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SECTION 3

Public Participation in Land Use Planning



THE IMPORTANCE OF PUBLIC PARTICIPATION

Public participation in local decision-making is fundamental to democracy. As a planning commissioner, the public will evaluate your service not only based on the wisdom of your decisions, but also on your commitment to involving the public in decision-making.

There are many reasons to involve the public in planning and land use decision-making. Perhaps most importantly, participation builds a sense of community. Individuals feel more connected when they are involved in the process of developing solutions to community problems. Moreover, individuals who are not involved in developing solutions are more likely to resist the solutions once developed. People who make contributions to the decision-making process often

report that they walk away with a feeling of pride and a stronger connection to the community.

OPEN MEETING REQUIREMENTS

California's open meeting law—commonly referred to as the Brown Act¹—provides the legal minimum for public engagement in meetings. All local legislative bodies—which includes planning commissions and many advisory committees—must conduct their business in an open and public meeting to assure that the public is fully informed about local decisions.²

Under the Brown Act, a “meeting” is defined as any situation involving a majority of a local legislative body's members in which business is transacted or discussed. In other words, a majority of the planning commission cannot talk privately about an issue before the commission no matter how the conversation occurs, whether by telephone or e-mail or at a local coffee shop.³

The following are some key points about the Brown Act that you should understand:

- **Meetings.** A “meeting” as any situation involving a majority of the commission in which business is transacted or discussed. This applies not only to the commission itself, but also to any advisory groups or committees created by the commission that are composed of a quorum (majority) of planning commissioners, have a continuing subject-matter jurisdiction, or have a meeting schedule fixed by

¹ Cal. Gov't Code §§ 54950 and following.

² See Cal. Gov't Code § 54952.2(a); Cal. Gov't Code § 54954.2(a).

³ Cal. Gov't Code § 54952.2(b).

formal action of the commission or the governing body.⁴

- **Serial Meetings.** One thing to watch for is unintentionally creating a “serial” meeting—a series of communications that result in a majority of commissioners having conferred on an issue. For example, if two members of a five-member commission consult outside of a public meeting (which is not in and of itself a Brown Act violation) and then one of those commissioners consults with a third commissioner on the same issue, a majority of the commission has consulted on the same issue. The communication does not need to be in person. Sending or forwarding e-mail can be sufficient to create a serial meeting.
- **Permissible Gatherings.** Not every gathering of commissioners amounts to a violation. For example, an open meeting violation would not occur if a majority of the commission attended the same educational conference or attended a meeting not organized by the local agency. Nor is attendance at a social or ceremonial event in and of itself a violation. The basic factor to keep in mind is that a majority of the commission cannot meet and discuss business except at an open and fully noticed meeting.
- **Closed Sessions.** The Brown Act includes provisions for closed discussions under very limited circumstances, most of which do not apply to planning commissions. A commission may meet in a closed session to receive advice from its legal counsel regarding pending or reasonably anticipated litigation. However, the reasons for holding the closed session must be explained in the agenda.⁵

Because of the complexity of the Brown Act, it is important to be in close consultation with the planning commission's legal advisor to ensure that its requirements are observed.

POSTING AND FOLLOWING THE AGENDA

The Brown Act requires that the public be informed of the time of and the issues to be addressed at each meeting.⁶ The agenda must be posted at least 72 hours



What Happens When the Brown Act Is Violated?

Decisions that are not made according to the Brown Act—including the notice and public participation requirements addressed below— are void. Additionally, commissioners who intentionally violate the Brown Act may be guilty of a misdemeanor.⁷

in advance of a meeting and written in a way that informs people of what business will be discussed (this is shorter than the 10-day notice requirement for a public hearing, see Section 2, page 15). Any person may request that a copy of the agenda packet be mailed to them. Many cities and counties also post these materials on their websites. There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances:

- **Need Arises After Agenda Posting.** Items may be added to the agenda if they arose after the agenda was posted. The commission must make these determinations by a two-thirds vote of the members present (or a unanimous vote if less than two-thirds of the members are present).⁸
- **Emergency Meetings.** Emergencies—such as work stoppages, events that impair public safety, and immediate perils—may justify discussion and action on an item not appearing on the posted agenda.⁹ A majority of the commission must determine that such circumstances exist.¹⁰
- **Special Meetings.** The chair or a majority of the commission may call a special meeting, but an agenda must be posted 24 hours in advance and 24-hour written notice must be given to each commissioner and each newspaper, radio, or television station requesting notice of meetings. Any commissioner may waive the written notice requirement by filing a written waiver with the clerk or merely by attending the special meeting.¹¹

⁴ Cal. Gov't Code § 54952(b).

⁵ Cal. Gov't Code § 54956.9.

⁶ Cal. Gov't Code § 54954.2(a).

⁷ Cal. Gov't Code § 54959.

⁸ Cal. Gov't Code § 54954.2(b)(2).

⁹ Cal. Gov't Code § 54954.2(b)(1).

¹⁰ Cal. Gov't Code § 54956.5(a).

¹¹ Cal. Gov't Code § 54956.

In general, the commission may only discuss and act on items included on the agenda. However, commissioners or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items. Commissioners can also make requests to staff to place a matter on the agenda for a subsequent meeting.

THE PUBLIC'S RIGHT TO PARTICIPATE AT MEETINGS

A third element of the Brown Act is that the public has a right to address the planning commission at any open meeting on any subject before it. Your role as a commissioner is to both hear and evaluate these concerns. There are a number of basic rules that govern this right:

- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure that everyone has an opportunity to be heard in an orderly manner. Typical restrictions include time limits, prohibitions of repetitious or irrelevant comments,¹² and ruling as out of order personal attacks on the character or motives of any person. The chair may also suggest that a spokesperson be chosen for a group.
- **Taping or Recording of Meetings Is Allowed.** Anyone attending a meeting may record it with an audio or



For More Information

- *The Brown Act: Open Meetings for Local Legislative Bodies*, 2003. Available on the California Attorney General's website at www.caag.state.ca.us (click on "Publications," then click on "General Publications and Forms").
- *Open and Public III: A User's Guide to the Ralph M. Brown Act*, 2000. Available on the League of California Cities website at www.cacities.org/store or by calling (916) 658-8257.

video recorder unless the commission makes a finding that the noise, illumination, or obstruction of view will disrupt the meeting. Any tape or film made by the local agency becomes a public record that must be made available to the public for at least 30 days. The agency must provide equipment to review the record without charge.¹³

- **Sign-In Must Be Voluntary.** Members of the public cannot be required to register their name or fulfill any other condition for attendance at a meeting. If an attendance list is used, it must clearly state that signing the list is voluntary.¹⁴

If a group willfully interrupts a meeting and order cannot be restored, the room may be cleared. Members of the press must be allowed to remain and only matters on the agenda can be discussed. However, the chair cannot stop speakers from expressing their opinions or their criticism of the planning commission.¹⁵ Again, the basic point is that members of the public have the right to make their viewpoints known on any issue.

THE PUBLIC'S RIGHT TO ACCESS DOCUMENTS

The public's right to access documents is guaranteed by both the Brown Act and the Public Records Act. Under the Brown Act, copies of the agenda materials and other documents distributed to the planning commission must also be available to the public.¹⁶ Any materials distributed by the local agency, its consultants, or commissioners must be available for public inspection at the meeting. Materials prepared and distributed by some other person must be made available after the meeting.

The Public Records Act gives the public the right to see any documents that are created as part of the planning process.¹⁷ This is referred to as the "record." The record includes any writing containing information relating to the conduct of the public's business that was prepared, owned, used, or retained by a public agency. It includes documents, computer data, e-mails, facsimiles, and photographs. A document is presumed to be a public record unless a specific exception applies.¹⁸ Two minor exceptions worth noting are:

¹² Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

¹³ Cal. Gov't Code § 54953.5.

¹⁴ Cal. Gov't Code § 54953.3.

¹⁵ Cal. Gov't Code §§ 54954.3(c), 54957.9; *Perry Educational Association v. Perry Local Educators' Association*, 460 U.S. 37, 46 (1983).

¹⁶ Cal. Gov't Code § 54957.5.

¹⁷ See generally Cal. Gov't Code §§ 6250 and following.

¹⁸ *State ex rel. Division of Industrial Safety v. Superior Court*, 43 Cal. App. 3d 778 (1974); *Cook v. Craig*, 55 Cal. App. 3d 773 (1976).

TOO MUCH OF A GOOD THING?

Evaluating the Testimony of Vocal Groups

Sometimes you may be tempted to think that there might be such a thing as too much public participation. This may be the case particularly when a vocal group shows up at a meeting to protest—or support—a particular agenda item. Typical scenarios include people who believe that a project might affect “the character of the neighborhood,” that a project must be approved to provide much-needed jobs, or that rejection of a project is necessary to protect the environment.

What kind of weight do you give to the testimony of a small group, particularly if you are considering taking a position contrary to the one that they presented? Consider whether the viewpoint expressed by the group represents the opinion of the community as a whole or just a vocal minority. You might also want to think about the views of those who did not show up to protest (it is less common for people who support a project to come out in large numbers). If the proposal would affect hundreds of residents and only twenty show up, it could be fair to say that the twenty may not represent the majority of affected people. On the other hand, you should also consider why the particular individuals appeared at all. It might be that their properties or lives will be the most affected by the decision.

Even if the group does represent the majority of residents in the area, what do you do if you believe that the opposite choice is necessary for the good of the community? One option, if time permits, is to reach out to the community through some of the more creative outreach strategies discussed later in this Section. Acknowledging that both sides share a concern about the community can be helpful in that it shows that everyone’s views have been heard and respectfully considered. For outreach to work, however, communication must go both ways. Don’t initiate an outreach effort just to advocate your point of view—people will sense that and their positions will entrench further.

Finally, whatever you decide, it is often helpful to explain why you believe a particular course of action better serves the community’s needs. Indicate the depth of thought you have given to the issue—particularly if you have linked your decision to values with which many people agree. Of course, there will always be a few who will remain upset and unforgiving. The very nature of public service means that you cannot please all of the people all of the time. As one official explained: “It’s a job to do, not a job to have.” At some point, you must evaluate whether keeping your position as a commissioner is more important than making the kinds of tough decisions that are involved in doing the job well.

- The “pending litigation” exception, which exempts documents that are prepared in support of ongoing litigation (otherwise opposing counsel could obtain all documents containing the agency’s legal strategy just by asking for them).
- The “deliberative process” exception, which exempts preliminary drafts, notes, or other information relating to deliberative processes not ordinarily retained in the agency’s course of business. The reason is to allow staff a certain degree of freedom to develop

new ideas. The public agency must be able to demonstrate that the public’s interest in nondisclosure outweighs the public’s interest in disclosure.¹⁹ Major drafts generally must be made available.

Despite these exceptions, the safe assumption is that virtually all materials involved in your service on the planning commission are public records subject to disclosure. Public records are subject to inspection at all times during the office hours of the agency in which they are kept.²⁰ The public may also ask for copies of records.

¹⁹ See Cal. Gov’t Code § 6254(a). See also *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159 (1998).

²⁰ Cal. Gov’t Code § 6253(a).

The request must reasonably describe an identifiable record or records subject to disclosure. The agency may charge a fee covering the direct cost of duplication.

REMOVING BARRIERS TO PARTICIPATION

A basic approach to encouraging public participation in planning decisions is to anticipate barriers to participation and remove them in advance. There are several things that may limit an individual's ability or desire to participate. Some view public involvement as "mere politics" and believe that their contributions will not be taken seriously. Others may find the complexity of government structure and finance overwhelming. In many cases, the logistics of attending a meeting present the biggest obstacle.

Designing an inclusive public participation process means taking a number of factors into account, including:

- **Opportunities for Meaningful Participation.** Whatever the format, a public meeting must provide meaningful avenues for communication. When people feel that their comments make a difference, they are more likely to take the time to attend meetings and share their ideas.
- **Effective Outreach Strategies.** Outreach efforts can help in getting more people to attend meetings. Take a look at your community and figure out how people are getting their information. Are notices posted

where they are likely to be read? Are they published in languages other than English? What other opportunities are there to reach a broader audience?

- **Policy Background Pieces.** Many people are unfamiliar with the structure and functions of local government. Information sheets—for example, about how the local agency works, where revenues come from, or the nature of the decision in question—can help people make meaningful comments. They can also help people understand the unique problems faced by local government.
- **Meeting Times.** Planning commission meetings are usually scheduled for evenings. In some cases, they can run late into the night, making it prohibitive for parents and shift workers to attend. Rescheduling occasional meetings to weekdays or weekends may attract a wider range of participants.
- **Other Logistical Considerations.** Many other logistical barriers—such as transportation, language, and childcare—also impede participation. Efforts to minimize these barriers might include making meetings more easily accessible by public transit, providing interpreters, and arranging for short-term childcare on site.
- **Technology.** People do not necessarily have to be present at a meeting to make a meaningful contribution. Taking written comments or soliciting input via e-mail can broaden the scope of comments that are received.

“UPDATED” REPORTS CREATE CHALLENGES FOR THE PUBLIC

Planning commissioners and staff should be sensitive to the challenges the public faces when documents they need to prepare for a hearing are revised at the last minute. Members of the public usually prepare their testimony based on the materials that are distributed with the agenda. When these are revised before the hearing, the public is in the awkward position of having to quickly review the changes at the hearing and determine the extent to which their concerns have been addressed.

Planning commissioners may want to discuss with staff ways to avoid this dynamic. One solution is to put over such matters to the next hearing. This has the advantage of giving staff more time to evaluate what otherwise would be last-minute changes by a project applicant. It may also encourage applicants to address concerns early on since they may not want to see action on their application postponed to a future meeting.

- **Efficient Meetings.** Well-run meetings will influence overall effectiveness. People are more willing to participate in meetings that start on time and stay focused on the issues at hand. In addition, supplemental written materials should be written clearly, using plain language that is easily understood by everyone.

The most important support for broad public involvement may come from the local agency, which sets the tone for community dialogue. Officials and staff who welcome diverse public input are more likely to develop successful solutions that meet the community's needs.

GOING FURTHER: SIMPLE PUBLIC ENGAGEMENT IDEAS

The Brown Act sets a minimum participation requirement. Many local agencies go much further. For many people, local government is a mysterious process with which they are only vaguely familiar. This lack of understanding forms a barrier to their participation.

Improving the flow of information can help to improve the public's trust and confidence in local government. Some ideas include:

- **Getting Information to the Public.** Enhance the readability of public documents. Aim for an eighth-grade reading level. Publish an electronic or paper newsletter that provides brief updates on major plans and projects. Organize a speakers bureau—a list of planners, local officials, and other well-informed persons—willing to speak before service groups, clubs, and classes. Use the city or county website to make information readily available to the public and to permit applicants.
- **Getting Information from the Public.** Periodically survey a cross-section of the community about critical issues and challenges. Place “passive surveys” in the planning department, public libraries, city hall, and shopping malls. Such surveys must be brief. Because the respondents are not selected randomly, the results will not be statistically accurate. However, such

EIGHT MORE WAYS TO ENCOURAGE PUBLIC INVOLVEMENT

- 1 **Use Nontraditional Media.** Write articles for publication in the newsletters and on the websites of local stakeholder groups. Highlight issues and identify ways that people can get involved. The local agency can also publish its own newsletter.
- 2 **Use the Internet.** Post important documents and information on the agency's website.
- 3 **Speaker Series.** Invite outside speakers to provide valuable information and perspectives. Presentations can be one-time events, incorporated into planned programs, or part of a series.
- 4 **Use the Public Access and/or Government Channels.** The public access and/or local government channel on cable television can do more than just broadcast meetings. For big projects, consider using it to broadcast information or visioning surveys and invite the public to respond by submitting their responses to a specific telephone number or e-mail accounts or in person at the next scheduled meeting.
- 5 **Publish a Participation Guide.** Help the public understand how local government works. Avoid jargon. A guide can provide contact and meeting information to help bring individuals into the process. Post it on the Internet and make it available at meetings.
- 6 **Hold Town Hall Meetings.** Meet at a neutral site to seek input before considering a possibly controversial issue at a typical commission meeting. Invite key stakeholders to speak.
- 7 **Create a Task Force.** Create a task force to discuss major issues.
- 8 **Develop a Self-Guided Tour.** A self-guided auto tour encourages residents to drive by certain areas or sites. An accompanying survey about community needs and policy options can be made available by mail or on the Internet. Tabulate responses and use the data to support local planning efforts.



surveys often provide useful information and suggestions that will help the local agency be sensitive to community concerns.

- **Encouraging Participation Around Specific Projects.** Encourage developers and permit applicants to bring their proposals to neighborhood groups early in the application process. This enables them to respond to resident concerns early, before making significant investments in plans and permits. Publicize and maintain a website or a phone number to deal with issues likely to generate a great deal of public comment or inquiry.
- **Working with the Media to Encourage Greater Participation.** Issue news releases and public service announcements (PSAs). Even small agencies can use this technique. News releases can be written and distributed quickly, and the media will often use them word for word. PSAs are news releases for radio stations, written so that they can be read on the air in 15 to 30 seconds. Use community access television to produce shows about planning issues. Work with staff (some public agencies have public information officers) to contact the editor of the local newspaper and suggest news articles or editorials about important planning issues and activities. Arrange for notices, flyers, or other information to be delivered as an insert in the local newspaper. This “print and deliver” service is useful for getting information to a certain geographical part of the community.

As a general rule, public involvement should occur early and often. To be effective, public participation must be structured and meaningful. Endless meetings that lead nowhere can be a considerable drain on agency resources and community patience.

GOING FURTHER: MORE EXTENSIVE ENGAGEMENT STRATEGIES

Many complex problems facing a community will need more than a newsletter or one meeting to reach a solution. A variety of communication tools have evolved in recent years—many made easier with digital technology—that can help the community, and specific groups within the community, participate in public discussions. These include:

- **Visioning Exercises.** Visioning or goal-setting exercises can be used to guide the preparation of a general plan, specific plan, or zoning ordinance. Participants, ideally representing a cross-section of community interests, are asked develop desirable characteristics for the future development of the community. In a typical visioning process, meetings may occur monthly and occasionally weekly for several months. Trained facilitators often guide discussions and participants are divided into committees and subcommittees to pursue solutions to specific issues. At the end of the process the group usually develops a set of guiding principles that serve as a vision statement, which then can be incorporated into the general plan or other policy documents.
- **Small-Area Planning Committees.** A small-area planning committee may be useful in building consensus around plans for specific neighborhoods, business districts, historic districts, and transportation corridors. Committee members—who may include area residents and business owners along with representatives of local groups—are asked to develop goals to improve their local neighborhood. Usually, the goals such a committee develops will be more specific than those that come out of a broad, community-wide visioning exercise. Precise development ideas and even detailed designs may emerge from a small-area planning committee. Because such committees are focused on a defined geographical area, residents tend to be more engaged because they see the process as directly affecting their neighborhood.
- **Charettes.** Charettes are an intense set of workshops—often occurring over consecutive days—that are designed to educate the public about choices. They

often focus on urban forms and examine what types of architecture and uses would be the ideal fit for the community. Visual preference surveys and detailed drawings help participants develop specific ideas for what they want their community to look like. Participants then develop a set of guiding principles from these preferences. A facilitator usually leads the workshops. Meeting content can vary, but usually ranges from identifying issues that need to be addressed to developing a specific set of guidelines for general and specific plans, designs, and other actions. Whatever the format, the emphasis is on intense, focused deliberations that can produce results within a short period of time. Charettes are an effective way of “getting to yes,” although they may require a big investment of time by participants and may not attract a representative cross-section of the community.

- **Stakeholder Groups.** A stakeholder is a person or group with a significant interest in a program or policy. A stakeholder group represents all the interests most likely to be affected by a proposal. Stakeholder groups are an excellent source of technical expertise and can provide a necessary reality check when a proposal produces unintended consequences. An alternative to a stakeholder process, which usually addresses a single issue, is to form an ongoing advisory committee. Advisory committees provide valuable perspectives on new issues as they arise.

These are just a few of the many innovative public participation strategies that a local agency may choose to employ. The key for anyone involved in the design of a public participation program is to determine what format will provide the most meaningful participation opportunities for the local community.

BUILDING CONSENSUS

Building consensus involves ongoing dialogue between the public, stakeholder groups, professionals, and local decision-makers. Consensus-building processes do not occur without a lot of effort. Sometimes, key individuals stake out positions well before the process begins. Participants may make sweeping statements like “the market will not support high-density homes” or “we are losing all of our farmland” without supporting data. An inclusive consensus-building process with the following elements can help counterbalances this situation:

- **Be Open-Minded.** Most participants don’t respond well when a consensus-building process is used to legitimize a predetermined policy. If all participants are open to new ideas, the final product will probably be quite different than expected—and more effective.
- **Develop Rules for Engagement.** Everyone participating in a consensus-building process should agree to be bound by the same set of rules and protocols. It is critically important for participants to be involved in designing the process. Remember, involvement creates buy-in.
- **Get Reliable Information.** Information must be trustworthy and easy to read. Involve people who understand different issues, such as housing and traffic, and can speak to the probable impacts of various policy choices. Unveil “the numbers,” then explain what they mean.
- **Consider a Facilitator.** Professional facilitators can keep a consensus-building process on track. Their focus on building a sound process—from creating a dialogue to developing assurances—helps ensure that goals are achieved.
- **Be Willing to Listen.** Taking the time to make sure everyone understands the differing viewpoints can help when parties are locked in a stalemate. Though such a process usually requires patience, the results are often worth the effort.