
- ❑ Prepare and use a good communication strategy to transmit the process and results of the hearing to the community as a whole. This can include, city-authored and independently written newspaper articles, direct mail, e-communication, etc.

FINAL THOUGHTS

Public hearings are an important vehicle for encouraging public input and participation in the decision-making process. However, they can be one-way forms of communication that are seen as “last chance” opportunities to make a point. There is also the risk that decision-makers will not hear from a representative cross-section of the community at these hearings, but instead from what one political consultant calls “the vocal few.”

Laws requiring public hearings are usually (but certainly not always) minimum standards, with room for reworking hearing processes and procedures, and considering additional input methods.²²

For important public issues, consider more flexible and deliberative public processes – held before a public hearing is scheduled – that will contribute to a decision with a high level of community input and support. For additional ideas on public engagement strategies, visit the Collaborative Governance Initiative portion of the Institute for Local Government's website at www.ca-ilg.org/cgi.

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EMOTIONS AND CONFLICTS IN PUBLIC HEARINGS

People who attend public hearings can be passionate, nervous, angry, frustrated, scared, confused, or uncertain about the issues, the hearing itself, or the possible outcomes. Emotions can run high. Conflicts among participants or between participants and officials may result. So what to do?

- 1. Be Real.** Peoples' feelings are real and conflicts do happen. To pretend or act otherwise will often make people feel angrier and less "heard."
- 2. Guide Communications.** Clear hearing rules, as well as "good-practice" guidelines for how attendees can effectively make their views or concerns known can help reduce stress and promote good communication and civility.
- 3. Be Attentive.** While not taking sides, the presiding and other officials can acknowledge the verbal and emotional expression of speakers. One aspect of this is good body language that shows respect, diligence and attentiveness. A public official's clarifying question can also reduce a participant's fear that no one is really hearing the concerns being expressed.
- 4. Ensure Clarity.** As described elsewhere, recording in some way what hearing attendees are saying, as well as clarifying early how input will be used and how final decisions will be made, will contribute to less stress, confusion and anger. Transparency by public officials almost always helps.
- 5. Acknowledge What You Hear.** If done with skill, it is also possible to feed back (in brief summary) what you have heard a speaker say ("so you're saying you believe this would kill all the fish in the stream, is that right?") or acknowledge strong feeling ("this is something that you've cared a lot about for a long time isn't it?"). This can be done while staying in an appropriate role and without being seen as taking sides.

Practice helps of course, and equal treatment for all is important. Time is always a factor that may limit such interactions at a specific hearing.

6. Identify Values And Interests.

Look for and ask about values and interests that underly speakers' expressed positions. People can more often understand each other's values and interests before they accept different positions. Here's an example:

- "I think children are vitally important to of our community" (value);
- "I want the health of our children protected" (interest);
- "I want a legislated limit on the amount of mercury in our water supply" (position).

There are usually more ways to satisfy interests than to bridge conflicting positions. This kind of conversation can reduce or more clearly focus conflicts and differences.

- 7. Dealing With Conflict.** Interpersonal conflicts that result from the issue in controversy cannot be addressed directly in the hearing. However, these are dynamics that linger, affect the quality of individual and community life, and may reignite in the future. Local officials may wish to encourage that unresolved interpersonal conflicts be addressed through a local mediation program or similar resource, especially when they are tied to an agency's decision.

Conflicts between the public and officials at public hearings are a more complex matter. However, clear process, good listening, and acknowledging the input received will help reduce the likelihood of bad feelings and ongoing conflict. Where appropriate, more and earlier public dialogue (before the public hearing) will also help. Decisions that reference interests (see above) and values (see "Values and Public Hearings", p. 5) will also tend to enhance understanding and reduce unnecessary conflict.

THE LAW AND PUBLIC HEARINGS

Two key values to consider during public hearings are fairness and respect.

Legislative versus Adjudicatory Decisions

The law sets certain minimum standards for fairness, according to whether the decision to be made at the hearing is legislative or adjudicatory. Legislative decisions generally involve fundamental policy questions of jurisdiction-wide concern; legislative decisions also can involve changes in existing law to govern future situations. Adjudicatory decisions tend to apply existing legal criteria to specific situations;¹⁰ they also tend to determine specific rights based upon specific facts determined from evidence evaluated at the hearing.¹¹

Findings and Judicial Review

Adjudicatory decisions are subjected to more exacting judicial review and should be accompanied by carefully drawn findings in support of the decision made.¹² To withstand such review, the agency's findings must bridge the analytic gap between the raw evidence and ultimate decision or order, to show courts the analytic route decision-makers traveled from the evidence to their decision.¹³ Note though that the law sometimes requires findings for legislative matters.¹⁴

Decision-maker Conduct, Information and/or Bias

Disqualify yourself if you have any direct or indirect financial interest in the outcome of the hearing and assess ethical considerations when other issues may impact your actual or perceived fairness. (Please see "**Key Ethics Law Principles for Public Servants**" available through the Institute for Local Government at www.ca-ilg.org/trust.)

When evaluating adjudicatory decisions, courts will also examine whether decision-makers were fair and unbiased.¹⁵ This includes whether decision-makers have taken sides in advance of the hearing.¹⁶

Courts also will look at such issues as how the hearing was conducted. For example, did the individual or company whose rights were the subject of the hearing have an opportunity to respond to adverse information?¹⁷ This is why many agency attorneys advise decision-makers to disclose any information that they may have received outside of the hearing. Another issue is whether decision-makers were attentive at the hearing.¹⁸

Notice

Another aspect of a fair hearing is notice. The law frequently specifies the public notice required for certain kinds of hearings. For example, most local agencies are subject to a general meeting notice requirement that agendas be posted at least three days (72 hours) before a meeting in a location that is freely accessible to the public.¹⁹ Notice for legislative actions typically involves publication of the notice in a newspaper (typically 10 days before the hearing). Adjudicatory decisions typically involve mailed notice to specified individuals or, under certain circumstances, a newspaper ad.²⁰

In addition, members of the public can make a written request to receive mailed copies of agendas and supporting materials. The agency may charge a fee to recover the cost of providing this service.²¹ Of course, some agencies also make it a practice to post such materials on their websites. State law imposes a variety of notice requirements for certain kinds of hearings, as do general open government laws. For more information on open government requirements, please see **The ABCs of Open Government Laws** available from the Institute for Local Government at www.ca-ilg.org/trust.

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¹ Judith Innes and David Booher, *Reframing Public Participation: Strategies for the 21st Century*, *Planning Theory & Practice*, Vol. 5(4): 419-436 (2004).

² William H. Baker, Lon Addams & Brian Davis, *Critical Factors for Enhancing Municipal Public Hearings*, *Public Administration Review* 65(4): 493 (2005).

³ *Id.* at 495.

⁴ Lawrence C. Walters, James Aydelotte & Jessica Miller, *Putting More Public in Policy Analysis*, *Public Administration Review* 60(4): 349-59 (2000).

⁵ Baker, Addams & Davis, *supra* at 495.

⁶ Betsy Bean, *Public Problems, Private Values: A New Framework for Helping Boards Solve Controversial, Divisive Problems*, Small Cities Publishing, Georgia Municipal Association (2005) (available at www.gmanet.com).

⁷ *Id.*

⁸ See *Lacy Street Hospitality Service, Inc. v. City of Los Angeles*, 125 Cal. App. 4th 526 (2d Dist. 2004) (depublished 2005 Daily Journal D.A.R. 84).

⁹ Baker, Addams & Davis, *supra* at 498.

¹⁰ See *Briggs v. City of Rolling Hills Estates*, 40 Cal. App. 4th 637, 649 (2d Dist. 1995).

¹¹ *ABS Institute v. City of Lancaster*, 24 Cal. App. 4th 285, 295 (2d Dist. 1994).

¹² *California Aviation Council v. City of Ceres*, 9 Cal. App. 4th 1384, 1393 (5th Dist. 1992).

¹³ *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974).

¹⁴ *ABS Institute v. City of Lancaster*, 24 Cal. App. 4th 285 (2d Dist. 1994).

¹⁵ *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1234-41 (2d Dist. 2000).

¹⁶ *Nasha L.L.C. v. City of Los Angeles*, 125 Cal. App. 4th 470 (2d Dist. 2004).

¹⁷ *Desert Turf Club v. Board of Supervisors*, 141 Cal. App. 2d 446, 455 (1956).

¹⁸ *Lacy Street Hospitality Service, Inc. v. City of Los Angeles*, 125 Cal. App. 4th 526 (2d Dist. 2004) (depublished 2005 Daily Journal D.A.R. 84).

¹⁹ Cal. Gov't Code § 54954.2(a).

²⁰ *Hayssen v. Board of Zoning Adjustments*, 171 Cal. App. 3d 400 (1985).

²¹ Cal. Gov't Code § 54954.1.

²² Walters, Aydelotte & Miller, *supra* at 491.

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