

Purpose

Principles of fundamental fairness and due process of law require that city decision makers conduct quasi-judicial proceedings in an open, objective, and impartial manner, free of undue influence and the abuse of power and authority. Communications with parties outside of an official proceeding can lead to doubts about the fairness of the proceeding and the impartiality of the decision makers. Establishing a policy disfavoring such communications and providing for clear procedures regarding such communications when they do occur will promote impartial, fair and transparent decision-making.

Statement of policy

1. This policy applies to quasi-judicial proceedings. A quasi-judicial proceeding is a proceeding in which the decision affects the specific rights or interests of an individual or entity based on the decision makers' application of the governing law to specific facts. The existence of a statute or ordinance mandating notice and a hearing is an indication the proceeding is quasi-judicial. Examples of quasi-judicial proceedings are proceedings involving land use permits, license revocations, and nuisance abatements.
2. This policy does not apply to legislative acts. A legislative act involves the establishment of a regulation or policy to be applied in all future cases and the ways and means of accomplishing it. Legislative acts include the adoption of ordinances or land use plans, such as general plans or specific plans.
3. Parties appearing before the city for a quasi-judicial proceeding deserve to have their issues heard in an open, transparent and fair process.
4. Ex parte communications are substantive oral or written communications with a decision maker regarding a quasi-judicial proceeding which takes place outside of a noticed hearing on the matter. Ex parte communications can be written communications received by a decision maker, substantive conversations with a decision maker, or independent fact-finding by a decision maker, including site visits. Ex

parte communications may be received from a developer, a project proponent or opponent, or any other interested party.

5. Ex parte communications are disfavored and should be avoided whenever possible because they can bring into question the impartiality and fairness of the hearing process. This is especially true of ex parte communications that suggest a decision maker has assisted project proponents or opponents in formulating and advocating their positions.

6. For quasi-judicial proceedings involving land use decisions, independent site visits by a

decision maker may be useful for the decision-making process. In such cases, the site visit should be disclosed at the public hearing and, when possible, should not occur while

a project proponent, opponent, or other interested party is present. If a project proponent, opponent or other interested party is present during the site visit, the substance of any communications with the party during the site visit should also be disclosed at the public hearing.

7. When an ex parte communication does occur, information regarding the communication should be fully disclosed so that all interested parties are aware of the communication and have an opportunity to explain or rebut the information as necessary.

Procedure

1. This policy shall apply to the mayor, city council members, and members of all boards and commissions when serving as decision makers in any quasi-judicial proceeding.

2. The city clerk in conjunction with the city manager and city attorney will identify agenda

items involving quasi-judicial decisions on the agenda for the City Council or any board or commission.

3. The presiding officer at a public hearing involving a quasi-judicial decision will ask each

other member of the decision-making body, if any, to disclose any ex parte communications prior to the time for receipt of public comment.

4. Disclosure of ex parte communications may be made verbally and should include the following information as applicable:

a. The type of communication, including whether any written or other materials were provided to the decision maker;

b. When and where the communication took place;

c. Who was involved in the communication with the decision maker; and

d. The substance of the information that was disclosed to the decision maker.

5. If a decision maker received any written or other materials as part of an ex parte communication, those materials should be provided to the City Clerk's Office and included in the record of the proceedings. If the materials are no longer available at the time of the hearing, the decision maker should provide the City Clerk's Office with a description of the materials received and an explanation of why they are no longer available to include in the record of the proceedings.

6. Ex parte contacts occurring after a public hearing is closed and before a final decision is

rendered are prohibited because there is no opportunity for rebuttal.