

Michael G. Colantuono
mcolantuono@cllaw.us
(530) 432-7357

Colantuono & Levin, PC
11364 Pleasant Valley Road
Penn Valley, CA 95946-9000
Main: (530) 432-7357
FAX: (530) 432-7356
WWW.CLLAW.US

Sandra J. Levin, Of Counsel

**MAKING MEETINGS MANAGEABLE:
Meeting Management Tips
for Local Elected Officials**

April 26, 2013

by

Michael G. Colantuono, Esq.^{1/}

This paper is an outline of ideas to assist City Clerks, Mayors and Councilmembers to identify meeting management issues. It is not intended as legal advice and is not a fully developed, narrative discussion of the issues presented. If you have questions about these matters or their application to specific facts, you should seek appropriate counsel.

1/ My thanks to my colleague Michael Jenkins, who prepared an earlier version of this paper and upon whose work it is substantially based.

I. GOALS OF MEETING MANAGEMENT

- A. Complying with legal requirements for public participation in a way that balances public participation with the need to get the City's business done.
- B. Making meetings shorter, while allowing thorough and meaningful discussion.
- C. Relieving elected officials and public agency staff of "meeting anxiety."
- D. Dealing effectively with disruptive people.
- E. Preventing rules of parliamentary procedure from become obstacles to, rather than tools for, meeting management.
- F. Presenting a "public face" of the agency of competence, civility, and efficiency.
- G. Accomplishing these goals without violating the Brown Act, due process rights of constituents or the privacy rights of agency employees.

II. PUBLIC PARTICIPATION REQUIREMENTS

There are four sources of public participation requirements in public meetings:

A. **THE BROWN ACT.** Since 1987, the Brown Act has required that the agenda of every regular meeting of a legislative body (such as a Board of Supervisors, City Council, a standing Council or Board subcommittee, or a Planning Commission) include a time for public participation (Government Code Section 54954.3). If a Council or Board generally allows public comment on all agenda items when each item is considered, the public comment period is usually reserved for items not on the agenda. The public comment period may be placed anywhere on the agenda. The Brown Act requires that the public have an opportunity to address every item before it is acted on by the Council. Therefore, unless you wish to allow public comment on every item of business, some portion of the public comment period must appear at the beginning of the agenda. Comments may be limited to those matters within the subject matter jurisdiction of the body. Reasonable time limits may be imposed; you should probably

hear everyone who signs up (the law is silent on this point) unless the lateness of the hour makes it unreasonable to do so.

B. OTHER STATUTES. A number of State statutes compel legislative bodies to conduct “public hearings” on various subjects. Examples include zoning matters, the establishment of some fees, and the formation of assessment districts. Members of the public must be accorded the right to participate in public hearings. Reasonable time limits may be imposed on speakers, consistent with the importance of the matter at hand and the number of speakers. You have greater leeway with a “legislative” matter (such as the adoption of a zoning ordinance), than with a “quasi-judicial” matter (such as a conditional use permit).^{2/} You may establish reasonable rules for hearing the testimony, such as sequence of speakers, or whether to give an applicant or a spokesperson for a group more time than others.

C. DUE PROCESS CLAUSE. The Due Process Clause of the 14th Amendment to the United States Constitution, and similar provisions in the California Constitution, apply to a quasi-judicial proceeding in which a “property” or “liberty” interest is at stake.^{3/} In those cases, those with an interest in a matter must be given due process — that is, reasonable notice of the matter and a meaningful opportunity to be heard — whether or not a statute requires a public hearing.

You should show some flexibility in your procedure and evaluate what “process” is required in each situation. Not every applicant, or business licensee, or disciplined employee can present a case in a standard allotment of time — the amount of time required depends on the importance and complexity of the matter at stake. A variance for a lot line adjustment on an existing house probably takes less time to discuss than a subdivision proposal for several dozen hillside houses.

2/ While you should ask your City Attorney or County Counsel if a particular matter is legislative or “quasi-judicial,” as a rule of thumb, if the matter involves a request from a particular person for a decision which will affect only that person or a small group of which he or she is a part, it is more likely to be “quasi-judicial” than is a matter which involves the formulation of a rule to govern a large class of people in the future.

3/ Many court decisions are devoted to defining the “property” and “liberty” interests protected by the Due Process Clause. For now, it is enough to note that most land use decisions affect the “property” interests of all who own or lease land near the site which is the subject of the decision, as well as the applicant and the owner of the site. Employees who cannot be fired without legal cause have a “property” interest in their employment and employees and others have a “liberty” interest in their reputation in the community. “Liberty” interests most commonly arise in “name-clearing” hearings for terminated employees. “Property” interests arise in many settings.

The difficulty here is balancing two competing concerns. On the one hand, rigid reliance on fixed rules may violate due process if the interests at stake are so significant that a more lenient rule is required. On the other hand, deviation from usual rules without good reason creates the appearance of arbitrary, and perhaps discriminatory, conduct. Therefore, you must use your judgment. It is helpful when deviating from usual rules to explain to the audience why a change is needed (“This is a very complicated zoning matter, so we will give the applicants and the project opponents more time than we usually allow.”) When in doubt, ask the City Attorney or County Counsel for guidance about what due process requires.

D. FIRST AMENDMENT. The “free speech” clause of the First Amendment to the United States Constitution and the parallel provisions of the California Constitution do not accord members of the public a “right” to speak at a City Council meeting. The courts have recognized that meetings are business sessions, and not unlimited First Amendment forums — places like parks and streets, where people may freely express themselves. Members of the public do not have the right to speak at a meeting, or to speak whenever they want, or on any subject they want. The First Amendment permits “reasonable time, place, and manner restrictions” as well as rules designed to limit comments to the subjects with which City or County government is concerned. Apart from this general subject matter restriction, however, the First Amendment **does** forbid the City to regulate speech based on its content, unless it is disruptive. You cannot suppress someone’s speech merely because you do not like what they are saying; if you do, you violate the First Amendment, and potentially put your agency, and yourselves personally, at risk of liability for damages under the federal civil rights statute, section 1983 of Title 42 of the United States Code.

Unless they disrupt a meeting, people can say just about anything at a City Council or Board of Supervisors meeting. You can require speakers to stick to matters relevant to the City’s business. What’s “relevant”? Speaking about political freedom in China might be safely regarded as irrelevant, unless the Council or Board has passed a resolution supporting greater freedom in that country. A subject is irrelevant if it simply has no bearing on the issue at hand or on matters within the jurisdiction of the City or County (or of the Commission or Board the speaker is addressing).

Speakers may denounce Council or Boardmembers and call for their defeat. The Brown Act specifically provides that a local government “shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.” (Government Code section 54954.3(c).) They may make personal attacks, to the extent that they involve agency business. All comments in

a meeting are absolutely privileged from liability for defamation under Civil Code section 47(b).

III. TYPES OF MEETINGS

FORMAL. These are the characteristics of formal meetings:

Roles of participants are strictly observed.
Audience speaks only when called on.
Time limits established for speakers.
Council or Boardmembers speak when called on.
Everyone sticks to the issue at hand.
Debates are not allowed — communication via the chair only.
Rules of decorum and procedure are strictly followed.

INFORMAL. These are the characteristics of informal meetings:

Fewer barriers between audience and Council or Board.
Town-meeting atmosphere.
Participation is encouraged and less structured.
Generous or no time limits.

Every board must decide on the degree of formality that works best to accomplish its goals. Some factors to consider include:

- How many people come to the meetings?
- How controversial are the issues?
- How well does the Mayor or Chair keep the meeting on track?
- Is audience disruption a regular problem?
- How long is a typical agenda?
- How big is the Council or Board chamber?
- Where does the Council or Board sit vis-à-vis the audience?

- Are the meetings broadcast or videotaped?

Each board must decide what degree of formality works best for a given meeting, depending on the combination of these factors. Generally, more control can be obtained if the meeting is more formal. Meetings need not be uniformly of one type or another; each meeting may be more or less formal than the last, depending on how the above factors apply; but if so, the inconsistency should be explained (Example: “We’ve got a lot more folks here than usual tonight, so we’re going to use speaker slips and limit everyone to three minutes so we can try to hear everyone by a decent hour.”)

Formality has the advantage of keeping tighter control over the meeting, appearing more business-like and moving through the agenda more quickly. However, it is less personal, more intimidating to the public, and allows less spontaneity. Less formal meetings offer a more approachable government, but are more difficult to manage, especially with larger audiences. Even with a small audience, an extremely informal approach, where the audience is given free rein to participate, often leads to long-winded discussions and lengthy meetings. Obviously, though, an overly formal meeting style would look silly if only a handful of people regularly attend meetings. Thus, you should adjust to your own particular situation and use those elements of formality necessary to accomplish your objectives.

IV. WHY MEETINGS GO ON ... AND ON ... AND ON

A. AUDIENCE PROBLEMS: hostile audience, disruptive “regulars,” exceeding time limits, wandering from the subject, speaking on every issue, speaking when it’s obvious the Council or Board is doing what the speaker wants, rude behavior and personal attacks.

B. STAFF PROBLEMS: unprepared staff, incomplete staff reports, non-responsive answers to questions, overly talkative staff.

C. AGENDA PROBLEMS: poorly organized agenda, overly packed agenda, poorly timed closed sessions, placing matters on the agenda before they are ready for decision or after the time when productive discussion can be had.

D. MAYOR/CHAIR PROBLEMS: a Mayor or Chair who is too passive and fails to move the meeting along, an autocratic Mayor or Chair who invites resistance and

argument from peers or audience, an unprepared Mayor or Chair, a disorganized Mayor or Chair, one who fails to perceive the feelings and desires of the audience and the Council or Board and allows one person to drag on a discussion when most of the group is ready to move on.

E. COUNCIL OR BOARDMEMBER PROBLEMS: Members who talk too much, who don't distinguish between important and unimportant issues, who aren't prepared and delay the meeting while they read the staff report, who are disorganized and waste time trying to remember what it is they wanted to know or say about an item.

Knowing the source of the problem is the key to managing it. We are all given to these behaviors at one time or another and effective meeting management requires collective effort by all Council and Boardmembers to cooperate toward a common goal of effective meetings.

V. TECHNIQUES FOR MANAGING MEETINGS

A. ORGANIZE THE AGENDA. Meetings are, in a loose sense, a form of theater — organize your agenda in a way that makes the most sense, prevents pent-up frustration due to long waits and is responsive to the audience.

- ⊙ Consider placing a limited audience participation period (perhaps 15 or 30 minutes) at the beginning of the meeting (allowing overflow later) so people don't have to wait all night to comment on something not on the agenda and people who have come to speak about something that is on the agenda are not delayed indefinitely.
- ⊙ Schedule public hearings early, especially if you know people are present to testify, so people can speak on the item they came for and then leave. Similarly, you may want to schedule early on the agenda items of interest to children, invited guests, and others who may not wish to stay for the whole meeting.
- ⊙ If your consent calendar tends to take longer than it should, put it later in the agenda, because it usually contains routine items. It is a good practice not to take items "pulled" from the consent calendar up right after (or before the consent calendar), but at the end of meeting, under "new business."

- ⊙ Start on time and finish at a reasonable hour; otherwise you communicate to the public that you do not mind wasting their time and do not invite their participation.
- ⊙ Be prepared and organized so the business moves along smoothly, in an orderly and business-like fashion. Read the agenda in advance and direct routine questions to staff before the meeting. Write down your comments and questions in anticipation of the meeting. Remember, there are two different reasons to ask a question: to get the answer and to make a public point. You can get your answers before or after the meeting. Making a public point may require a public question. Even if the question must be asked at the meeting, staff will be grateful, and answers will be more useful, if you let staff know in advance that they should prepare to answer the question.
- ⊙ Use study sessions to tackle difficult and time-consuming issues in a more informal setting, so that they do not interfere with regular meetings.
- ⊙ Schedule closed sessions so that they do not interfere with the public portion of the agenda.
- ⊙ In your enthusiasm to increase efficiency and shorten meetings, be careful not to pre-decide issues outside the meeting by use of so-called “daisy chain” or “seriatim” meetings (in which a series of conversations among Council or Boardmembers effectively resolves an issue out of public view), to prematurely cut-off audience input (especially in a public hearing setting), or otherwise give the impression that you are steam-rolling through the agenda in a predetermined direction without regard to public input.
- ⊙ Develop a process for placing items on agendas so that they are not unrealistically long.

B. **MANAGE PUBLIC INPUT.** You can accord speakers a meaningful opportunity to be heard without giving them unlimited time:

- ⊙ Use speaker slips; announce who will speak next so they can be ready and it isn't necessary to wait for them to get to the podium.
- ⊙ Enforce reasonable time limits.

- ⊙ Insist that the speaker address the Council or board as a whole and not the audience, the television audience or an individual Council or Boardmember (think about positioning the speaker table or podium to subtly reinforce this rule).
- ⊙ Allow Council or Boardmembers to ask questions of speakers but avoid debates between the Council or Board and speakers or among audience members, but avoid cross-examination and abusive exchanges.
- ⊙ Avoid debates between Council or Boardmembers and staff.
- ⊙ Consider using a “Council or Boardmember response” period after audience comments so Councilmembers can respond or give staff direction immediately, yet not when a speaker is at the podium; a “staff response” time can avoid encouraging debates between members of the public and staff.
- ⊙ Tell people what is going on as you work through the agenda so that the audience is fully informed. People are more likely to participate if they don’t feel lost or intimidated. Borrow from television news practice of telling people where you are on the agenda and what’s coming up, and what the evening’s rules are for participation. Try to make the public feel comfortable participating in the meeting and get buy-in for your decisions.
- ⊙ Be polite and encourage politeness; but do it firmly. The audience can be told to quiet down and a speaker can be told to conclude politely, rather than by bullying. Be firm about heckling, booing and harassment of other speakers.

C. DEALING WITH DISRUPTIVE PEOPLE. So, how do you deal with persistent, vicious public commentary? You have at least these options:

- Rise above it by ignoring it, smiling, and thanking each speaker for his/her comments; effective use of appropriate humor can also be helpful.
- Respond in kind.
- Periodically remind the audience to be civil and observe commonly understood rules of decent behavior.

- Meet with the offenders privately to see if their concerns can be resolved.
- Compliment offenders when they behave well, praise their commitment to the community in attending meetings, and give them the attention they may be seeking in ways that encourage positive behavior.
- All of the above.

Each alternative has its pros and cons, and its predictable consequences. There is no one single solution; sometimes only time, patience, and peer pressure to observe the rules of common courtesy will work in your favor.

It is always best to treat the audience with respect and in a manner that responsible adults prefer to be treated. In general, it is better to serve as an example than to be perceived as a bully or an object of ridicule.

Be aware of your body language, both positively and negatively. Reaching for the microphone is a non-disruptive way to ask for the floor. Crossing your arms, rolling your eyes, turning your chair, etc., tell the speaker that you are not listening. Facing the speaker, sitting still, making eye contact, all say that you are listening.

Be careful with the use of cellphone, slate computers and other electronic devices in public meetings. Multi-tasking conveys that you are not listening and can raise thorny issues under the Brown Act and the Public Records Act.

You can eject disruptive people from meetings, but before doing so, you should establish a “record” by giving them clear and ample warnings and alternatives, providing the person an opportunity to leave or reform his/her behavior voluntarily, and calling upon the sergeant-at-arms as a last resort. Alternatives include clearing the room under Government Code section 54957.9 or simply taking a short recess to cool things down.

Consider efforts outside the public meeting to address the concerns of persistent or regular complainers. This could be a conversation with the complainers or with the Council or Boardmembers or staff members who react to the complainers in a counterproductive way.

Whatever your style, don't make threats you won't carry out. Ejecting someone from a Council or board meeting and clearing the room are serious legal matters and

can lead to lawsuits, so we recommend consulting with your City Attorney or county Counsel before doing so.

D. DISCOURAGE REPETITION.

The Audience. When you have a full house and many members of the audience want to speak, you can:

- ⊙ Encourage people to avoid repetition (and even interrupt to remind them not to repeat what prior speakers have said).
- ⊙ Ask for a showing of hands as an alternative to individual comments.
- ⊙ Ask for a “spokesperson” from a group and give him or her more time than the others.
- ⊙ Firmly curb straying from the subject.
- ⊙ Discourage applause and other demonstrative activity. It is helpful to explain that you are doing so not to silence the audience but to make all speakers feel welcome, whether they agree or disagree with the majority.
- ⊙ Enforce time limits.
- ⊙ Prohibit dialogues and encourage written testimony. Written testimony is especially useful in complex matters.
- ⊙ “Reflective listening” – in which the chair or a Council or Boardmember summarizes what has been said and encourages input which is not repetitious — tells people that you are listening, that they have been heard, and they needn’t belabor the point.

Staff. Encourage staff to summarize, rather than read, staff reports; reading the entire report wastes time and suggests to the public (and Council and Boardmembers) that the Council or Board is not (or need not be) prepared. Do provide enough information to allow the public to following the meeting.

E. MANAGE CONFLICT. Conflict among Council or Boardmembers can lead to repeated debates which waste time. It may be best to agree to disagree respectfully and to encourage the chair to manage or prevent debates. Obviously, the chair should not

get so involved in debate that he or she forgets that it is his or her primary responsibility to manage the meeting. If the chair gets into a prolonged debate, it is difficult for anyone else present to get the meeting back on track (although the Mayor Pro Tem or Vice-Chair might take on this role). It may also be useful to attempt “team-building” via retreats, study sessions, and social contacts among Council or Boardmembers.

Cooperate to create a positive image for the agency. Like it or not, the Council or Board is likely to be perceived as a whole, not as five individuals. Therefore, you all have an interest in creating a positive public perception.

Rotating the chair among Council or Boardmembers can expose the agency to a variety of meeting management styles and give all Council or Boardmembers an appreciation for the chair’s job. Even Cities with directly elected Mayors often have related City bodies, such as redevelopment successor agencies, financial authorities, etc., and the chair of these bodies can be rotated.

Use team-building retreats, study sessions, and social contact among leaders to foster an environment of cooperation and trust. While conflict is inevitable, mistrust is not.

Don’t send people home angry if you can avoid it, even if only by thanking them for coming and speaking.

F. DON’T ATTACK OR EMBARRASS STAFF. The City or county will look better, and the Council or Board, too, if you avoid “ambushing” or embarrassing staff. You look like a bully if you attack the people who work for you: they can’t fight back. You also increase disrespect for the City or County as an institution and ultimately for you — you hired these people (or didn’t fire them), didn’t you?

You can respectfully disagree with staff’s recommendations; but address the issues, not the personalities. If you have serious questions about the performance of a staff member, take it up with the City Manager or CAO or schedule a closed session to evaluate his or her performance. This will also avoid suits claiming that a Council or Boardmember has invaded the privacy of a staff member.

G. KNOW YOUR LIMITS. Adjourn at a reasonable hour. No one does their best work late at night after a long day.

If a long meeting is unavoidable, consider a short break or a “seventh inning stretch” to allow people to refresh themselves and come back to the table with renewed focus.

A snack can be a good idea, especially for a late closed session. Keeping people’s blood sugar levels up can contribute to effective meetings!

VI. WRITTEN PROCEDURES

A. Consider written rules of decorum.

B. Disseminate written rules governing meeting procedures and public participation by placing them at the back of the room with the agendas and speaker slips.