

City of San José, California

COUNCIL POLICY

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PURPOSE

City Boards and Commissions are formed in order to provide independent recommendations to Council or, in the context of quasi-judicial boards such as the Planning Commission, Civil Service Commission, Elections Commission and Appeals Hearing Board, to make independent decisions and take administrative actions (also called “quasi-judicial actions”). The Commissions play an important role by being visible in the community and bringing a broad representation of ideas into the process.

This Policy is adopted with the intent of formalizing the need for independent advice and decision making by the Commissions as well as to ensure a clear understanding of the role of the Commissioners by all who participate in the governmental process. References to “Commissions” in this Policy includes City Commissions, and Boards which are subject to the Brown Act (Gov. Code Sections 54950 - 54962.) This Policy does not apply to task forces or ad hoc committees.

POLICY

A. Council Liaisons

The Council Liaison is the Councilmember who is specifically assigned to be the liaison between the City Council and the Commission. The primary role of the Liaison is that of facilitator of communications between the Commission and the Council. A Councilmember who is appointed to sit as a member of a Board or Commission is not a liaison for purposes of this Policy.

1. Definition of the Role

The Council Liaison shall facilitate communications between the Commission and the Council. The Liaison should not be an advocate for the Commission, give direction or influence a decision of the Commission. The Liaison may, however, assist and provide guidance to Commissions with their workplans or agendas.

2. Purpose

The Liaison acts as:

- a. Spokesperson on behalf of the Council when so directed by the Council.
- b. Contact person, if the Commission or an individual Commissioner wants such a channel of communication.
- c. Monitor the Commission to identify procedural and structural issues relating to the effective functioning of the Commission for Council.

3. Participation Expectation

- a. Attendance is discretionary with the Councilmember - attendance at Commission meetings is not required but is encouraged.

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- b. Liaison shall have no vote on the Commission and shall not act as an ex officio member of a Commission.
- c. Liaison attendance at Commission retreats is discouraged unless attendance is requested by the Commission

B. Councilmember/Commission Interactions

City Boards and Commissions are formed in order to provide independent recommendations to Council and, in the case of some commissions, to conduct hearings in order to make determinations, which may or may not be subject to appeal to the Council. These hearings are referred to as being quasi-judicial. Council members may, from time to time, be witnesses at such hearings.

The following guidelines apply to all Council members.

- 1. Council members should not speak to any Commissioner on any matter that may come before the Council in a manner designed to influence the Commission. Nor should any Councilmember privately lobby any Commissioner outside of the meetings in an attempt to influence his or her individual vote.
- 2. Any Councilmember who has testified on his or her own behalf or as a witness before a Commission on any administrative action which then comes to Council is disqualified from participating as a Councilmember on the matter only if there is a legal conflict of interest.
- 3. A Councilmember must clearly state when he or she is speaking on behalf of the City Council.

C. Role of Liaison Staff

- 1. Council staff do not serve as “alternates” to the Liaison but may attend to observe, provide information on behalf of the Liaison and answer questions in order to report back to their respective Council members.
- 2. Council staff members should not participate in the discussion by the Commission. However, staff can communicate messages on behalf of the Liaison and answer Commission questions.
- 3. Council staff members who attend meetings may sit at the table with the Commission at the discretion of the Commission or the chair.

D. Code of Conduct For Commission Members - General Standard

All Commissioners should conduct meetings in a dignified and courteous manner. No bias or prejudice against any individual or group of people should be manifested by any Commissioner or condoned by any Commission.

The following Code of Conduct applies to all Boards and Commissions, except the City Retirement Boards, whose members are subject to a fiduciary duty.

- 1. When speaking or writing publicly on matters within the purview of his or her Commission, unless a Commissioner has been authorized to speak on behalf of the Commission or the Commissioner is speaking on behalf of a position that the Commission has taken by formal action, the Commissioner should make very clear that he/she is speaking on his/her own behalf and not on behalf of the Commission.
- 2. No Commissioner shall use his or her Commission title or speak or write as a Commissioner except when speaking on behalf of the Commission. Except when a Commissioner is speaking on behalf of the Commission, no Commissioner shall identify

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him or herself as a Commissioner without making clear that he or she is not speaking on behalf of the Commission.

3. Business cards shall be provided to those Commissioners where requested by the Commission. Such cards shall only be used when the Commissioner is on official business.
4. Use of City stationery must be limited to official Commission business. All correspondence concerning the Commission's business should be processed by staff.
5. Commission recommendations to the City Council must be recommendations of the Commission as a whole, and not subject to undue influence by Council Liaison, Councilmember, City staff, or any outside agency.
6. Individual Commissioners are free to discuss any issues and concerns with their Council Liaisons, Council District representative or any Council office. However, Commissioners cannot assign themselves as "liaison" to the various Council members and must take care that contact with Council members does not result in a prohibited seriatim meeting of either the Council or the Commission under the Brown Act.
7. Commissions may not interview candidates for political office or make endorsements of such candidates. Individual Commissioners must not use their Commission title in making personal political endorsements, including using the title for identification purposes only.
8. Commissioners individually or Commissions as a whole are free to recommend candidates for appointment to any City Board or Commission including their own to the Rules Committee, Project Diversity or individual Council members.
9. Commissions may not independently support or oppose state or federal legislation, but instead shall be free to make recommendations on such legislation to the City Council through the Rules Committee.
10. Commissions may not appoint or invite anyone to act as the City's representative or to advocate a particular cause or viewpoint on behalf of the Commission. Only the City Council has the authority to designate the City's representatives. Commissions, however, are free to seek the advice or input of others in the course of making their recommendations to the Council.
11. Commissioners who are members of an organization which is in litigation against the City on issues related to the work of the Commission should not participate in any Commission discussion or review of matters affecting the organization if they are an officer of the organization a named litigant in the lawsuit or disqualified because of a conflict of interest. Litigation includes an administrative enforcement action, lawsuit in a court of law or a claim filed with the City or Redevelopment Agency.
12. All conflict of interest and circumstances giving rise to a perceived conflict of interest should be avoided. Commissioners must avoid the appearance of favoritism towards people and organizations with whom a Commissioner is affiliated. For example, if a Commissioner serves as a volunteer board member for a service organization, the Commissioner must not vote on any matter which will directly affect that organization. The exception to abstention based on organizational affiliation applies where the Commissioner was appointed as a representative of the organization such as the Rent Control Boards or the. Deferred Compensation Committee.

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13. Commissioners may not contact consultants or others under contract with the City directly, outside of a Commission meeting, unless so authorized by the Department head charged with contract administration.
14. Commissions should only take actions within their authority, duties and responsibilities as specifically set forth in the City's Municipal Code. Assigned legal staff will advise on legal issues related to jurisdiction and authority as required
15. Commissioners shall not act as mediators or facilitators between the parties on matters that come before them. Any facilitation shall be part of the public process and as requested or required by the City Council.
16. Commissions shall place items on the Council agenda in accordance with the Rules Resolution. Commissions should not request of Council members to place items on a Rules Committee or City Council Agenda.

E. Quasi-Judicial Commissions

Commissions which sit as hearing bodies and take administrative actions, including the Planning Commission, Civil Service Commission, Elections Commission, and Appeals Hearing Board must be diligent to ensure that a hearing is fair and impartial.

1. Commissioners should not have ex parte conversations with anyone on the subject, outside of the hearing. If a Commissioner has a communication with a party or a party's representative regarding the subject matter, facts or the issues of an administrative action pending before the Commission, the communication shall be disclosed on the record of the administrative action or proceeding before the action is heard.
2. Any visit to the site or other information gained outside of the hearing must be stated on the record. Commissioners should disqualify themselves if there is any appearance of bias.
3. Commissioners should not make any public comment on a matter pending before them until after the Commission has rendered a decision.

F. Councilmembers Sitting as Members of Boards or Commissions

Councilmembers may also be appointed by the City Council to sit as voting or non-voting members of a Board or Commission. In those instances, Councilmembers are expected to regularly attend meetings and actively participate in the deliberations and training of the Board or Commission. If the Councilmember is a non-voting member, the Councilmember cannot participate in quasi-adjudicatory matters or closed sessions. Councilmembers shall not have any greater authority than other Board members. Information requests or other requests of City staff may be made as part of the proceedings of the Board in the same manner as may be made by other Board members.