



City of San Luis Obispo Advisory Body and Staff Training Workshop





Agenda

- Welcome
- City Overview
- Advisory Body Roles and Relationships
- The Brown Act & Conflicts of Interest
- Meeting Management





City Overview



City Council

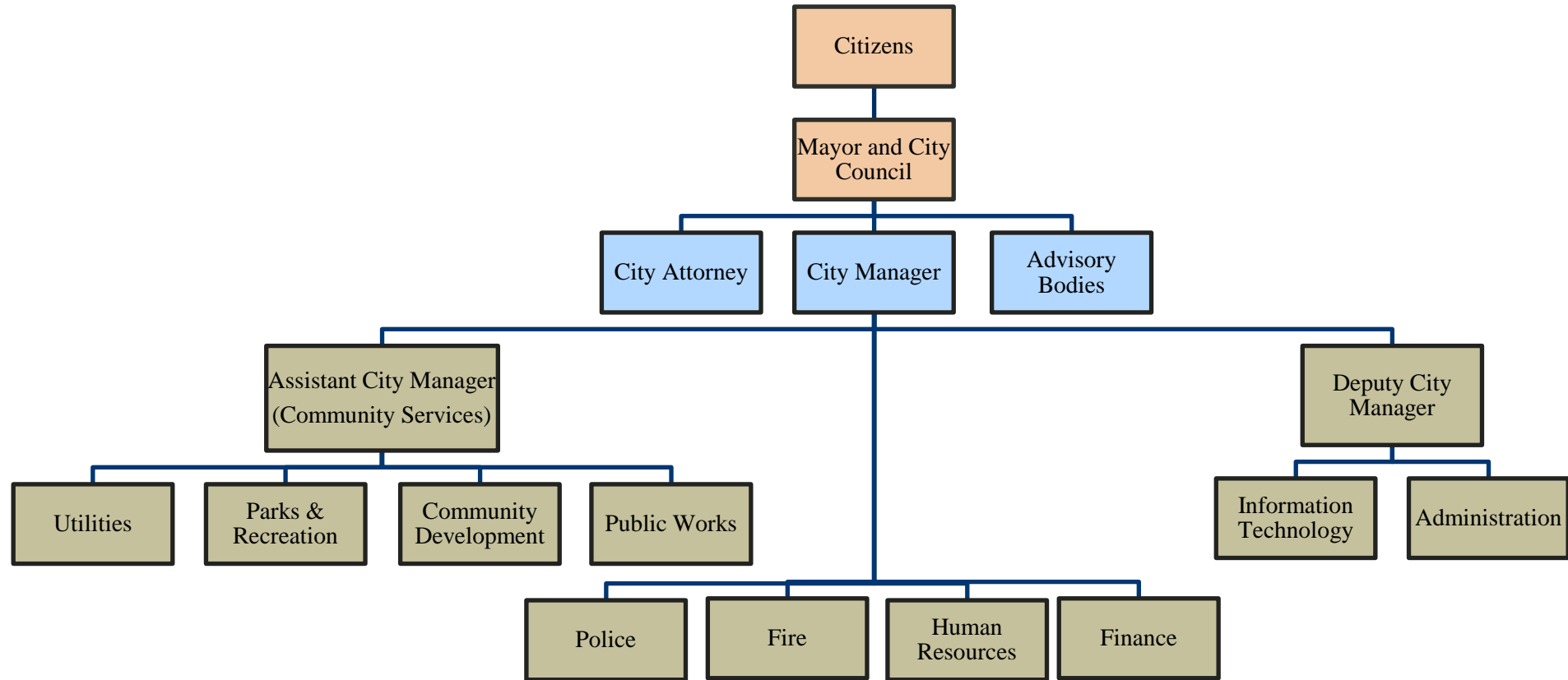


City Council Vision

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

Commitment to City Government

Teamwork

Complete Work

Communication

Uphold Organizational Values

Aspire for the Community

Reliable and Timely Responses

Outcome-Focused

Action-Oriented



Major City Goals

**Economic
Recovery,
Resiliency and
Fiscal
Sustainability**

**Diversity, Equity
and Inclusion**

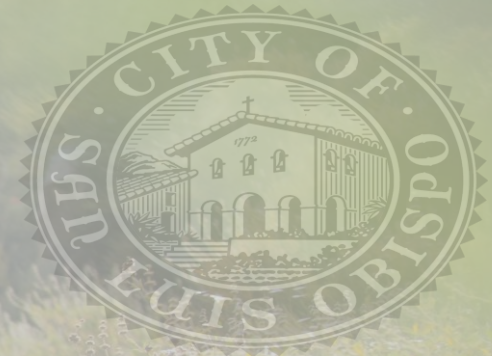
**Housing and
Homelessness**

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





Advisory Bodies



Advisory Bodies

1. Administrative Review Board (ARB)
2. Architectural Review Commission (ARC)
3. Active Transportation Committee (ATC)
4. Construction Board of Appeals (CBOA)
5. Cultural Heritage Committee (CHC)
6. Housing Authority Board (HAB)
7. Human Relations Commission (HRC)
8. Investment Oversight Committee (IOC)
9. Jack House Committee (JH)
10. Mass Transportation Committee (MTC)
11. Parks and Recreation Commission (PRC)
12. Personnel Board (PB)
13. Planning Commission (PC)
14. Promotional Coordinating Committee (PCC)
15. Revenue Enhancement Oversight Commission (REOC)
16. Tourism Business Improvement District Board (TBID)
17. 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

What Advisory Bodies Do Not Do:

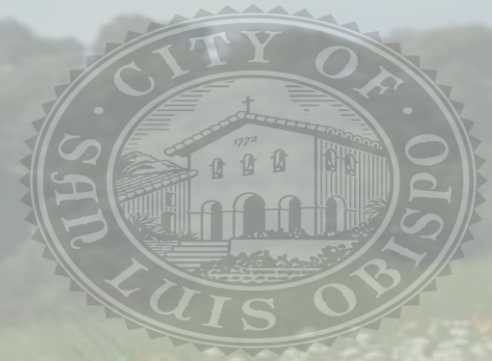
- Make policy
- Direct budget decisions
- Direct operations
- Direct Staff



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

- 1. Respect the right of all people to hold different opinions
- 2. Avoid rhetoric intended to humiliate, malign, or question the motivation
- 3. Strive to understand
- 4. Choose words carefully
- 5. Debate the Policy not the Person
- 6. Speak out against violence, prejudice and incivility



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

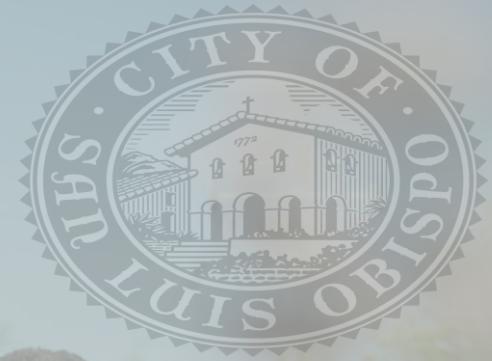


Best Practices

- 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.



The Brown Act and Conflicts of Interest



Mechanics: The Brown Act

- Weighing Competing Values
- 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: Weighing Competing Values



Transparency, Participation, Accountability,
Impartiality, Deliberative Decision-Making

VERSUS

Efficiency, Agility, Expediency, Profitability,
Reactive Decision-Making



The Brown Act: **Open and Public**

- “All meetings of the legislative body of a local agency shall be open and public...”
- “Public agencies exist to aid in the conduct of the people’s business.”
- “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.
- Agendas for Council and bodies whose members are compensated must also be posted on the website.
- 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 Brown Act: Who's Covered?

- Applies to:
 - The Mayor & City Council
 - Council Members-Elect
 - All Advisory Bodies
 - Standing Committees of Legislative Bodies
- Does not apply to:
 - Less than a quorum of a legislative body (exception: social media).
 - Ad hoc committee of a legislative body appointed for a specific, temporary purpose.
 - Staff communications with individual members of the body.



The Brown Act:

What is a “meeting”?

- “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...”
- 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.

Exceptions:

- Individual contacts
- Conferences open to the public
- Open and publicized community meetings organized by another organization
- Social events
- Open and publicized meeting of another body of the local agency, or a legislative body of another local agency
- Open and noticed meeting of a standing committee



The Brown Act: Common Pitfalls

- Collective briefings
- Serial meetings (“hub and spoke” or “daisy chain”)
- E-mail or social media (more on this later!)
- Retreats and workshops
- Informal meetings

Special Note to Staff:

- While not a legislative body, City staff must avoid being a conduit for a Brown Act violation.
- Remember, well-meaning applicants and constituents can also act as conduits and land the advisory body member in hot water.
 - The Act governs your conduct, not theirs!



The Brown Act: Social Media

- Permitted activity:
 - 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.
- Prohibited activity:
 - Discussing information received from the public (#3 in previous column) regarding a matter within its subject matter jurisdiction with a majority of the body.
 - 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

- 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! *Knight First Amendment Institute at Columbia University, et al. v. Trump, et al.*, (S.D.N.Y. 2017).
- The 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.
- 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.*

May place reasonable
time limits on public
comment.

Cannot prohibit
criticism of policies,
procedures, acts or
omissions of the body
or public employees.



The Brown Act: The Public's Rights

Cannot require members of public to register names, provide info, or fill out questionnaires as a condition to attend.

No secret ballots.

Right to review agendas and writings distributed by the body.

May record proceedings.





The Brown Act: Violations

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





Conflict of Interest: What is a Disqualifying Financial Interest?

- **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:
 - 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).
 - 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...

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

- 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”
- Make sure recusal is noted in the minutes
- Immediately step down from the dais (or leave the Zoom conference) and leave the room



Conflict of Interest: Exceptions to the Leave the Room Rule

- 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)
- Exercise of your First Amendment right to speak
- Think about whether want to avail yourself of this as such participation may cause the public to question the impartiality of your commission
- Talk to staff liaison and City Attorney first, please!





Conflict of Interest: Consequences

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



Takeaways: Brown Act & Conflicts

- Look ahead – It's easier to prevent mistakes than it is to correct them.
- 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?”
- 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 you identify a potential conflict problem, raise it with the Chair and/or City Attorney's office before the meeting, if possible.
- 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.
- 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.
- 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.
- 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

- Chair should discuss with the liaison the level of assistance they want or need.
- 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).
- Facilitate questions both of staff and applicant/appellant, and questions raised by applicant/appellant.
- Remain impartial during heated discussions



Meeting Management: Roles

Role of the Advisory Body Member

- Help the chair
- Obtain recognition before speaking
- Limit remarks to the issue
- Ask clarification question
- Respect colleagues' rights
- Explain your reasoning
- Raise concerns and objections at the meeting.



Meeting Management: Roles

Role of the Staff Liaison

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



Order of Business on Agenda

- Call to Order
- Role Call
- Public Comment for Items not on the Agenda
- Consent Items
- Business/Public Hearing Items
- Commission/Committee/Staff Communications
- Adjourn



Basic Format for Discussing Agenda Items

- Chair announces agenda item
- Staff presentation on the item, including any recommendation
- Advisory Body Members ask questions on item for clarification (if needed)
- Chair opens Public Comment, after all speakers closes Public Comment
- Chair asks for further questions or discussion by the Advisory Body members.
- Chair asks for a motion and a second
- 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, applicants are given 10 minutes.
- Public Comment should be directed to the Advisory Body, not the audience or staff.
- Chair asks staff to respond to questions/themes 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 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

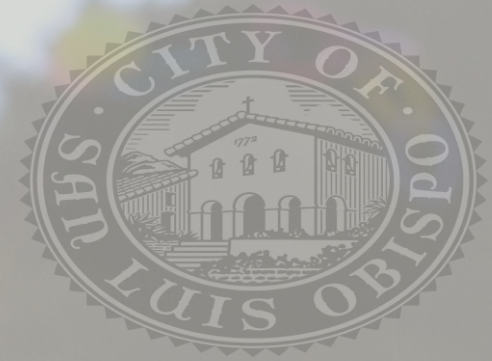
- Don't engage in dialogue with the audience.
- Prepare in advance of the meeting by reviewing the agenda and staff reports.
- If you have a specific question or concern, contact staff in advance of the meeting so they can prepare to address them at the meeting or provide clarification.



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?



CITY OF SAN LUIS OBISPO