



City of San Luis Obispo Advisory Body and Staff Training Workshop

April 30, 2024



Agenda

1. Welcome
2. City Overview
3. Advisory Body Roles and Relationships
4. The Brown Act & Conflicts of Interest
5. Meeting Management





City Overview



City Council

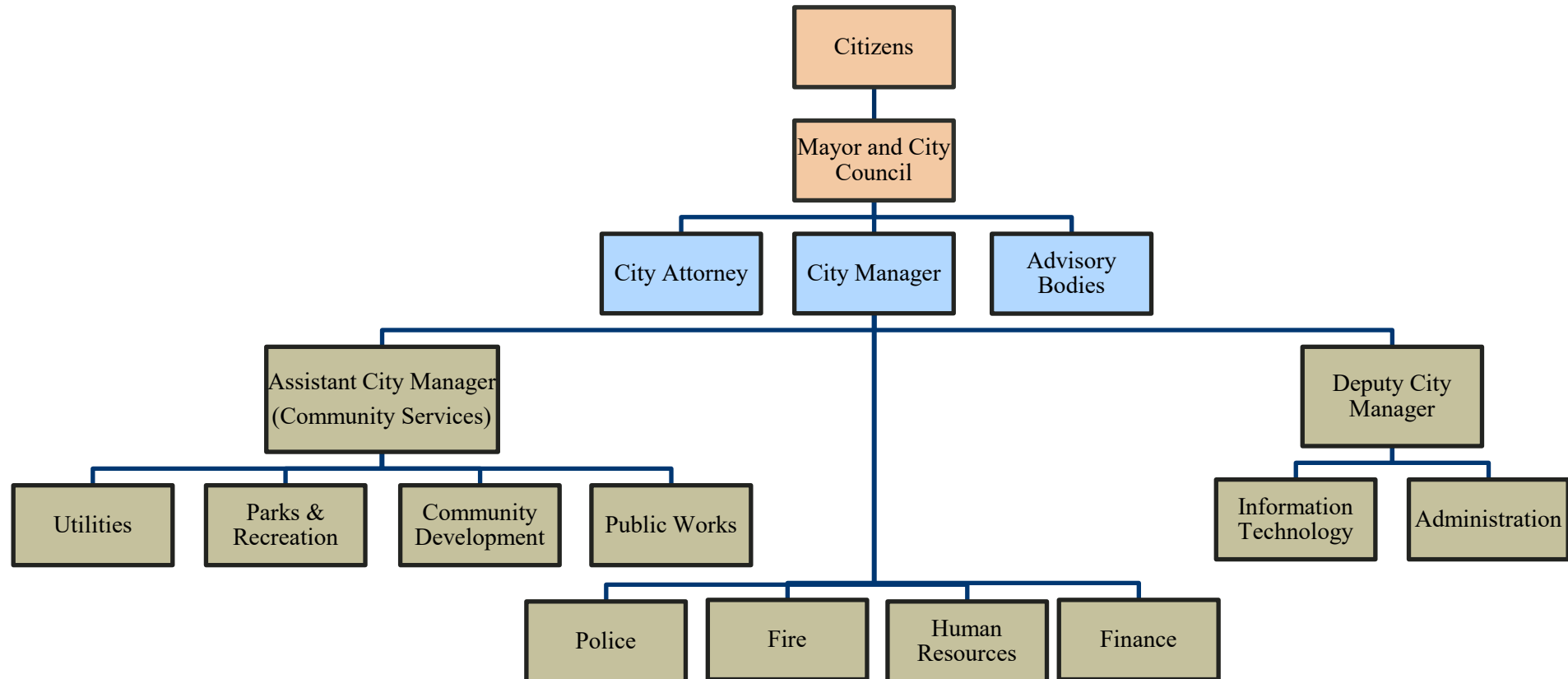


City Council Vision

The City of San Luis Obispo is a dynamic community embracing its future while respecting its past with core values of civility, sustainability, diversity, inclusivity, regionalism, partnership, and resiliency.



City Departments



Expectations

Healthy and Smart

Uphold Organizational Values

Commitment to City Government

Aspire for the Community

Teamwork

Reliable and Timely Responses

Complete Work

Outcome-Focused

Communication

Action-Oriented



Major City Goals

**Economic
Resiliency,
Cultural Vitality
and Fiscal
Sustainability**

**Diversity, Equity
and Inclusion**

**Housing and
Homelessness**

**Climate Action,
Open Space &
Sustainable
Transportation**





Advisory Bodies



Advisory Bodies

Administrative
Review Board (ARB)

Architectural Review
Commission (ARC)

Active Transportation
Committee (ATC)

Construction Board
of Appeals (CBOA)

Cultural Heritage
Committee (CHC)

Human Relations
Commission (HRC)

Investment Oversight
Committee (IOC)

Mass Transportation
Committee (MTC)

Parks and Recreation
Commission (PRC)

Personnel Board (PB)

Planning Commission
(PC)

Promotional
Coordinating
Committee (PCC)

Revenue
Enhancement
Oversight
Commission (REOC)

Tourism Business
Improvement District
Board (TBID)

Tree Committee (TC)



Advisory Bodies

What Advisory Bodies Do:

- Ear for the City Council
- Forum to encourage citizen participation early in process
- In-depth analysis of specific issues
- Broad perspective on focused topics
- Make recommendations/to staff, another Advisory Body, or City Council
- Make decisions/Take action
- Review staff decisions for compliance with City policy

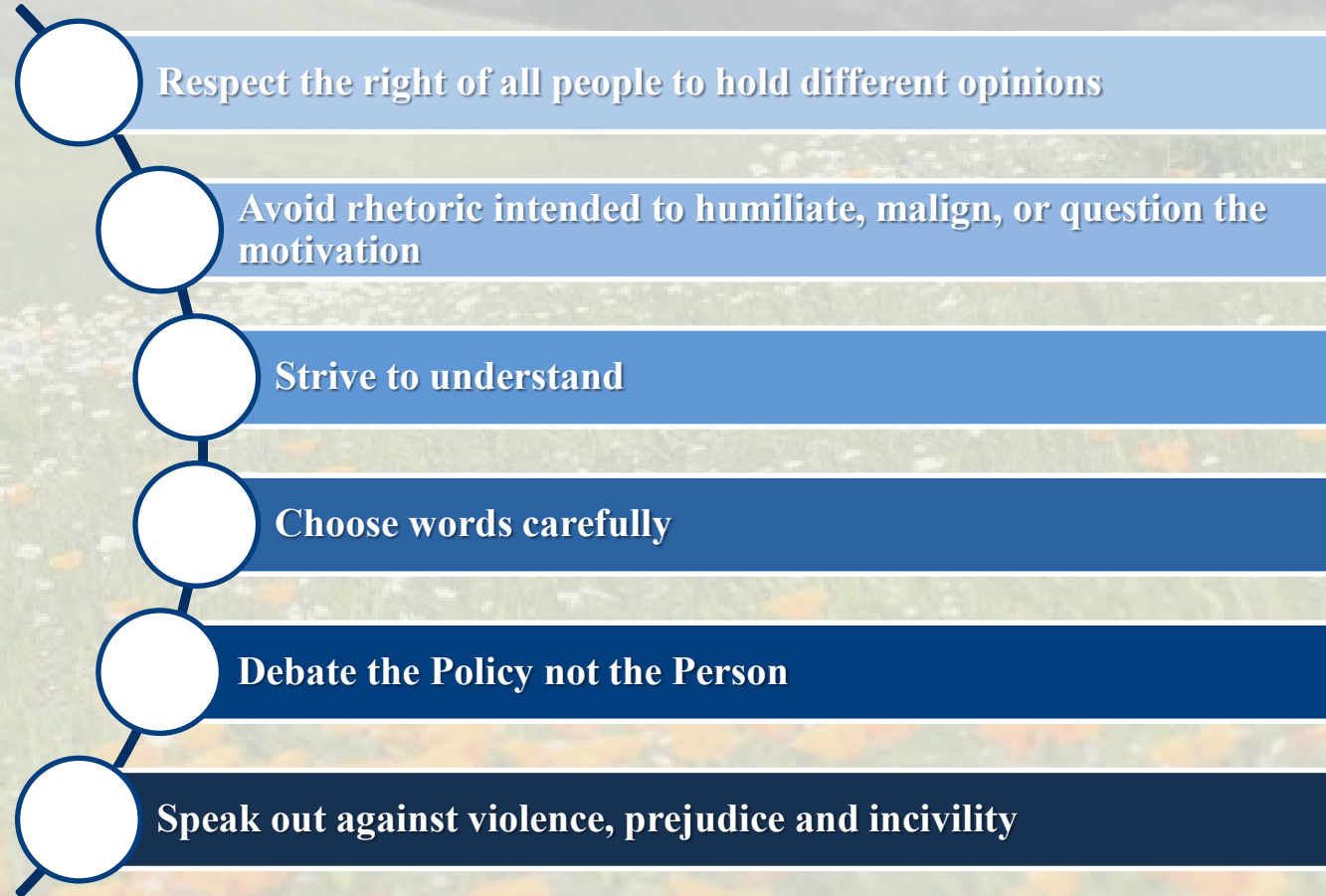
What Advisory Bodies Do Not Do:

- Make policy
- Direct budget decisions
- Direct operations
- Direct staff



Civility Agreements

Advisory Bodies: Shall promote the use of and adherence to the principles of civility and discourse in conducting business with elected officials, staff, and citizens



Communication

- Encourage and Honor Public Participation
 - Be neutral, fair, and consistent
 - Pay attention to all speakers and actively listen
 - Ask questions for clarification
 - Be sure your body language is not sending mixed or negative messages
- Respect Individual Viewpoints
 - Allow others time to present their views fully
 - Actively listen and seek to understand
 - Avoid interrupting others
 - Be open to new ideas
 - Explore alternatives
 - When necessary, agree to disagree



Best Practices

- Purview, Policies, Practices and Precedent
- Put your best foot forward. Create a good impression of City Government
- Be Sharp, Punctual & Prepared
- Be Attentive, Polite & Respectful
- Listen. Digest. Think.
- Respect differences in opinions
- Remain impartial and neutral
- Refer to staff for help. Do not speak to things you do not know.



A photograph of two men riding bicycles on a paved path. The man on the left is wearing a red jacket and sunglasses, riding a blue bicycle. The man on the right is wearing a light green shirt, sunglasses, and a beard, riding a green bicycle. They are both smiling. The background features lush green trees and bushes under a clear blue sky. A semi-transparent white box is overlaid on the center of the image, containing the title text.

The Brown Act and Conflicts of Interest



The Brown Act

- Open and Public
- The Brown Act in Brief
- Who Does it Apply to?
- What is a Meeting?
- Common Pitfalls
- The Public's Rights
- Brown Act Violations



The Brown Act: Open and Public

1. “All meetings of the legislative body of a local agency shall be open and public...”
2. “Public agencies exist to aid in the conduct of the people’s business.”
3. “Public agencies’ actions are to be taken openly and their deliberations are to be conducted openly.”



The Brown Act: In Brief

- Agendas for regular meetings must be posted at least 72 hours in advance; special meetings 24 hours in advance.
- The City posts all agendas on the City's website and in the information kiosk in front of City hall.
- The Agenda must contain a brief description of each item to be acted upon.
- Meetings must be open to the public, except for narrowly defined closed sessions.
- The public must be given an opportunity to speak at regular meetings on any item, on or off the agenda.
- Meetings must be held within the City limits, with very limited exceptions.
- The members of the body may not collectively discuss items not on the agenda.



The Brown Act: Who's Covered?

1. Applies to:

- a. The Mayor & City Council
- b. Council Members-Elect
- c. All Advisory Bodies
- d. Standing Committees of Legislative Bodies

1. Does not apply to:

- a. Less than a quorum of a legislative body (exception: social media).
- b. Ad hoc committee of a legislative body appointed for a specific, temporary purpose.
- c. Staff communications with individual members of the body.



The Brown Act:

What is a “meeting”?

1. “Any congregation of a majority of the members at the same time and place to hear, discuss, deliberate, or take action on any item within the subject matter jurisdiction of the legislative body or the local agency...”
2. The Act also prohibits going through a series of communications or through intermediaries to do what you can’t do directly outside a noticed meeting.

What is *not* a meeting?

1. Individual contacts
2. Conferences open to the public
3. Open and publicized community meetings organized by another organization
4. Social events
5. Open and publicized meeting of another body of the local agency, or a legislative body of another local agency
6. Ad hoc committee meetings of less than a majority of the body.

...but still, if a majority of the body attends one of the above, they cannot discuss among themselves matters within the subject matter jurisdiction of the body



The Brown Act: Common Pitfalls

1. Collective briefings
2. Serial meetings (“hub and spoke” or “daisy chain”)
3. E-mail or social media (more on this later!)
4. Retreats and workshops
5. Informal meetings
6. Info obtained outside meeting
 - a. If an advisory body member meets with a constituent for, e.g., a project site inspection, the member should state on the record during the noticed meeting what was discussed or learned

Special Note to Staff:

1. While not a legislative body, City staff must avoid being a conduit for a Brown Act violation by, for example, sending an email to all members of the body and inviting or allowing discussion via email or otherwise outside the noticed meeting
2. Remember, well-meaning applicants and constituents can also act as conduits and land the advisory body member in hot water.
 - a. **TIP:** If a majority of the body meets at a location for a site visit/inspection, the members cannot discuss the project during the visit with each other or with the constituent.



The Brown Act: Social Media

1. Permitted activity:

- a. A public official may communicate on social media platforms to: (1) answer questions, (2) provide information to the public; and (3) solicit information from the public regarding a matter within its subject matter jurisdiction.

1. Prohibited activity:

- a. Discussing information received from the public (#3 in previous column) regarding a matter within its subject matter jurisdiction with a majority of the body.
- b. Responding directly to another body member's social post regarding a matter within the body's subject matter jurisdiction (this includes "liking" the post of *any other member* or use of emojis to express reaction).



Cautionary Tales

1. Consider carefully if you want to invite public comment on City business via your private social media platforms – doing so may limit your ability to control the social media conduct, i.e., restrict, block or delete users or comments. You may be legally required by the First Amendment to be trolled if a challenger establishes that you are someone with actual authority to speak on behalf of City on particular matter and that you purported to exercise that authority in the relevant posts Lindke v. Freed, 601 U.S. 187, 144 S. Ct. 756 (2024)
2. Even if your platform or device isn't found to be a public forum, California Supreme Court's decision in *City of San Jose v. Superior Court* (2017) makes it clear that emails and text messages about public business sent through the personal accounts and devices of public officials are public records that must be publicly produced if requested – the same analysis would apply to social media messaging.
3. Because public communications through “private” channels are now clearly public records, we must also assume they are subject to public records retention requirements. So, if you engage in public communications through private channels, those communications need to be retained for at least two years and publicly produced upon request!



The Brown Act: The Public's Rights

Right to speak on items on the agenda.

Right to speak on matters *not on the agenda*.

Reasonable time limits may be placed on public comment.

Members of the body and/or City staff cannot prohibit criticism of policies, procedures, acts or omissions of the body or public employees.



The Brown Act: The Public's Rights

The public cannot be required to register their names, provide contact or other info, or fill out questionnaires as a condition to attend or comment.

The body cannot vote by secret ballot.

The public has the right to review agendas and writings distributed by and to the body.

Members of the public may record proceedings.



The Brown Act: Violations

1. Invalidation of action taken
2. Civil injunctive action to prohibit action
3. Misdemeanor prosecution against individual legislative body member (fine of up to \$1,000 and up to 6 months imprisonment)
4. Looks bad in the newspaper! Affects your “Google Factor” and undermines public trust
5. Ability to “cure” - admit and commit



Mechanics: Conflict of Interest

- General Rule
- Financial Interest
- Disclosure & Disqualification
- Leave the Room Rule
- Consequences



Conflict of Interest: General Rule

Public officials are prohibited from ***making, participating in or in any way attempting to use their official position to influence*** a governmental decision in which they know or have reason to know they have a financial interest.

* Note Saying you won't vote is not good enough. You cannot participate in or in any way attempt to influence the decision. So, you should not discuss the project or item with another commissioner, staff member or applicant before or after the meeting.



Conflict of Interest: What is a Disqualifying Financial Interest?

1. **Disqualifying Interest**: When it is reasonably foreseeable the governmental decision will have a material financial impact or effect (positive or negative!), different from its effect on the public generally, on the official or a member of his immediate family. Five types of financial interests that may result in disqualification:
 - a. An effect on a **real property interest** where you have an investment of \$2,000 or more (includes leases, but not month to month leases).
 - b. An effect on any **source of income** of \$500+ promised (legally enforceable right) or received within last 12 months.



Conflict of Interest: What is a Financial Interest?

Or any of the following...

- a. An effect on a **business entity** where the public official has a direct or indirect investment worth interest of \$2,000 or more.
- b. An effect on a business entity in which the public official is a **director, officer, partner, manager, or employee** of that business.
- c. An effect on **source of gifts** worth \$500 or more in the aggregate in the previous 12 months.

*A public official's "financial interest" in the categories listed extends to the official's own personal finances and those of a member of his or her immediate family (spouse, registered domestic partner, and dependent child)



Conflict of Interest: Disclosure and Disqualification

1. State publicly what interest you have that constitutes a potential conflict of interest, e.g., “I own real property at 123 Elm Street, across the street from the subject project”
2. Make sure recusal is noted in the minutes
3. Immediately step down from the dais and leave the room



Conflict of Interest: Exceptions to the Leave the Room Rule

1. Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests as defined (i.e. real property, business interests)
2. Exercise of your First Amendment right to speak
3. Think about whether want to avail yourself of either of the above as such participation may cause the public to question the impartiality of your commission
4. Talk to staff liaison and City Attorney first, please!



Conflict of Interest: Consequences

1. Criminal prosecution by local District Attorney or State Attorney General – generally, misdemeanors (up to \$1,000, 6 months in jail), but sometimes felonies.
2. Administrative action by FPPC resulting in civil penalties, usually \$500-\$5,000 per offense.
3. Civil action by the public, certain government agencies or the Enforcement Division
4. Bad press and undermining of public confidence



Takeaways: Brown Act & Conflicts

1. Look ahead – It's easier to prevent mistakes than it is to correct them.
 - a. If you identify a potential conflict problem, raise it with the Chair, Staff Liaison and/or City Attorney's office before the meeting, if possible.
2. Front Page Test: “Is there anything about the reality or perception of my actions that I wouldn't want to read about on the front page of the Trib?”
3. Always be alert to potential Brown Act and conflicts of interest violations – your own and those of your colleagues. Don't assume someone else is seeing the same things you are or knows what you know. If someone raises a question, be grateful, not defensive!



Takeaways: Brown Act & Conflicts

4. Cut off discussion on matters not on the agenda and make suggestions as to how the body might address the issue, after proper notice, at a future meeting.
5. Think (and breathe) before you post and know your choice to engage on City issues creates public access and records obligations. Don't forget that public officials live in a fishbowl and everything we say and do potentially impacts public trust in City government.
6. In the era of the internet and e-communication, the only foolproof way to avoid the gray area between public business and private business is to conduct public business exclusively through public networks, accounts and devices.
7. If there's a question in your mind, don't leave it there!



Procedural & Legal Guidance

Keep this power point handy when things get hairy!

Ask your staff liaison, the City Attorney's office, or the FPPC!



Questions?

Ask for help ahead of time.
Call the City Attorney's
Office (805) 781-7140.



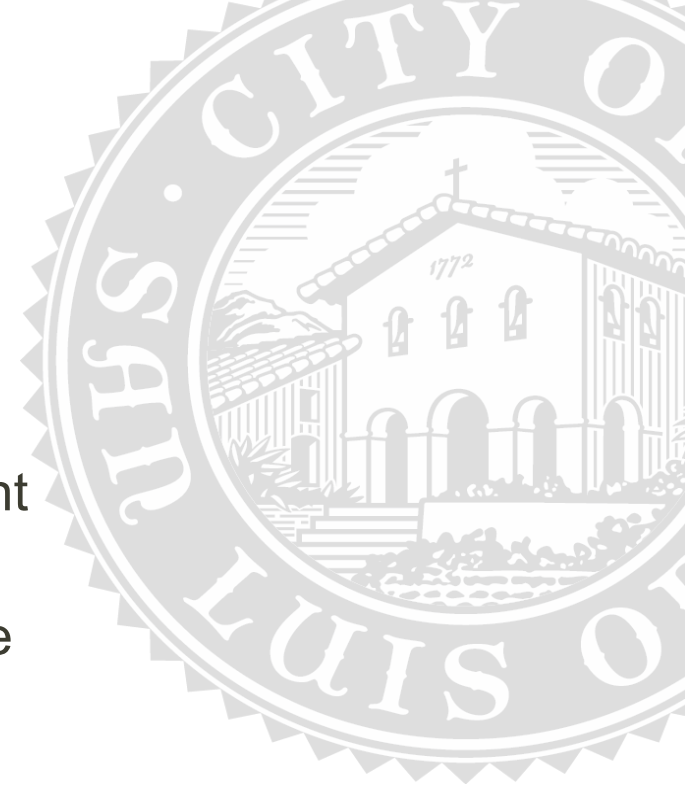
Meeting Management



Meeting Management: Roles

Role of the Chair

- a. Chair should discuss with the liaison the level of assistance they want or need.
- b. It is the Chair's responsibility to maintain the structure and flow of the meeting and ensure the meeting proceeds according to established rules and bylaws (including civility agreements).
- c. Facilitate questions both of staff and applicant/appellant, and questions raised by applicant/appellant.
- d. Remain impartial during heated discussions.



Meeting Management: Roles

Role of the Advisory Body Member

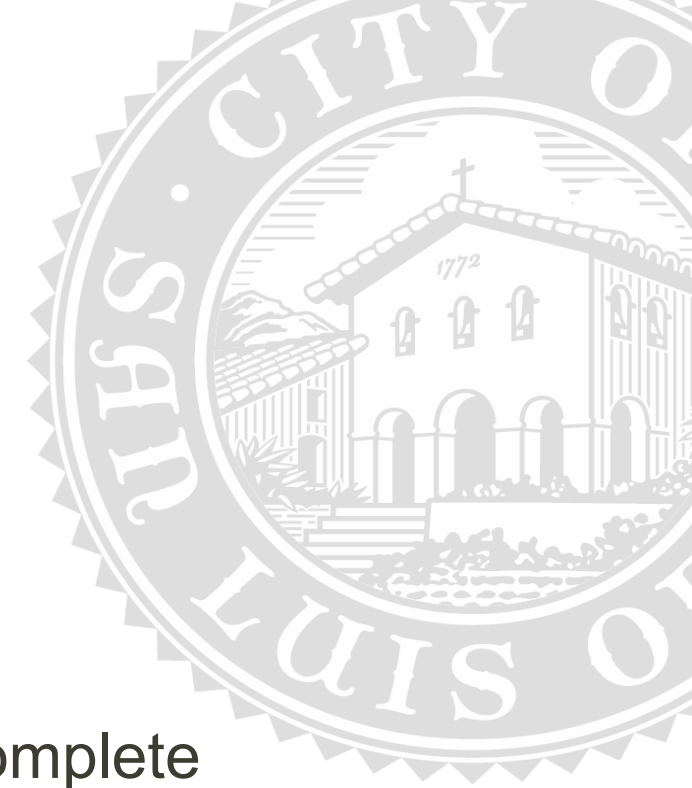
1. Help the Chair
2. Obtain recognition before speaking
3. Limit remarks to the issue
4. Ask clarification questions
5. Respect colleagues' rights
6. Explain your reasoning
7. Raise concerns and objections at the meeting.



Meeting Management: Roles

Role of the Staff Liaison

- a. Serves as point of contact for Chair and Members.
- b. Forecasts agenda.
- c. Focuses the body on matters within its purview.
- d. Provides procedural guidance, factual information, and complete staff reports.
- e. Assists to identify and avoid potential pitfalls.



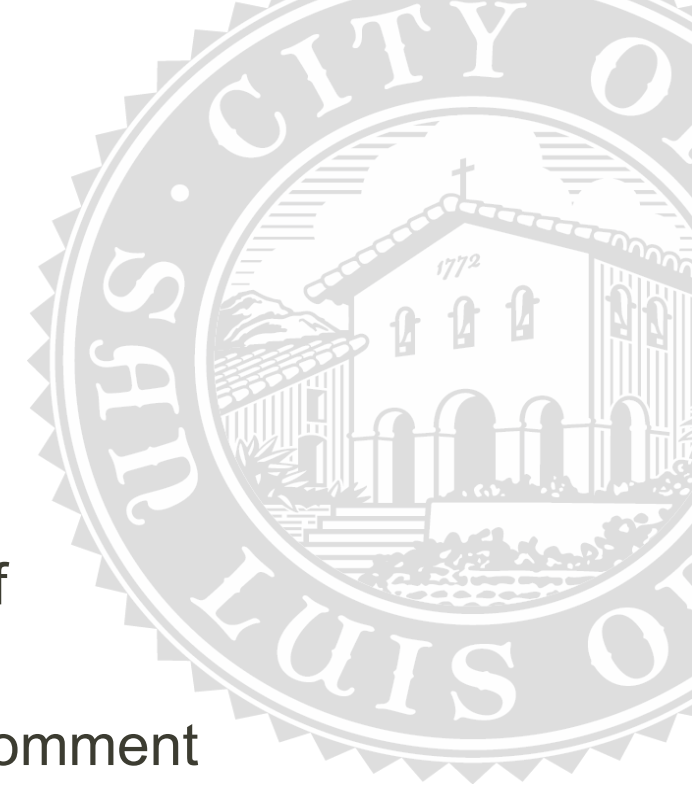
Order of Business on Agenda

1. Call to Order
2. Role Call
3. Public Comment for Items not on the Agenda
4. Consent Items
5. Business/Public Hearing Items
6. Commission/Committee/Staff Communications
7. Adjourn



Basic Format for Discussing Agenda Items

1. Chair announces agenda item
2. Staff presentation on the item, including recommendation
3. Advisory Body Members ask questions on item for clarification (if needed)
4. Chair opens Public Comment, after all speakers closes Public Comment
5. Chair asks for further questions or discussion by the Advisory Body members.
6. Chair asks for a motion and a second
7. After motion and second, Chair repeats the motion, Asks for a roll call vote on the motion.



Public Comment

Public comment is limited to 3 minutes for each speaker, (however can be less if there are a lot of speakers) applicants/applicant's representatives are given 10 minutes total.

Public Comment should be directed to the Advisory Body, not the audience or staff.

Chair asks staff to respond to questions at the close of Public Comments

At the end of public comment, the Chair should announce that public input has concluded.



Courtesy & Decorum



One person has the floor at a time.



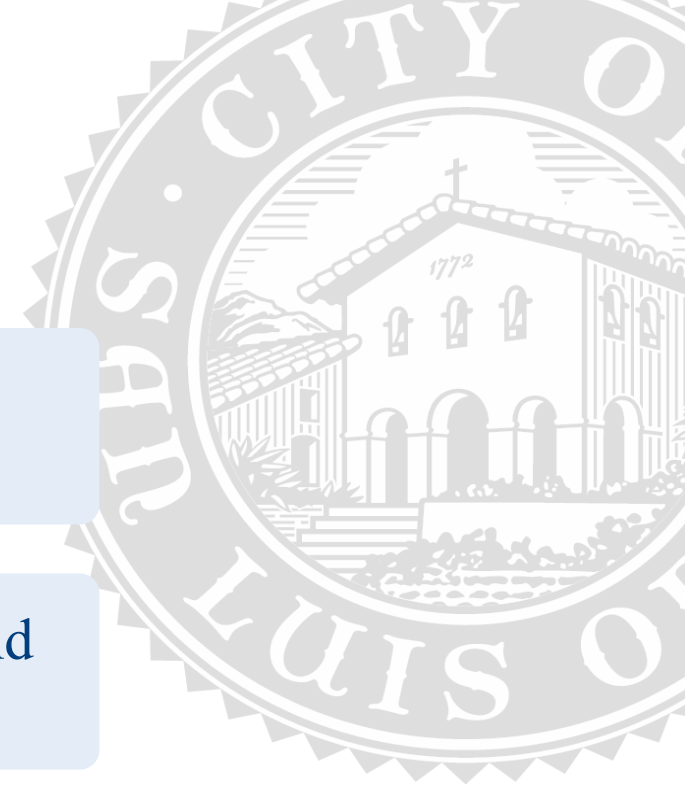
Chair recognizes each speaker (Advisory Body member, staff and Public)



Discussion focuses on agenda item, not on personalities



Chair has the right to cut off discussion that is too personal, too loud or rude.



Pointers & Tips



Don't engage in dialogue with the audience.



Prepare in advance of the meeting by reviewing the agenda and staff reports.



If you have a specific question or concern, contact staff in advance of the meeting so they can prepare to address them at the meeting or provide clarification.



Resources

Staff

- Your staff liaison if you have questions about an issue or need assistance
- City Attorney's office regarding Conflicts of Interest
- City Clerk's office if you aren't sure who to contact

City's web site

- Development pages
- Key initiatives
- Capital projects
- Advisory Body Handbook and Bylaws





Questions?

