The Planning Commissioner Handbook

Chapter 2

Meetings and Procedures

Institute for Local Government℠

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Preparing for Meetings

Local legislative bodies — which includes planning commissions – are required in almost all cases to conduct their business at open and public meetings. The public's perception of government is often derived from how these meetings are conducted. Planning commission meetings that are conducted openly, fairly and respectfully promote public confidence in their government generally and the commission's decisions in particular.

Preparation will also promote public confidence by ensuring that planning matters are handled professionally and knowledgably by all involved. Remember, members of the public watching your meetings either in the audience or at home are not likely to distinguish between commissioners, staff and others participating in your meetings. Fair and respectful treatment for everyone is therefore very important. This includes knowing what is expected of you at a planning commission meeting, both as to how the meeting will be conducted and what decisions the commission will be asked to make.

Agenda Review

As a planning commissioner, your primary job is to make land use decisions that are consistent with your local agency's plans, ordinances and policies. These decisions will be listed in advance on a publicly posted agenda, and planning commissioners are typically provided with a staff report for each item.

It is important that your agenda packet—usually received a few days before each meeting— contains the information that you need to make good decisions. Depending on the number of items and their complexity, reviewing the agenda packet may take considerable time. Simple information items might have very short staff reports, but more complex development applications might require reports that are several hundreds of pages including environmental assessments, technical reports, project plans, etc.

Commissioners should work closely with executive staff to ensure that key information is presented clearly and efficiently in the agenda packet, and that is delivered in time to allow for ample review before meetings. You may also want to ask staff before the meeting any questions you have about the material in the written reports. The questions should only address ambiguities that you have identified in the staff report or other documents. Discussing these issues before meetings gives staff time to provide you with the most relevant information. It also increases the efficiency of commission meetings by minimizing the chance that a decision will be postponed due to incomplete information.

At the public meeting, you should be prepared to both ask and answer questions about the projects under consideration, their relationship to the general plan and ordinances and their potential impacts on the community. If legal questions arise, don't be afraid to ask your agency's attorney for an opinion. Never take legal advice from anyone other than your agency's own lawyer.

Abstention and Disqualifications

When reviewing meeting agendas, you should keep an eye out for any items from which you should abstain or disqualify yourself. You may abstain from considering an agenda item when you have potentially conflicting loyalties that are not otherwise addressed by law. For example, if your cousin has a pending development application, the public would probably perceive that your personal loyalties conflict with your public duties. Even when you are certain of your impartiality, it can still be a good idea to abstain to avoid the appearance of impropriety. Abstention should not be used just to avoid taking a position on a decision, however. This is unfair to the public, project applicants and your colleagues on the commission. It might also be prohibited by local rules adopted for the commission.

Disqualification, on the other hand, occurs when the law determines that you must not participate in a decision based on certain circumstances. If you have spoken out for or against a specific project, you should consult with your agency's attorney to see if rules of common law bias require your disqualification. However, general predispositions—such as being generally concerned about the environment—are not enough to make disqualification necessary.[1] Note that these rules generally apply only to quasi-judicial decisions. When you are making legislative decisions, such as adopting zoning ordinances, you have more freedom to gather your own information—such as by contacting members of the community and visiting sites—to help in making your decision.

Identifying potential conflicts before each meeting provides you and your agency counsel (not planning staff) the opportunity to examine how the laws apply to your economic interests. If necessary, you may need to consult with the Fair Political Practices Commission to determine whether you are indeed disqualified or whether an exception applies.

Early identification of conflicts also enables staff to determine whether your disqualification will affect the commission's quorum on an item or whether your participation will be legally required despite the conflict (there are limited circumstances in which this occurs).[2]

If you are disqualified from participating on a specific agenda item, you must:[3]

- Publicly identify the financial interest or potential conflict of interest in sufficient detail to be understood by the public;
- Refrain from discussing or voting on the matter; and
- Leave the room until after the discussion, vote and any other disposition of the matter, unless the matter is on the consent calendar.

There are limited exceptions that allow a disqualified official to remain in the room and participate when one's "personal interests" are at stake. These include:[4]

- Interests in real property wholly owned by the official or his or her immediate family;
- A business entity wholly owned by the official or his or her immediate family; and
- A business entity over which the official (or the official and his or her spouse) exercise sole direction and control.

Even though the law allows the public official to remain in the room when these interests are at stake, the public official may still wish to balance that option with the potential that the public may nonetheless perceive that the official is improperly trying to influence colleagues.

The Duty to Decide, Not to Duck

What if the law allows you to vote but you would prefer not to? It can be tempting to abstain when you know a decision will be unpopular or when you simply do not know what the right decision is. However, you were appointed to make tough decisions. It is unfair to let your fellow commissioners take the heat for a necessary but unpopular decision. Instead, you should come to meetings fully prepared and ready to explain your decision.

1 See Fairfield v. Superior Court, 14 Cal. 3d 768 (1975); BreakZone Billiards v. City of Tor ance, 81 Cal. App. 4th 1205, 1235-1241 (2000).

2 Cal. Gov't Code § 87101; 2 Cal. Code Regs. § 18701.

3 See Cal. Gov't Code § 87105; 2 Cal. Code Regs. § 18702.5.

4 2 Cal. Code Regs. §§ 17802.5(d)(3), 18702.4(b)(1).

Meetings and Public Hearings

Public hearings are formalized opportunities for public comment. They are usually required for specific types of actions, such as general plan adoption, zoning ordinances, development permits and variances. The hearing guarantees that the fundamentals of due process—such as the right to notice and the opportunity to be heard—are incorporated into the decision-making process. Local agencies must give at least ten days notice for a public hearing (compared to the three-day notice for a general meeting required under the Brown Act).[5] For legislative actions such as general plan amendments or zoning ordinances, the notice is usually posted on the agency's website and in a newspaper of general circulation. For development permits, notice must be mailed to affected property owners, including all owners within 300 feet of the affected parcel. These are the minimum standards that apply to all agencies.

Individual agencies may adopt additional procedures at their discretion. It is sometimes difficult to tell the difference between a general meeting and a public hearing, particularly when local agencies have incorporated similar processes into their general procedures. The planning commission may go back and forth between regular meeting and public hearing in the same session. If a public hearing is on the agenda, the chair will open the hearing at the appropriate time. The public is then given the opportunity to speak. At the end, the chair will close the hearing and deliberations on the item will proceed. Alternatively, the hearing can be continued to another meeting.

Basic Meeting Procedures

Meetings should be run in a manner that makes the person in the audience who has never attended a meeting before feel comfortable and able to participate. A simple, well-explained procedure is vital to inclusivity. A typical meeting would include:

1. Chair calls the meeting to order
2. Commission secretary calls the roll
3. Chair introduces key staff
4. Chair reviews the commission's procedures
5. Chair announces any changes to the agenda
6. Commission acts on consent items
7. Agenda items are addressed in turn
8. Comments and questions
9. Chair adjourns meeting

Most agencies use a "consent calendar" for routine items—such as approval of minutes—that can be handled without discussion. These items generally do not involve policy questions. Regular agenda items include both public hearing and non-hearing items. Both types of items are handled in the same way. First, the chair asks if the applicant is present. The chair may also find it helpful to determine how many other people also wish to speak about the application. This can often be accomplished by reviewing the speaker slips (pieces of paper filled out by those wishing to speak on an agenda item) that have been turned in to the commission secretary. The typical process for reviewing an application is:

1. Staff report
2. Commission questions to staff
3. Applicant's presentation

5 Cal. Gov't Code §§ 65090, 65095.

4. Commission questions to applicant
5. Public comments
6. Applicant's response
7. Commission discussion

All questions should be addressed to the chair rather than to the applicant, staff or anyone else. The chair should note these questions and ensure that they are answered. Other commissioners should also note issues of importance to them that are raised during testimony and bring them up later during the commission's deliberations. The commission should openly discuss the issue at hand. It should state why it is making its decision and why it gives more weight to some factors than others. In many cases these reasons must be formally stated as findings. On complex projects, it is helpful to deal first with sub-issues, such as amendments to conditions, by making separate motions rather than making a motion to approve with numerous amendments.

In some cases when a public hearing is being held—or when there is a contentious or popular item that has attracted a lot of people—the commission may change the agenda order to accommodate those in the audience. However, doing so should be weighed against the chance that others might arrive later only to find that the issue on which they wished to speak has already been covered.

How to Get the Most out of Public Meetings

- **Notice.** Send out notices far enough in advance so that people can adequately respond. It is very difficult for community groups to meet, become informed, take a position and prepare testimony within a ten-day (much less a three-day) notice period. Utilize an inclusive outreach strategy to keep the public informed.
- **Accessibility.** Hold the meeting at a place that is easy to reach using alternative transportation choices such as public transit, walking, biking or car-share. Make sure the location is accessible for those with physical disabilities. If holding virtual meetings, make sure to explain the platform so participants understand how to engage and consider accessibility needs such as closed captioning.
- **Room Size.** Ensure that the room is large enough to hold everyone who wants to attend.
- **Written Materials.** Have sufficient copies of the agenda and written materials available in multiple languages (as applicable) placed near the entrance of the room.
- **Procedural Explanations.** Provide brief summaries of local agency procedures to help people who are new to the process understand what is going on and tailor their comments appropriately.
- **Speaker Slips.** Many agencies use speaker slips to organize comments during meetings. Such slips should provide space for the person's name and the agenda item on which they want to speak.
- **Audiovisual.** Make sure all presentations, visuals and video conferencing software are working and tested in advance. If software programs like PowerPoint will be used, pre-load the presentations into the computer.

- **Other Logistics.** Make sure all the other things—such as microphones, recorders, projectors, easels, maps, name plates, gavel, timer, flags, water and anything else that will be used during the meeting—are in place.
- **Special Needs.** Address special needs that are likely to arise that are specific to the meeting. For example, an interpreter might be appropriate if a large number of people who do not use English as their first language is expected.
- **Timing.** Start on time.

Civility in Public Meetings

Public debate includes the potential for disagreement, but this does not mean that civility has to go out the window. Civility is the notion of mutual respect, even in the face of disagreement. Uncivil meetings contribute to public alienation and antipathy towards government. The following are some tips for maintaining civility in meetings:

- **Separate People from the Problem.** Recognize that other thoughtful people have different views. Focus on solutions that are most likely to succeed. Avoid resolving disputes on an "us versus them" basis.
- **Limit Misunderstandings.** Make a continuing effort to understand the views and reasoning of people with opinions different than your own.
- **Get the Facts.** Work together to resolve factual disagreements. Fact-finding can get opponents on the same page in terms of identifying the problem. When uncertainty in the data remains, contending parties need to explain the reasoning behind their differing interpretations.
- **Use Fair Processes.** Genuinely solicit and consider public input. Make decisions on the basis of substantive arguments.
- **Remain Open to Being Persuaded.** One crucial element of civility is the recognition of the possibility that others may have better ideas than your own. Seriously consider persuasive arguments and explain your own position.
- **Debate in Good Faith.** Discuss your differences with others without pretense and based on your sincere concerns and values.

Open Meeting Requirements: The Brown Act

California's open meeting law—commonly referred to as the Brown Act[6]—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.[7]

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 at the same time and location. In other words, a majority of the planning commission cannot hear, discuss, deliberate or take action privately on any issue before the commission no matter how the conversation occurs, whether by telephone or e-mail or at a local coffee shop.[8] This applies 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 formal action of the commission or the governing body.[9]

Types of Meetings

For purposes of the Brown Act, almost all planning commission meetings are of one of either two types: a regular meeting or a special meeting.

Regular meetings are the meeting that occurs at planning commission's regularly established meeting day, time and location. Most of your meetings will be regular meetings, but there are some sorts of decisions or other actions that the planning commission can legally take only at a special meeting.

Special meetings are meetings held at a time or place that is different from the planning commission's regular meetings. Special meetings can be held for a variety of reasons, but they are typically called for scheduling reasons or to address some specific issue that might require the commission's particular attention.

Special meetings often require greater efforts for public outreach. For example, a community workshop meant for members of the public to provide input on a project prior to formal consideration might be held somewhere other than the commission's regular meeting location to make it more convenient for attendees. In such cases, the city or county might need take additional steps to advertise the meeting in order to follow inclusive public participation principles.

Special meetings sometimes also allow for a less formal atmosphere for the commission to receive information and discuss matters in a relaxed manner. They are often used for initially considering more complex or lengthy matters on an upcoming meeting agenda or to educate the commission about a specific policy. The commission is not allowed to make motions, take actions to resolve a question or make a decision at work sessions. In a work session, no testimony on the record is taken from the public, although members of the public are invited to attend and provide comment.

Closed Sessions. The Brown Act also includes provisions for discussions outside of public view in closed session, but only under very limited circumstances that mostly 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.

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

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

8 Cal. Gov't Code § 54952.2(b).

9 Cal. Gov't Code § 54952(b).

Serial Meetings

One thing to watch for is unintentionally creating an illegal "serial" meeting—a series of communications outside of an open and public meeting that results in a majority of commissioners having conferred on an issue. These are expressly prohibited under the Brown Act.

Communication does not need to be in person or directly between commissioners in order to create a serial meeting problem. Communicating through third parties or sending or forwarding e-mails can be sufficient to create a serial meeting if it ultimately includes a majority of commissioners. For example, if two members of a five-member commission consult outside of a public meeting 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. Although the initial communication might not in and of itself violated the Brown Act violation, there is a violation as soon as the chain reaches a majority of commissioners. The result is the same if the communications are through email, telephone, or through a third party such as a staff person, applicant or member of the public.

If you discuss commission business with a third party, you should keep the conversation about commission business "unidirectional." Feel free to receive or solicit information, but don't describe views of any other commissioners or ask about the third party about the views of other commissioners.

When it comes to email and text messages, you should never communicate your position on a pending matter to a majority of members, or solicit responses from other members when forwarding information you receive, or "reply all" to a message sent to the majority.

Social Media. The Brown Act now has special rules that apply to social media communications.[10] Public officials may communicate on social platforms to answer questions and provide the public with information. They may also solicit information regarding matters being considered by the body, or that fall within the official's jurisdiction. However, the Brown Act now prohibits public officials from responding directly to any communications posted on the internet by any other members of the same legislative body regarding a matter within the jurisdiction of the legislative body. Direct responses also include the use of emojis and "like" buttons. Importantly, this applies to any two members - the majority is not required for a violation to occur. In practice, avoid responding to fellow members' posts at all and consider not following each other on social media.

Permissible Gatherings. Not every gathering of commissioners outside of a public meeting is necessarily prohibited. For example, a majority of the commission may attend the same educational conference or the same public meeting of another legislative body. Attendance at a social or ceremonial event is not in and of itself a violation. The basic factor to keep in mind is that a majority of the commission cannot meet and discuss commission business except at an open and fully noticed meeting.

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.

Teleconferencing

The Brown Act only allows the use of teleconferencing for meetings of a legislative body under limited circumstances.[11] If one or more members participate in a meeting via teleconferencing, the following requirements apply:

- The remote location must be connected to the main meeting location by telephone, video or both.
- The notice and agenda of the meeting must identify the remote location.

10 Cal. Gov't Code § 54952.2

11 Cal. Gov't Code § 54953(b).

- The remote location must be posted and accessible to the public.
- All votes must be by roll call.
- The meeting must comply with the Brown Act, which includes allowing participation by members of the public present in the remote locations.
- A quorum of the body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction.

The role of teleconferencing in public meetings expanded significantly during the COVID-19 pandemic in order to promote social distancing under a series of executive orders issued by Governor Newsom in response to the pandemic. Under these orders, the following Brown Act teleconferencing requirements were temporarily suspended:[12]

- The requirement that each member's teleconference location be noticed, posted and accessible to the public.
- The requirement that at least a quorum of the local body participates from locations within the jurisdiction.

The orders also require local agencies to make meetings accessible to the public telephonically or otherwise electronically, and imposes special notice and accessibility requirements.

In 2021, Governor Newson signed Assembly Bill (AB) 361 into law, amending the Brown Act and allowing legislative bodies to continue to meet virtually during the COVID-19 public health emergency. AB 361 allows for legislative bodies to meet virtually during a proclaimed state of emergency if any of the following apply:

- State or local officials have imposed or recommended measures to promote social distancing,
- The purpose of the meeting is to determine, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, or
- The legislative body has already determined that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Agencies are still required to meet aspects of the Brown Act including: providing notice and posting agendas; providing the public access to the meeting and the opportunity to address the council/board/commission; and providing the public the opportunity to comment in real time.

Without additional action, AB 361 will sunset Jan 1, 2024.[13]

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.[14]

12 Executive Order N-29-20 § 3.

13 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB361

14 Cal. Gov't Code § 54959.

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.[15] The agenda must be posted on the agency's website at least 72 hours 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). Teleconference location, if any, must be included on the agenda. Any person may request that a copy of the agenda packet be mailed to them. 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).[16]

- **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.[17] A majority of the commission must determine that such circumstances exist.[18]

- **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 media outlet 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.[19]

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 in 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[20] 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.

- **Recording of Meetings Is Allowed.** Anyone attending a meeting may record it with an audio or video recorder unless the commission makes a finding that the noise, illumination or obstruction of view will disrupt the meeting. Any recording 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.[21]

- **Sign-In Must Be Voluntary.** Members of the public cannot be required to register their name or fulfill any other condition

15 Cal. Gov't Code § 54954.2(a).

16 Cal. Gov't Code § 54954.2(b)(2).

17 Cal. Gov't Code § 54954.2(b)(1).

18 Cal. Gov't Code § 54956.5(a).

19 Cal. Gov't Code § 54956.

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

21 Cal. Gov't Code § 54953.5.

for attendance at a meeting. If an attendance list is used, it must clearly state that signing the list is voluntary.[22]

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.[23] 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.[24] 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 other attendees or participants 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.[25] 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, including: handwritten or printed documents; photos and videos; voicemails, drawings, plans and maps; and electronic communications such as emails, text messages, tweets and others. To be in the public record, the document must be related to the conduct of the public's business and prepared, owned, used or retained by the agency. This does not include every piece of paper.

A document is presumed to be a public record unless a specific exception applies.[26] Two minor exceptions worth noting are:

- 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.[27] 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. To avoid combining public and private conversations, don't include personal or political business to an email about your agency business. Create a new email if you are changing topics.

Public records are subject to inspection at all times during the office hours of the agency in which they are kept.[28] The public may also ask for copies of records. 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.

22 Cal. Gov't Code § 54953.3.

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

24 Cal. Gov't Code § 54957.5.

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

26 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).

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

28 Cal. Gov't Code § 6253(a).

Parliamentary Procedures

The rules of parliamentary procedure govern how decisions are made at meetings. Many, but not all, local agencies rely on Robert's Rules of Order for this purpose. Parliamentary rules are meant to create an atmosphere in which a meeting can be conducted efficiently, fairly, orderly and with full participation. The chair and the members of the commission bear responsibility for upholding the rules and maintaining common courtesy and decorum.

Debate and discussion under the rules should be focused, but free and open. It is generally best if only one person speaks at a time and for every speaker to be recognized by the chair before speaking. The chair should always ensure that debate and discussion focus on the item and policy in question, not on the personalities of the individual commissioners or anyone else in attendance.

A proposed course of action is first presented formally as a motion. Three types of motions are most common: basic motions, motions to amend and substitute motions. Basic motions are made when a commissioner recommends a specific action after saying, "I move...." You can change or amend the terms of a basic motion by saying, "I move to amend...." You can also completely replace the basic motion with another by saying, "I move to make a substitute motion that...." Motions to amend and substitute motions are often confused. A motion to amend seeks to retain the basic motion but to modify it in some way. A substitute motion seeks to throw out the basic motion and substitute a new and different motion for it. The question of whether a motion is really a motion to amend or a substitute motion is left to the chair. If you make a motion to amend but the chair determines that it is really a substitute motion, the chair's determination stands.

A motion should be seconded to ensure that more than one member is interested in supporting it. Debate can continue as long as the commission wishes, subject to the decision of the chair that it is time to move on or take action. At some point during the debate, someone may make a motion to limit debate by saying: "I move the previous question," "I move the question" or "I call for the question." What this motion is really saying is "I've had enough debate. Let's get on with the vote." A motion to limit debate may include a time limit. For example: "I move we limit discussion on this item to 15 minutes." When such a motion is made, the chair should ask for a second. Assuming there is a second, debate is stopped and a vote on the motion to limit is taken. A motion to limit debate requires a two-thirds vote.

Decisions are generally made by a simple majority vote. Usually, a simple majority of those present are required. However, there are a few instances—such as general plan approvals—where a majority of the entire commission is required.[29] A tie vote means the motion fails. Thus, for a five-member commission, a vote of 3-2 passes the motion, but a 2-2 vote with one abstention means the motion fails. If a simple majority is required, but one member is absent and the vote is 2-2, the motion still fails. In some cases, a super-majority (two-thirds) vote may be required. Examples of this kind of action include motions to limit debate, close nominations or suspend rules.

Three Types of Motions

- **Basic Motion:** "I move that we approve the Smith project as recommended in the staff report."
- **Amendment to Motion:** "I amend the basic motion to add the requirement that the applicant incorporate the design features recommended in the neighborhood group report."
- **Substitute Motion:** "I move to make a substitute motion that we reject staff's recommendation and accept the developer's proposal as presented to us originally."

29 Cal. Gov't Code §§ 65354, 65356.

If there is no end to the discussion in sight and you want to move on, adjourn, or at least end the discussion, you can make one the following motions.

- **Motion to Adjourn.** Commission adjourns to its next regularly scheduled meeting.
- **Motion to Recess.** Commission takes immediate recess. Normally, the chair determines the length of the recess.
- **Motion to Fix the Time to Adjourn.** Commission adjourns at a specified time. For example, the motion might be: "I move we adjourn this meeting at midnight."
- **Motion to Table.** Discussion is halted and the agenda item is placed on hold. The motion can designate a specific time to return to the discussion or it may be indefinite: "I move we table this item until our meeting in October" or "I move we table this item indefinitely." When an item is tabled indefinitely, a commissioner will have to make a motion to take the item off the table at a future meeting. These motions are not debatable and require an immediate vote, with a simple majority required for passage.

10-Step Format for Discussion of an Agenda Item

1. The chair announces the agenda item number and the subject.
2. The chair invites the appropriate staff to report on the item.
3. The chair asks members of the commission if they have any clarifying questions for the staff.
4. The chair invites public comments. Reasonable time limits – usually 3 to 5 minutes per person – may be imposed. Discussion is closed after everyone is given the opportunity to speak.
5. The chair invites a motion and announces the name of the motion maker.
6. The chair asks for a second and announces the name of the person seconding.
7. If a motion is made and seconded, the chair makes sure everyone understands by repeating it or asking the maker to repeat it.
8. The chair invites discussion of the motion among the commissioners. Upon conclusion, the chair announces that it is time to vote. The chair should repeat the motion to assure that everyone understands it.
9. The chair takes a vote. Simple "ayes" and "nays" are normally sufficient. A person not voting abstains. A motion passes with a simple majority unless there is a super-majority requirement.
10. The chair announces the result, indicating the names of the members, if any, who voted in the minority. For example: "The motion passes by a vote of 3-2, with Coleman and Jones dissenting. We have passed the motion requiring 10 days' notice for all future meetings of this body."

Chairing Meetings

At some point, it is likely that you will be asked to chair one or more meetings of the commission. The attitude and abilities of the chair are critical for an effective meeting. The chair sets the tone of the hearing by keeping the discussion on track, encouraging fairness and bringing the commission to the point of decision, even on complicated or controversial issues. A capable chair will bring many personal attributes—such as active listening, tact, decisiveness and patience—to the role.

In addition, the chair must think quickly to articulate positions, clarify motions and give direction to staff based on the differing views of individual commissioners. A very important—and often underrated—key to chairing a meeting is having a full understanding of the agenda items. Effective chairs put extra effort into studying the agenda and preparing for the meeting to better understand the nuances of the issues and options before them.

It is common practice for the chair to take a less active role in debates and discussions. This does not mean that the chair should not participate. On the contrary, as a member of the body, the chair has full rights to participate in discussions. The chair should, however, usually offer opinions last and should not make or second a motion unless convinced that no other member of the body will do so. The responsibilities of the chair include[30]:

- **Open the Meeting.** Explain why the meeting is being held, review the agenda and note any changes and review the procedures and time limits (if any) that are in effect.
- **Manage Public Testimony**. Describe the agenda item and ask speakers to identify themselves. Ask speakers to be concise and not repeat points made by prior speakers. Intervene when speakers ramble or when successive speakers repeat the same testimony. Assure that people have a reasonable length of time to testify and balance that with the number of people who want to testify. Sometimes there is a tendency to be easy on the time limits in the beginning of a meeting and more strict at the end. It's fairer for all if the time limits are applied consistently throughout.
- **Facilitate Deliberations.** Summarize issues, ask for input from the commission as a whole and ask for more information from staff if necessary. When commissioners disagree, assist them in expressing their various concerns. When a motion is proposed, assure that it is stated understandably before a vote is taken. At times, the chair may have to move the meeting along by asking for or suggesting a motion ("A motion at this time would be in order" or "A motion would be in order that we adopt staff 's recommendation").
- **Maintain Order.** Assure that commissioners wait to be recognized before speaking and intervene to prevent more than one speaker from talking at a time. Do not allow members of the public to clap or cheer. Likewise, quickly step in when sharp words are exchanged. Limit dialogue between commissioners and persons testifying to fact-gathering that will contribute to the commission's decision-making ability.
- **Apply the Rules of Procedure.** Be familiar with the commission's procedures and agenda items. The chair's decision is final on most rules of procedure.
- **Draw Out Reasons for a Decision.** Make sure that findings are adopted when required. When the commission makes a decision that is contrary to staff's recommendation, make sure that the reasoning for the decision is explained so that the relevant findings can be drafted. These duties are a lot to keep in mind, particularly the first few times you are called upon to chair a meeting. However, chairing a meeting is an acquired skill and you will become better at it the more you do it.

30 https://www.ca-ilg.org/sites/main/files/file-attachments/understanding_the_role_of_chair.pdf?1498252437

Quasi-Judicial and Legislative Decisions

Understanding the type of decision that the commission is being asked to make will help you understand your role in making the decision. Most land use decisions can be divided into two categories: legislative and quasi-judicial.

- **Legislative decisions** involve policy choices that apply to a broad class of landowners. Examples include decisions to adopt general plans and zoning ordinances.

  Legislative Acts: Examples

  - General plan amendments
  - Zoning code amendments
  - Zoning map amendments
  - Special plan adoption and amendment
  - Annexations
  - Development agreements

- **Quasi-judicial decisions** (also called adjudicative or administrative decisions) involve individual projects that are being considered for approval, conditional approval or denial based on criteria previously established by some legislative action. Examples include zoning permits or other entitlements, such as variances.

  Quasi-Judicial Acts: Examples

  - Conditional use permits
  - Variances
  - Coastal zone permits
  - Subdivision maps
  - Williamson Act cancellations
  - Development allotment per growth control ordinance
  - Certificates of compliance
  - General plan consistency determination
  - Habitat conservation plan amendments
  - CEQA decisions requiring hearings and evidence

The key difference between the two from a decision-making perspective is that procedural due process requirements apply to quasi-judicial decisions. Because these decisions are more formal, you have to be more careful about the sources of information you use to make your decision.

There is also a third type of decision that may arise from time to time: ministerial decisions. These actions are mandatory,

nondiscretionary activities that must be approved so long as certain standards are met. A final subdivision map, for example, must be granted when all of the conditions of the tentative map are met. Likewise, certain applications for second unit or "granny flat" approvals in single-family neighborhoods are ministerial.

Key Considerations for Quasi-Jurisdictional Proceedings

As a commissioner, you play a unique role when you are considering an individual application or other quasi-judicial decision. In a way, you are operating as a court in that you are applying the local land use regulations to a specific application just as a court applies the law to a specific set of facts. Because of this, you should limit your decision to facts that are presented as part of the quasi-judicial process, just as a court bases its decision on the evidence presented before it.

This does not mean, however, that the commission must have detailed rules of evidence like a court does. The public hearing format is much simpler. However, you do need to be aware of how the basic requirements of procedural due process may affect your ability to make a decision. Basic procedural due process requirements include:

- **Notice of Hearing Required.** Quasi-judicial proceedings almost always involve a public hearing. Affected property owners should receive notice of the hearing by mail at least 10 days in advance, although different timelines and procedures may apply in charter cities.[31]

- **Decision-Maker Must Be Present for all Evidence.** Anyone involved in making the decision must have heard all the evidence. This becomes an issue if you miss a meeting where evidence is presented but the vote is postponed to a later meeting that you attend. While the best practice is to be present for all hearings, in some cases you may still vote after reviewing the tape or testimony of the earlier meeting, reading all documents involved, presenting and stating on the record that such review and examination was completed.[32] However, your agency's attorney may recommend that you abstain from the vote to avoid questions about fairness.

- **Avoid Ex Parte Contacts.** An ex parte communication about a project occurs when you receive information—in person or by phone, e-mails, social media, etc.—outside of the quasi-judicial process (ex parte is Latin for "from one side only"). Reliance on information received in this way can be unfair because the opposing parties are not there to rebut the information. If you are about to receive this kind of information, you should explain that you are not permitted to discuss the issue outside of the hearing. Ask that the person submit their comments in writing for the consideration of the entire planning commission. The comments will then be included as part of the record (and have greater legal effect). You should also discuss the contact with the agency's attorney. You may be able to resolve the problem by disclosing the contact and the substance of the communication at the hearing. This will get the evidence you received on the record.

- **Site Visits Raise Concerns.** It is often tempting to visit a project site to get a better feel for the issues. However, this action raises due process concerns. The visit provides you with an opportunity to draw conclusions outside of the hearing process. For example, if neighboring owners are concerned about traffic congestion and you visited the property on a Sunday morning when there was no traffic, you might dismiss their claims as unwarranted. They may have just assumed you knew their concern was about congestion at peak travel times. Many local agencies require that you disclose any site visits that you may have made—along with any conclusions you drew from such visits—at the beginning of the hearing. Other agencies may take a more conservative approach. Always check with staff or the agency's attorney to see what procedures may apply to your commission.

- **Strong Personal Bias May Require Disqualification.** Strong personal bias may require that you disqualify yourself from making a decision. Procedural due process is built on the notion of an unbiased decision-maker.

31 Cal. Gov't Code § 65091.

32 David J. Curtin, Jr., & Cecily T. Talbert, Curtin's California Land Use and Planning Law (Solano Press, 2004).

Making a Decision

When a public agency makes a decision, the guiding principle must always be what best serves the public's interests, not the personal self-interests of the decision-makers. That is because the very purpose of having public agencies is to provide mechanisms to engage in collective decision-making. The goal of this decision-making is to work through challenges being faced in a community, to provide services and facilities and, through laws, to guide individual behaviors to promote the overall safety, well-being and prosperity of the community.

The primary job of a planning commission is to make informed land use decisions. Reaching decisions that can be supported by a majority of the commission is often difficult and requires a well-structured meeting and discussion. The following tips may help in the decision-making process:

- Remember that you have more choices than to simply approve or deny a project as presented. Be prepared to suggest changes that address a concern that you have or that was raised during public testimony. Be aware that the applicant may have already made changes to the project prior to the hearing. Ask about any such changes.
- Establish time limits and review periods to ensure that the project is implemented as the commission has required.
- Check with staff to see if a suggested condition can be enforced.
- Be willing to approve a project in concept and give staff clear direction to work with the applicant to complete the project.
- Consider the relationship of the project to the entire community and to your understanding of the community's goals and policies. Does the project exacerbate current challenges or disparities or does it work to address them in a way that aligns with community values?
- Draw the line on conditions. Too many can overburden a project. If a project requires too many conditions, should you really be approving it? Remember, it is okay to deny a project if you have good legal cause.

Depending upon local procedures, the commission's decision on a project may be: (1) referred to the city council or board of supervisors as a recommendation for action (this is common for general plan amendments and rezonings) or (2) considered a final action unless appealed to the council or board (this is common for subdivisions, variances and use permits).

Findings

Findings are written explanations of why—legally and factually—the planning commission made a particular decision. They map how the commission applied the evidence presented to reach its final conclusion. Findings should be developed with at least five audiences in mind: the general public, interested parties, the governing body, other governmental entities and courts.

Sometimes you may hear staff say that findings must "bridge the analytic gap." This refers to a leading court decision stating that findings must bridge the analytic gap between the evidence presented and the agency's ultimate decision.[33] Findings are helpful to the public. They offer an important opportunity to show how the commission's decision promotes the public's interests. In addition, findings:

- **Encourage Interagency Communication.** Findings can explain the basis of the commission's decision to the governing body.
- **Assure that Standards Are Met.** Some laws require that certain findings must be made before the commission can take a particular action.
- **Help Courts Interpret the Action.** Courts often look to the findings to determine the underlying rationale for an action or requirement. Findings provide the local agency with an opportunity to tell its side of the story.

Findings are always required when local agencies are acting in their quasi-judicial capacity[34]—that is, when they are making decisions on individual permits. Findings are also required for certain legislative decisions. It is often a good idea to develop findings even when they are not required, particularly for decisions that may be controversial or lead to litigation.

How findings are drafted will vary—and there is no perfect way to do it. Typically, the staff report includes a proposed set of findings that supports staff's recommendation. Proposed findings provide a starting point for the commission to develop the final set of findings. The drawback is that the commission may not adopt the recommended position, requiring the preparation of a new set of findings. Even if the commission adopts staff's position, the proposed findings may not reflect the entire record because they are usually written before any public testimony.

Some local agencies have tried to address this challenge in two ways. The first is to include two proposed sets of findings in the staff report, one in support of staff's position and one in support of the opposite position. This method, however, has its own drawbacks. In addition to creating more work for staff, the unused set of findings provides a starting point for anyone who wants to appeal the decision. Also, some members of the public find it hard to understand how the same set of facts can be used to support both positions.

The second and more common method is for the commission to make a tentative decision at the meeting and explain its reasoning to staff. Staff can then draft the findings and return them to the commission at the next meeting, where the decision can be finalized and the findings adopted. This approach is not always viable when time deadlines (such as those imposed by the Permit Streamlining Act) require a decision before the next meeting is scheduled to occur.

Regardless of how findings are drafted, there are always some instances when the commission will need to articulate its findings orally immediately upon taking action. The challenge in such a situation is to develop findings on the fly that are specific enough to withstand judicial review. The following four-step process will help in such situations:

33 Topanga Association for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506 (1974).

34 Topanga Association for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506 (1974).

1. State the impact (either positive or negative) of the project.
2. Cite the source of the information (for example, a study, testimony or other evidence).
3. Refer to the relevant governing statute, regulation or ordinance.
4. Describe in detail why or how the project's impact either meets or fails to meet the requirements included in the statute, regulation or ordinance.

One of the simplest techniques is to use the word "because." It connects the reasoning to the legal principle. For example:

- "The project is inconsistent with Section III (A) of the housing element because only three percent of the units will be affordable instead of the required 15 percent."
- "The 100-foot-wide buffer does not threaten bird and wildlife migration because the biologist's report notes on page 32 that 65 feet is sufficient for each species in the project area."

Questions Findings Should Answer

Findings should answer the following questions, as relevant to the particular decision:

- Why was the regulation adopted or rejected?
- Why was the permit approved or denied?
- How does the decision meet relevant statutory requirements?
- What is the connection between the action and the benefits of the project?
- What public policy interests are advanced by the decision?
- What do particular provisions, restrictions or conditions mean?

The Record

A key aspect of quasi-judicial hearings is the administrative record. The record is the collection of all evidence presented to the commission during the proceeding. This includes all written documents, testimony, photographs, maps and any other evidence that was submitted during the hearing. Your own personal knowledge may also be relied upon as long as you announce it during the hearing.

The record can include any written documents in the files of the local agency. Always be careful about what documents that you submit to planning staff. There have been instances where things have made it into the record—such as e-mails—that later turned out to be embarrassing. It is always a good rule to keep your communications with staff and others professional, particularly when they are expressed in writing.

What is in the Record

The information that is included in the record can vary with the proceeding, but typically includes:

- The application
- A description of the property or area at issue
- Correspondence between the applicant and staff
- The staff report
- Written comments submitted by others
- Oral evidence given at the public hearing (memorialized)
- Plans, drawings, photographs, deeds and surveys
- Consultant reports
- Written testimony
- Records of mailed and published notices
- Relevant portions of the general plan, any specific plans, the zoning ordinance and other ordinances and policies

Appeal to the Governing Body

The process for appealing a planning commission decision will vary with each agency. Typically, commission decisions can be appealed to the governing body, which may overturn the commission's decision, adopt it or modify it. In some instances, an applicant may request that only a specific portion of the commission's decision—such as a fee or mitigation condition—be reconsidered. Even in these cases, the governing body may decide to revisit the entire decision depending on its local rules.

In some communities, the planning commission may sit as an appeals board for decisions made by a zoning administrator, staff or some other commission (like a historical resources or landmarks commission). Usually, these procedures are governed by specific guidelines contained in the local agency's zoning or development code.

Judicial Review

If an applicant or community member has appealed an action to the governing body and is still not satisfied with the result, he or she may seek relief in the courts. This is another point where the distinction between legislative and quasi-judicial actions is important. Courts are more deferential to legislative actions because they involve policy choices. Our legislative system of government reserves policy choices for the legislative branch. Because of this, courts will normally only look to see that legislative decisions were not arbitrary, capricious or entirely lacking in evidentiary support.[35]

In contrast, quasi-judicial decisions are scrutinized more closely because the local agency is acting more like a court than a legislative body. Courts will normally examine whether there was substantial evidence to support the agency's findings. The court will uphold the agency's decision if the evidence substantially supports the findings or decision.[36]

There are individual cases in which courts may apply a stricter standard. For example, when vested rights are at issue, courts may apply an independent judgment test that allows the court to reweigh the evidence and substitute its own conclusions.[37] Likewise, stricter tests may apply for constitutional issues, such as free speech.[38] In such cases, the quality of the underlying administrative record and the local agency's findings will often be at the heart of the case.

35 See for example California Hotel & Motel Association v. Industrial Welfare Commission, 25 Cal. 3d 200 (1979).

36 Sierra Club v. California Coastal Commission, 19 Cal. App. 4th 547 (1993).

37 Cal. Civ. Proc. Code § 1094.5(b), (c); Strumsky v. San Diego County Employees Retirement Assn., 11 Cal. 3d 28, 44-45 (1974); Goat Hill Tavern v. City of Costa Mesa, 6 Cal. App. 4th 1519, 1525 (1992).

38 See Desert Outdoor Advertising, Inc. v. City of Moreno Valley, 103 F.3d 814, 820 (9th Cir. 1996), cert. denied, 522 U.S. 912 (1997).