Making Public Participation Legal

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Photos on cover:
Top photo is a public domain photo taken at a contentious town hall event.
Bottom photo taken at a 2010 National Coalition for Dialogue & Deliberation workshop in Portland.

COMPILED BY THE WORKING GROUP ON LEGAL FRAMEWORKS FOR PUBLIC PARTICIPATION

Three Minutes at the Microphone

How outdated citizen participation laws are corroding American democracy

By Matt Leighninger

In legislative hearings, school board meetings, zoning hearings, and city council proceedings all over the country, democracy is dwindling, three minutes at a time.

The vast majority of public meetings are run according to a formula that hasn't changed in decades: officials and other experts present, and citizens are given three-minute increments to either ask questions or make comments. There is very little interaction or deliberation. Turnout at most public meetings is very low – local officials often refer to the handful of people who typically show up as the "usual suspects." But if the community has been gripped by a controversy, turnout is often high, and the three-minute commentaries can last long into the night. On most issues, the public is either angry or absent; either way, very little is accomplished.

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A heated and boisterous crowd at a meeting to adopt the San Francisco Bay Area's long-range transportation and housing plan.

Over the last two decades, a wide range of participatory meeting formats and dynamic online tools have emerged – so why do we continue conducting public business in such an outdated fashion? There are a number of reasons, but one is the legal framework that governs public participation. At the local, state, and federal levels, these laws can stifle innovation and discourage public officials and employees from reaching out to citizens while failing to achieve the intended goal of greater transparency.

When combined with other kinds of engagement opportunities, traditional public hearings can work, mainly by providing a sense of closure and validation to public debate on an issue. But

since our legal framework supports only the bare minimum of deliberation, the pressure of dealing with contentious policy issues falls squarely on a format that isn't up to the task. One survey of local officials concluded that almost every official has experienced "instances of the public-acting-badly and civic-engagement-gone-wrong" in public meetings. "These experiences were personally painful and often degraded the quality of decision-making and policy imple-mentation." A city clerk in California referred to her city's monthly council meeting as a "broken process" dictated by outdated laws. "Public participation in our city has turned into a punishment and hostage-taking process," she says.

For 21st Century citizens, who are more skilled and educated than their predecessors, who have access to endless quantities of information through their smartphones, and who are used to having a wide array choices open to them, these old meetings seem like a waste of time; there is little for them to learn, and little they can contribute. The consequences go far beyond miserable meetings: as the relationship deteriorates between the people and their public institutions, the legitimacy and financial sustainability of governments continue to decline.

New needs, old processes

Most of the laws governing public participation are at least thirty years old; one of the most notorious, California's Brown Act, just turned sixty. They predate the Internet as well as many innovations in face-to-face engagement, and it is unclear how they apply to:

- Use of Twitter and other social media platforms by public officials and public employees;
- Participation by public officials and public employees in neighborhood online forums, email listservs, and other online arenas;
- Participation by public officials and public employees in small-group dialogue and deliberation as part of larger public engagement efforts;
- Use of online tools to announce and proactively recruit for public meetings (rather than the old formula still found in many laws, which require governments simply to post a notice about a meeting in a city bulletin); and
- Collaboration between public institutions and private, nonprofit, charitable, and faith-based institutions in organizing and supporting public participation.

In all of these scenarios, our laws ought to uphold values such as transparency, privacy, inclusion, fairness, and freedom of speech.

In the Knight Foundation's "Soul of the Community" study, researchers found that attending a public meeting was more likely to reduce a person's sense of efficacy and attachment to community than to increase it. At the federal level, the poorly structured "town hall meetings" on health care reform in the summer of 2009 led to a number of highly publicized clashes

between constituents and members of Congress, and were widely viewed as being detrimental to the policymaking process.

Reframing the relationship

Many local leaders understand the implications of this shift. They know that the financial pressures facing local governments, school systems, and other public institutions are not just the result of the recent economic downturn. "If we think we're going to come out of this recession and expect everything to go back to normal, we've got another thing coming," says Harry Jones, county executive of Mecklenburg County, North Carolina. "We need to reach out and reframe our relationship with citizens – the people who are the ultimate source of our revenues."

To support this new relationship, our public participation laws ought to support newer, more meaningful forms of citizen engagement. Over the last two decades, Jones and many other local leaders have pioneered a new generation of participation practices. These range from much more intensive, deliberative face-to-face meetings to a burgeoning array of online tools and arenas.

The most successful of the face-to-face efforts rely on proactive, network-based recruitment to bring more than the "usual suspects" to the table. They use small, facilitated groups that allow people to explain why they care about an issue, become more informed about it, consider a range of policy options, and decide how they can contribute to problem-solving – in addition to making recommendations to government. In some cases, as with the practice of Participatory Budgeting, citizens vote on how public money should be spent. Neighborhood and school online forums have emerged that employ some of the same tactics, giving leaders the chance to interact with sustained networks of citizens. And online tools have been established that allow people powerful and convenient ways to report problems, generate and rank ideas, work in small action teams, and visualize options for public budgeting and land use planning. Many of these efforts have been initiated by people and groups outside government, from community foundations to neighborhood organizers to universities to Chambers of Commerce. But whether or not they are led by public officials, most of

Photo taken by Richard Hastie at a Sustainable Places Project event in Lockhart, TX.

these efforts occur outside the scope of official citizen participation processes and the laws that govern them.

Revising the legal framework

Over the last year, a working group that includes representatives from the International Municipal Lawyers' Association, International City/County Management Association, American Bar Association, National League of Cities, National Civic League, Policy Consensus Initiative, National Coalition for Dialogue and Deliberation, and Deliberative Democracy Consortium have worked to produce new legal tools for public participation. These include:

- A model public participation ordinance for local governments
- A model public participation act for state governments
- A document describing local policy options and techniques for strengthening public participation.

Snapshot from a National Coalition for Dialogue & Deliberation workshop.

The intent of these tools is not to offer cookie-cutter solutions for city councils and state legislatures, but to encourage them to consider their options. This would be a great help to city attorneys and other legal advisors, who often have to make recommendations without clear laws, legal precedents, or policymaker intentions.

The legal tools crafted by the working group are intended to allow innovation, not require it. "We took as our inspiration the laws on alternative dispute resolution (ADR) enacted during the 1980s and 90s," says Lisa Blomgren Bingham of Indiana University, a public administration scholar who has taken the lead for the working group in the drafting process. "Simply by authorizing public agencies to use mediation, facilitation, and other ADR processes, those laws resulted in a dramatic proliferation of these practices at every level of the legal system."

The same is needed for public participation techniques. We must free public officials and employees to engage the public without abandoning the goals of transparency and accountability. We must enable government to reach out to its constituents, adapt its practices and expectations, and repair the relationship. The success and even the survival of our governments may depend on it.

Policy Options for Strengthening Public Participation at the Local Level

There are many ways in which local governments can strengthen the capacity of elected and appointed local officials, local agency staff and citizens to participate in public decision-making and problem-solving. These measures can help create a community in which:

- Residents, decision-makers, and other stakeholders have regular opportunities – in a variety of ways and places, ranging from online forums to public meetings to gatherings in neighborhoods, schools, and workplaces – to build relationships, discuss issues, and celebrate community.

- People of all backgrounds and viewpoints are actively invited, and feel welcomed to participate.

- People on opposing sides of public issues interact regularly, in respectful, deliberative and productive ways, across their differences.

- Participation has a tangible and readily apparent impact on policy decisions, public plans, and public budgets.

- Public servants, other organizations, and citizens themselves are taking action (often in collaborative or coordinated ways) to address key issues and opportunities.

Photo by Richard Hastie from a Sustainable Places Project event in Lockhart, TX.

- Participation is tracked, measured, and assessed in transparent ways.
- People participate in order to fulfill a range of basic human needs, from improving their community to socializing with their neighbors to raising their children.

Developing policies on public participation: The need to work collaboratively

Collaboration between governments and non-governmental entities – including nonprofit organizations, businesses, faith institutions, and grassroots groups – is beneficial and often essential for strengthening public participation. Some of the necessary tasks can only be accomplished by people and organizations outside government. Above all, the local civic infra-structure for participation must reflect the needs and goals of ordinary people.

It is important, therefore, to develop policies on this issue through some sort of broad-based, cross-sector planning process in which local government is involved, but not dominant. A recent National League of Cities publication, *Planning for Stronger Local Democracy*, provides guidance on how to organize such a process.

Public participation commissions and advisory boards

One potential step for local governments is to create a commission or advisory board that will advise the council on the design, implementation, and evaluation of public participation processes. This body could help direct a participation planning process; alternatively, the planning could be accomplished by an ad hoc group, and the advisory board could be created as an outcome of the process, with the charge of overseeing implementation of the plan.

Depending on its role in the participation planning process, a commission or advisory board could have one or more of the following duties and responsibilities:

- Develop and propose to council a multi-year plan for public participation to guide the public participation activities, programs, and policies;
- Develop guidelines and policy recommendations to council for inclusive public participation;
- Provide advice and recommendations to council regarding the implementation of public participation guidelines and practices;
- Review public participation process evaluation results to provide advice and recom-mendations to council regarding continuous improvement of public participation policies and practices; and
- Provide an annual report to council regarding the status of public participation activities.

A public participation advisory board ought to be constituted in a way that ensured geographically representative membership. It should adopt its own rules and bylaws, mirroring successful participation practices, and develop its own schedule for meetings.

Policy options

Many measures for strengthening public participation require action by local government. The possibilities include:

- Adoption of more successful and participatory formats for public meetings, including meetings of city/town/county council, school board, planning and zoning, and other elected or appointed bodies.
- Establishment of a system of neighborhood or ward-based associations, councils, or networks, relying on both face-to-face and online communication, with proscribed responsibilities and roles in local decision-making.
- Appointment of a "public participation coordinator" within City Hall (these responsibilities may be incorporated into another position).
- Setting of annual participation goals and plans at the agency, departmental, and government-wide level.
- Incorporation of public participation metrics in performance reviews of relevant government positions.
- Adoption of a document that directs local government staff in what kinds and methods of engagement to use in which situations.
- Adoption of principles and protocols that guide participation practices by local agencies.
- Establishment of a youth council that teaches and models principles of productive public participation.
- Creation of a system for sharing data transparently on engagement processes and outcomes.
- Development of a training program to help public employees, other stakeholders, and citizens learn engagement skills and practices.
- Adoption of a policy to govern how public buildings (schools, libraries, firehouses, policy stations) are used for public participation purposes.

Accepted tools and practices

A number of successful large-group, small-group, and online formats for public participation have emerged in the last twenty years. Most successful participation initiatives utilize a variety

Photo taken at the 2002 National Conference on Dialogue & Deliberation.

of these formats; for example, the best applications of participatory budgeting feature a combination of large-group, small-group, and online interactions.

Large-group formats

Decision-making forums

- Designed to foster communication among citizens, and sometimes between citizens and public officials, to influence a policy decision.
- Often designed to be deliberative: to help people carefully consider different sides of an issue, and to uncover the values underneath different options.
- Main policy options may have been spelled out beforehand, or they may be determined by the participants during the course of the meeting.
- May utilize technology, such as polling keypads, video projection, and laptops, to move between large- and small-group discussions and summarize conclusions quickly.

Visioning forums

- Similar to decision-making forums, but used for planning the "built environment": the

buildings, parks, streets, and sidewalks of a neighborhood, city, county, or metro region.

- Sometimes use tools that help citizens visualize proposals: maps, three dimensional models, Geographic Information Systems (GIS) data, etc.

Action forums

- Often used after a series of small-group meetings to help citizens act on the ideas they generated in their discussions.
- Sometimes used to help citizens move directly into action planning (action groups will usually require further support and assistance in order to succeed).
- May have different elements: the opportunity for citizens to join committees or task forces to work on particular projects; the involvement of public officials or other decision-makers, who listen to citizen recommendations; booths set up by different organizations to recruit volunteers; or all of the above.

Small-group formats

Facilitated small-group meetings
- Feature an impartial facilitator, ground rules set by the group, and a guide that lays out open-ended questions and sample viewpoints to structure the dialogue.
- Discussion usually begins with participants sharing their experiences with the topic.
- Groups usually meet for several sessions, though not always; sometimes they take the form of breakout groups in the midst of large forums.

Focus groups

- Used primarily as a way of gathering information.
- Groups usually meet only once, for two hours or less.
- Used instead of surveys, or in combination with them, because they can provide more nuanced, comprehensive information about public views.
- Sometimes used to "frame" the various views and options on an issue, in order to create a discussion guide to be used in one of the other formats.

Structured conversations

- Many different kinds of dialogues fall under this category: some are quite simple and easy to organize, while others are highly structured and require a specific kind of facilitation.
- One common use of structured conversations is at the beginning of a public dialogue

project, to engage a small number of people who will then work together to involve much larger numbers of citizens.

- Variations include conversation cafés, wisdom councils, wisdom circles, and world cafés.
- Sometimes used to "frame" the various views and options on an issue, in order to create a discussion guide to be used in one of the other formats.

Online formats

For more detail on the rapidly changing technologies for public participation, see *Using Online Tools to Engage – and be Engaged by – the Public* from the IBM Center for the Business of Government. The following brief list is abridged from that document:

Wikis
- A website that allows a group of people to write and edit any number of interlinked web pages using a web browser.

Listservs
- An ongoing email exchange centered around a common interest, such as a neighborhood or a public issue.

Threaded online discussions
- A web-site that allows people to propose and join conversations on different topics.

Online deliberations
- A variety of sites and online tools that allow organizers to include some common elements of face-to-face deliberation, such as neutral facilitation, into an online discussion.

Crowdsourcing
- A system that allows participants to propose and then vote on ideas or solutions, is perhaps the best-known online engagement technique.

(Produced by the Working Group on Legal Frameworks for Public Participation)

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Model Municipal Public Participation Ordinance

Whereas, direct and active participation in self-governance is a widely held value in the United States, and

Whereas, knowledge and talent are widely dispersed in society, and all benefit when those skills and abilities are directed toward common goals, and

Whereas, public participation and collaboration may enhance local government's effectiveness, expand its range of options, improve the quality of its decisions, and enlist the problem-solving capacities of the general public, and

Whereas, public agencies and municipal authorities may collaborate with the general public and state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders to accomplish public work and deliver public services more efficiently and effectively, and

Whereas, there have been dramatic changes in the techniques of public participation and the technology allowing for greater transparency of government both through broadcast media and the internet,

Now, therefore, the city of _____ enacts the following Public Participation Ordinance:

Section 1: Definitions

For all purposes under this Act,

> the phrase "public participation" is defined to include "public engagement," "community engagement," "citizen engagement," "public hearing," and "public comment" and includes, but is not limited to, any form of in-person, technology-aided, or online communication that provides for discussion, dialogue, or deliberation among participants, allowing residents to engage meaningfully in local problem identification, and/or problem solving related to community challenges, problems, and opportunities. "Policy process" means any action in developing, implementing, or enforcing public policy, including but not limited to identifying and defining a public policy issue, defining the options for a new policy framework, expanding the range of options, identifying approaches for addressing an issue, setting priorities among approaches, selecting from among the priorities, implementing solutions, rulemaking, project management, and assessing the impacts of decisions.

Section 2: Public Participation Policy

It is hereby declared a matter of public policy that the active public participation of community members to offer comments, ideas and recommendations, both individually and collectively, on public challenges, problems and opportunities is a public good and will be pursued in the interest of the health, prosperity, safety, and welfare of the community, and in the pursuit of effective and trusted governance. Further, as these ends are best achieved by community members who have the opportunity to become informed and to jointly deliberate on public matters prior to offering their ideas and recommendations, that such deliberative opportunities are to be offered when and where possible, and public input received will be considered in final decision making by the appropriate agency body.

The city and its municipal departments may use any process that meets the principles for public participation set forth in Section 3 in addition to statutorily or federally required forms of public input such as notice and comment or public hearings for public participation.

The city shall adopt and make publicly available a Public Participation Policy to guide the city's use of participation strategies and techniques to satisfy the principles for public participation set forth in Section 3.

Section 3. Principles for Public Participation

a) The following principles govern meaningful and effective public participation:

- **Planning Ahead**: Public participation is an early and integral part of challenge and opportunity identification, planning and design, budgeting, and implementation of city policies, programs, and projects.
- **Inclusive Design**: The design of a public participation process includes input from appropriate local officials as well as from members of intended participant communities.
- **Authentic Intent:** A primary purpose of the public participation process is to generate public views and ideas to actually help shape local government action or policy.
- **Transparency:** Public participation processes are open, honest, and understandable. There is clarity and transparency about public participation process sponsorship, purpose, design, and how decision makers will use the process results.
- **Inclusiveness and Equity**: Public participation processes identify, reach out to, and encourage participation of the community in its full diversity. Processes respect a range of values and interests and the knowledge of those involved. Historically

excluded individuals and groups are included authentically in processes, activities, and decision and policymaking. Impacts, including costs and benefits, are identified and distributed fairly.

- **Informed Participation**: Participants in the process have information and/or access to expertise consistent with the work that sponsors and conveners ask them to do. Members of the public receive the information they need to participate effectively with sufficient time to study.

- **Accessible Participation**: Public participation processes are broadly accessible in terms of location, time, and language, and support the engagement of community members with disabilities.

- **Appropriate Process**: Each public participation process uses one or more engagement formats that are responsive to the needs of identified participant groups and encourage full, authentic, effective and equitable participation consistent with process purposes. Participation processes and techniques are well-designed to appropriately fit the legal authority, scope, character, and impact of a policy or project. Processes adapt to changing conditions as projects move forward.

- **Use of Information**: The ideas, preferences, and/or recommendations contributed by community members are documented and given consideration by decision-makers. Local officials communicate decisions back to process participants and the broader public, with a description of how the public input was considered and used.

- **Building Relationships and Community Capacity**: Public participation processes invest in and develop long-term, collaborative working relationships and learning opportunities with community partners and stakeholders. This may include relationships with other temporary or ongoing community participation initiatives.

- **Evaluation**: Sponsors and participants evaluate each public participation process with the collected feedback, analysis, and learning shared broadly and applied to future public participation efforts for continuous improvement.

Section 4. Public Participation Specialist

The mayor/city manager shall designate a public participation administrator to assist in the implementation of this ordinance and to provide ongoing training in public participation processes for city employees, members of city advisory boards and commissions, and such others as may be determined by the mayor/city manager.

Section 5. Public Participation Advisory Board

a) Establishment.   A public participation advisory board for the City of ____ is hereby created.

b) Purpose and Intent. The purpose of this board is to advise the city council on the design, implementation, and evaluation of public participation processes for determining community goals and policies and delivering services.

c) Duties and Responsibilities. The board shall have the following duties and responsibilities:
>   Develop and propose to the city council a multi-year plan for public participation to guide the public participation policies, protocols, practices, and assessment of the City of _____;
>   Develop guidelines and recommendations to the city council that support inclusive participation and a diversity of viewpoints in public engagement processes; and
>   Provide advice and recommendations to the city council regarding the implementation of public participation guidelines and practices.
>   Review public participation process evaluation results to provide advice and recommendations to the city council regarding continuous improvement of public participation policies and practices;
>   Provide an annual report to the city council regarding the status of public participation activities.

d) Composition. The public participation advisory board shall consist of numbers of members and terms consistent with the practices of the appointing authority. The appointing authority shall give due consideration to recognized qualifications and experiences in the field of public participation and shall designate representatives reflecting the diversity of interests of the broader community.

e) Procedure. A majority of the board shall constitute a quorum. The commission shall adopt such rules and bylaws as appropriate to further govern its proceedings.

f) Meetings. The board shall hold regular meetings as may be provided by its bylaws, and may hold special meetings on the call of the chairperson or at the request of the city council.

Model State Public Participation Act:

An Amendment to the State Administrative Procedure Act and Government in the Sunshine Act

Comment: Some states include municipalities as agencies subject to the Administrative Procedure Act. Others do not. The model would need to be adapted to each state's context. In each state, the Act should incorporate by reference that state's statutory definition of state agency or municipal authority (city, town, county, water district, etc.).

Whereas, direct and active participation in self-governance is a widely held value in the United States, and

Whereas, knowledge and talent are widely dispersed in society, and all benefit when those skills and abilities are directed toward common goals, and

Whereas, public participation and collaboration enhance the Government's effectiveness, expand its range of options, improve the quality of its decisions, and enlist the problem-solving capacities of the general public, and

Whereas, public agencies and municipal authorities may collaborate with the general public and state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders to accomplish public work and deliver public services more efficiently and effectively, and

Whereas, there have been dramatic changes in the techniques of public participation and the technology allowing for greater transparency of government both through broadcast media and the internet, and

Whereas, existing statutory requirements place limits on the interaction between public agencies, municipal authorities, and members of the general public,

Now therefore, the [state] Administrative Procedure Act and Government in the Sunshine Act shall be amended as follows:

Now therefore, the state of _____ enacts the following Public Participation Act:

Section One: Definitions

For all purposes under this Act,

For all purposes under this Act, the phrase "public participation" is defined to include "public engagement," "community engagement," "citizen engagement," "public hearing," and "public comment" and includes, but is not limited to, any form of in-person, technology-aided, or online communication that provides for discussion, dialogue, or deliberation among participants, allowing residents to engage meaningfully in local problem identification, and/or problem solving related to community challenges, problems, and opportunities.

Municipal authorities may include [to be defined]

State agencies may include...[to be defined]

"Policy process" means any action in developing, implementing, or enforcing public policy, including but not limited to identifying and defining a public policy issue, defining the options for a new policy framework, expanding the range of options, identifying approaches for addressing an issue, setting priorities among approaches, selecting from among the priorities, implementing solutions, rulemaking, project management, and assessing the impacts of decisions.

Comment: This section is intended to define these terms for all purposes under a state's statutory code. The intent is to broaden the statutory definition so as to explicitly authorize innovation. Most states use these terms repeatedly across the code, not only in the Administrative Procedure Act, but also in statutes involving land use and transportation planning, the environment, utilities regulation, etc.

Section Two: Public Participation Policy

It is the policy of this state to encourage state agencies and municipal authorities to provide broad, inclusive, deliberative, participatory and meaningful public engagement in the policy process with the general public and stakeholders from the public, private, and nonprofit sectors, including state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders. This act should be construed broadly to promote the fullest opportunity permitted by law to participate meaningfully in governance and the policy process and to provide their Government with the benefits of their collective expertise and information.

Comment: This section establishes that this is a remedial statute to be construed broadly.

Section Three: Commitment to Agency or Municipal Authority Discretion

Each state agency shall and each municipal authority may develop a policy on public

participation that will allow broad, inclusive, deliberative, participatory, and meaningful public engagement in the policy process. The choice of a particular form of engagement or sequence of opportunities for the public to participate is committed to agency or municipal authority discretion and not subject to judicial review, provided the agency or municipal authority provides some form of public participation, hearing, or comment as required by law.

Comment: This section is intended to shield agencies and municipal authorities from litigation over the choice of process model, for example, deliberative polling, deliberative town hall meeting, blog, etc.

Section Four: Public Participation Specialist

The head of each state agency shall designate a staff person to be the public participation specialist. This designation may be a collateral duty appointment. The public participation specialist shall be responsible for the implementation of the public participation policy and other provisions of this Act. Each agency shall provide for training on a regular basis for the public participation specialist of the agency and other employees involved in implementing the public participation policy of the agency. The public participation specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

Comment: This section locates responsibility for public engagement expertise within an agency or municipal authority. The public engagement specialist can obtain training and expertise that he or she can share with other employees in the agency or municipal

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A crowd at a meeting to adopt the San Francisco Bay Area's long-range transportation and housing plan.

authority through in house continuing education. This pyramid structure for disseminating training is cost effective.

Section Five: Collaboration

State agencies, municipal authorities, and other public entities may initiate or participate in collaborative arrangements with one another, tribes, nonprofit organizations, businesses, other nongovernmental stakeholders, and the general public in carrying out any of their powers and duties under state law.

Comment: This section allows agencies and municipal authorities to collaborate with one another and the broadest public on anything that they could do independently.

Section Six: Public Participation Meetings

a) State agencies and municipal authorities may conduct meetings for the sole purpose of public participation provided these meetings are: (1) open to the general public; and (2) a notice stating in general terms the subject matter of the meeting is posted and/or published according to Open Meeting Law. Members of state agencies and municipal authorities, including a quorum, may attend these meetings and interact with the public, including responding to issues and ideas not specifically identified within the original agenda, provided these issues or ideas originate with the public. Members of public agencies and municipal authorities, including a quorum, shall not engage in decision making, or vote upon or take official action at a public participation meeting.

b) Public agencies and municipal authorities may consider and make use of information from public participation meetings in a subsequent public meeting at which they take official action, provided that records of the general content of the public participation meeting are made public within three (3) days after the meeting, and are public for a period of at least fourteen (14) days prior to official action.

Comment: This section carves out an exception to the Sunshine Act to permit public officials to attend public engagement meetings and participate in discussion, deliberation, or dialogue with members of the public that may inform their later participation and action on public business.

Model City Charter Language for Citizen Advisory Bodies[1]

Note: Local government citizen advisory bodies (CABs) provide existing institutional opportunities for broad engagement of citizens in the policy making and implementation process—one that is neither administrative nor legislative in nature, but rather advisory to both. As advisory bodies, they are not held to the formal requirements of legislative or quasi-judicial decision-making bodies. While CABs may have functioned in a highly formalized manner in the past, it may be legal and relatively simple to repurpose CABs as a venue for broadly inclusive, participatory engagement of the public in policy deliberation without disrupting existing transparency laws. Therefore, this approach is recommended as a first step in expanding public engagement policies and practices. The following language is proposed for inclusion in the National Civic League's Model City Charter, currently in its eighth edition. The revised language could provide guidance and clarity for local charter commissions or councils as communities re-think their approaches to public participation and citizen engagement.

Constitution

From the 2004 National Conference on Dialogue & Deliberation.

Citizen Advisory Bodies shall be formed according to guidance in this charter through municipal ordinance enacted by the governing body.

Commentary: CABs are established through a variety of mechanisms, including the municipality's charter and bylaws, municipal ordinance, citizen petition, administrative request, or governing body resolution. Some state statutes and codes limit or require certain types of CABs. For the purpose of a model, the most common approach is to constitute the CAB through ordinance. The ordinance should follow generic guidance in regard to the operations of a CAB in terms of authority, scope, and purpose, but must be custom-tailored to the unique substantive area of concern.

1 Excerpted from aforthcoming article by Margaret Stout in the National Civic Review.

Powers and Duties

Citizen Advisory Bodies shall be authorized to distribute information to the public in delegated issues of concern, convene, deliberate, and make recommendations on their own volition and as directed by the governing body. Deliberations shall be made publicly to meet the goal of transparency in governance, but not according to provisions required of legislative or quasi-judicial bodies. Deliberations shall include the public in open-ended discussion as well as formal public hearing. Community sentiments shall be translated by the advisory body into policy recommendations for consideration by the governing body.

Commentary: In earlier versions of the Model, city planning commissions were charged with providing recommendations to the city council either based on self-identified issues or on issues referred to them by the council. Likely due to the historic pattern of deemphasizing CABs as an institution of government, they have become increasing reactive, often only responding to issues referred to them by the mayor, council, or administrative staff (Dougherty, Stout, & Dudley, 2013). This limits both the instrumental benefits of innovation as well as the legitimizing benefits of issue naming and framing. Indeed, some CAB members wish to be more proactive participants in governance, particularly in regard to planning (Dougherty et al., 2013).

CABs are also typically operated like corporate boards of directors or city councils, employing Robert's Rules of Order and formal public hearing procedures. These particular methods of deliberation also limit innovation and issue naming and framing. Even when they are not quasi-legislative (policy) or quasi-judicial (regulatory) in nature, they are structures that "replicate the limitations and disadvantages of city councils" (Leighninger, 2008, p. 8), as opposed to the more organic and open-ended organizing styles that emerge from citizen-driven collective action (King, 2011). In short, CABs are structured to operate according to parliamentary rules in hierarchical relationships typical to formal organizations, but many CAB members prefer to function more loosely (Dougherty et al., 2013). If left to their own devices, citizens tend to operate according to egalitarian consensus rules in network relationships (King, 2011). The challenge is to integrate these informal processes with formal procedures which have developed "in isolation from each other" (Leighninger, Wright, & Delchad, 2006, p. 6).

To maximize potential benefits, CABs should employ contemporary techniques of public engagement as described by organizations such as the International Association for Public Participation (IAP2). Less formal settings may allow CABs to develop consensus before moving to majority decision rules in the formulation of recommendations. Indeed, many citizen board handbooks and policy manuals

state a primary purpose of gathering information and formulating policy and program options and recommendations for consideration by the governing body. With this purpose, they are ideal forums for deliberative democratic practices that can better mirror the organic processes of citizen-driven collective action.

Functions

Citizen Advisory Bodies shall provide comment and recommendations on any function of government in which public engagement is considered of value.

Commentary: While functions such as water, sewer, utilities, ports, affordable housing, and civil service oversight may often be delegated to quasi-judicial authorities that must operate according to standard formal procedure and transparency laws, many other functions can benefit from the advice of interested, deliberating community members. Common areas of concern include: planning, development review, historic preservation, budgeting and capital improvement programs, parks and recreation, transportation, human rights and diversity, arts and culture, economic development, and neighborhoods (Barnes & Mann, 2010; Dougherty & Easton, 2011). It is important not to create boards that have authority over operational functions, as this would conflict with the executive function, whether held by a city manager or mayor.

Photo by Richard Hastie from a Sustainable Places Project event in Lockhart, TX.

Appointments and Removals

Appointments to and removals from Citizen Advisory Bodies shall be made by the mayor with council advice and consent. Consideration shall be given to geographic and demographic diversity, in addition to knowledge of the substantive area of concern. Qualifications shall be judged by the mayor and council with recommendations from administrative staff.

A member of the administrative staff and a member of the council may be appointed as a liaison to a Citizen Advisory Board, but will serve in an ex-officio capacity.

> *Commentary: To ensure representative composition and to meet the functional purpose of each CAB, eligibility for service, the application and appointment process, and removal procedures are generally detailed in CAB handbooks and bylaws. To garner the greatest benefits to democratic legitimacy, inclusion should be broad. To garner the greatest instrumental benefit, expertise and experience are desirable. Therefore, selection processes often employ criteria that seek broad representation across a variety of dimensions such as geographic location, income, age, gender, and race or ethnicity.*
>
> *Furthermore, CAB members are often highly involved community members and act as informal liaisons to other groups (e.g. chambers of commerce, civic organizations, faith-based groups, and parent-teacher associations) (Dougherty et al., 2013). Indeed, the seventh edition of the Model notes this benefit: "Mayoral appointment of boards and commissions with council advice and consent creates the opportunity for purposeful balanced representation and can be used to forge coalitions and tap into networks of community activity" (NCL, 1989, p. 20).*
>
> *While some municipalities (e.g. West Virginia) appoint elected representatives to each CAB, it is preferable to appoint them as ex-officio liaisons because if they are voting members, they will, in effect, be advising themselves in their council role. To generate the benefits of all three governance roles—elected representative, expert administrator, and citizen (Stout, 2013)—separation of roles is advisable. Indeed, where there has been friction, it is generally due to unclear boundaries of authority between CABs or between the CAB and council (Dougherty et al., 2013).*

Administrative Support

Citizen Advisory Bodies shall be provided adequate administrative support to fulfill assigned duties and functions, including meeting space, clerical support, recordkeeping, orientation and training, and technical assistance.

Commentary: While larger cities may have the capacity to provide adequate administrative and technical support to CABs, this is rare in rural communities (Dougherty et al., 2013). Yet, adequate resources are connected to CAB effectiveness (Busenberg, 2000). Therefore guidance on what to provide could be supported by model policies and procedures that can be broadly disseminated to rural communities through municipal leagues and other professional associations. Of particular concern is the need for orientation and training on the basics of formal duties (Dougherty et al., 2013; Lachapelle & Shanahan, 2010; Rebori, 2004).

Facilitation Support

Citizen Advisory Bodies shall be provided adequate facilitation support to fulfill assigned duties and functions, potentially including a full range of public engagement techniques.

Commentary: Above and beyond the basics of formal operations, if CABs are to provide a venue for broadly inclusive policy deliberation, expert facilitation is necessary. Therefore, municipalities need to either tap into community-based dialogue and deliberation facilitators, or develop such resources within the professional staff or CAB membership through job descriptions, training, and development.

The National Coalition for Dialogue and Deliberation (NCDD) and the International Association for Public Participation (IAP2) have each developed principles that guide general practice in this field, as well as a plethora of techniques that can be employed for specific engagement purposes. Large group, small group, written, and online formats are included. Numerous technical assistance resources are available through these groups' websites, many of which are free.

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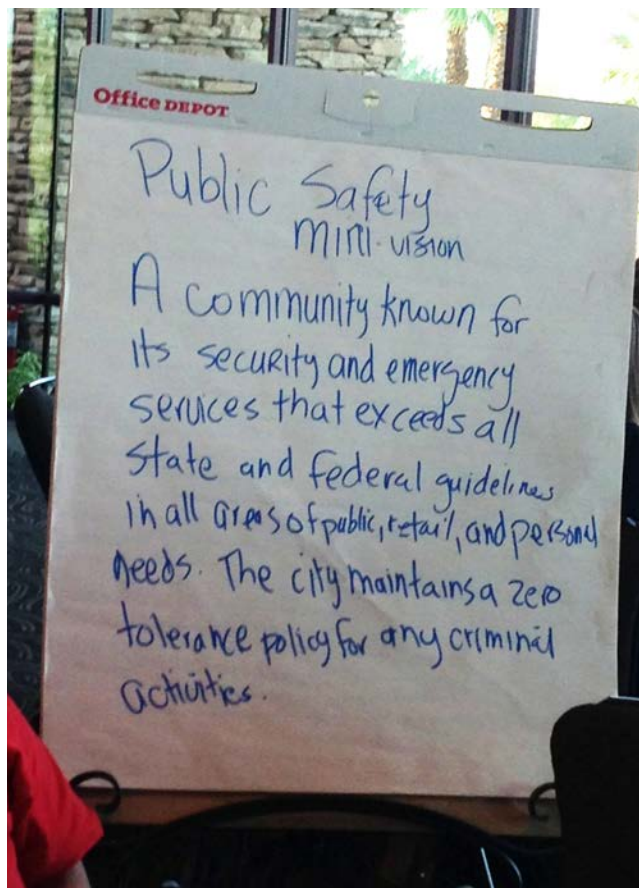
Local Government: The Legal Framework and Context for Voice

By Lisa Blomgren Amsler

The current legal framework for public engagement in local government must be viewed within the historical context for home rule. As Barron (2003) explains, early 19th century courts viewed municipalities as creatures of the state, and enforced a public/private distinction to limit the scope of municipal action. Local power was privatized; the municipality coordinated wealthy private actors who both sought and then paid for public improvements like streets through special assessments (p. 2282), or property owners who paid for police protection through private deputies or fire protection through volunteers and contributions (p. 2283). This view was reinforced by Dillon's Rule, which conceived of municipalities not as government, but instead as corporate creatures of the state with limited power to administer local affairs and make economic expenditures (p. 2285). They had powers explicitly delegated through legislation, and implicitly delegated by the state's act of incorporation. Beyond these, municipalities were powerless to act.

In the late 19th century, urban reformers began to promote what became known as "home rule" efforts, which attempted to strengthen municipalities by creating a zone of action insulated from state legislative interference, and possibly corruption, through special acts directed at a particular city. Barron (2003) suggests three early conceptions of home rule: the Old Conservative, Administrative, and Social. The Old Conservative vision sought home rule charters over traditional matters of local concern to limit taxation and maintain municipal autonomy as an impartial and neutral coordinator of private markets (p. 2292-93). The Administrative view was an effort to protect a municipality from state legislative interference by entrusting local powers to professional, impartial, and expert administrators (p. 2302; see also Goodnow 1895). In the Social conception, home rule reformers sought to engage broad public cooperation on an expanded scope of important municipal action that included providing public services that had heretofore been private, such as transportation and utilities (p. 2311-12).

While Barron (2003) does not directly address the question of public engagement in local governance, these home rule conceptions implicitly reflect a changing view of who has standing to participate. In the Old Conservative view, business actors and property owners are the express beneficiaries of government, and hence the legitimate participants in decision making. In the Administrative view, objective, professional public administrators are important participants, because they bring scientific and technical expertise to solving practical problems. In contrast, the reformist Social view, known as "the public point of view," recognized the political nature of municipal decisions and the role of the public in making those decisions (p. 2310).

Over time, changing views about the nature of engagement echoed these changing views of standing. Historically, participation focused on gaining and guaranteeing the rights of all citizens to vote for government representation (Keyssar 2000). As various constituents of the public firmly established their suffrage (e.g., voting rights for minorities and women; removal of poll taxes, literacy tests, and other voting booth obstacles), the focus of participation shifted from an emphasis on "the representative nature of government" to an emphasis on "direct participation by the citizenry in day-to-day activities" of government (Stewart 1976: 1).

Although public engagement in U.S. local government dates back to New England town hall meetings, the modern conception of public participation (i.e., participation mandated by law), stems from the emergence and growth of large-scale administrative apparatus at the federal and state levels. A comprehensive review of federal and state mandates is outside the scope of this article, but some examples are useful because the legal framework for public participation provides the backdrop for public engagement. At the federal level, the New Deal birthed numerous administrative agencies (Beierle and Cayford 2002) and prompted the passage of the federal Administrative Procedure Act (APA), which created a form of public participation by requiring opportunities for notice and comment in rulemaking (for analysis of federal law, see Bingham 2010). Among the Great Society programs, the 1964 Economic Opportunity Act mandated "maximum feasible participation" among the poor in community action programs; this led to substantial controversy and ultimately the repeal of the language (Advisory Commission on Intergovernmental Relations 1979; Moynihan 1969). Several other federal laws, executive orders, and agency regulations, guidance, and policy memos in numerous policy areas such as housing, transportation, education, and the environment, among others, also require public participation (for a planning example, see the California Department of Transportation, http://www.dot.ca.gov/ser/vol1/sec1/ch3public/chap3.htm). More recently, the Obama Executive Memorandum on Transparent and Open Government requires all federal agencies to be more participatory and provides some limited impetus for innovations in deliberative public participation as a contrast to typical public meetings and town halls (Bingham 2010).

State laws on public participation vary widely. Home rule acts, whether they take the form of a constitutional amendment or state statute, are generally silent on the issue. Instead, public participation at the state and/or local level is addressed in state general legislation on adminis-trative procedure (see Commissioners on Uniform State Laws, Model State APAs dating from 1961, 1980, and 2010), freedom of information and public records, and public meetings in the sunshine. Specific mandates for public participation at the state and/or local level also appear in laws on land use and planning, transportation, elections, budgeting, education, environmental policy, and many other policy areas. Finally, the federal Open Government initiative has provided a model for similar state initiatives.

Preliminary research reveals that at the state level, similar to the federal level, the phrase "public participation" is rarely defined. Thus, while the authority to conduct public participation is clear, government officials have reason to shun more innovative forms of participation in

favor of compliance with minimal standards. Government counsel raise concerns about the legal authority of their clients to move beyond these minima (Bingham 2010). Provisions in sunshine laws that require advance notice and confine public meetings to topics on a specific agenda may limit the capacity of elected officials to respond to public comment outside the scope of the agenda. Monitoring to keep public officials within the agenda requires staff resources. Together, these and other issues may lead municipal authorities to do the minimum required public comment approach using the standard 'three-minutes-each-at-the-microphone' tactic rather than more inventive deliberative approach where many people engage in dialogue simultaneously.

In short, the legal infrastructure to support broader and more deliberative and innovative local direct public engagement is problematic. Although sometimes prompted and authorized by law to involve the general public in their work, local governments often seek compliance with the explicit minimal standards for participation instead of examining law to identify their broader implied authority. Local governments have rarely institutionalized (meaning made permanent through ordinance, resolution, or formal policy) new systems of more fully democratic participation at the local level. A few exceptions exist. For instance, some large cities (e.g., Los Angeles, California; Portland, Oregon; Minneapolis, Minnesota) and small cities (e.g., Dayton, Ohio) have created and funded permanent structures, such as neighborhood councils or community boards, that have an official or semi-official role in local decision making; however, these tend to be representative bodies, rather than democratic, empowered ones (Leighninger 2006, 2012). Despite the limited legal infrastructure for public participation in local government, the number of people initiating, organizing, facilitating, and researching direct public engagement is growing.

Photo by Richard Hastie from a Sustainable Places Project event in Lockhart, TX.

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Resources for Public Engagement

The ICMA Center for Management Strategies, and its research partners the Alliance for Innovation and Arizona State University, conducted a literature review in 2013 on key documents and writings as well as organizations operating in the field of civic engagement. The purpose of this review was to identify resources and documents that would be helpful to local governments in their work in civic engagement and to identify key research and practitioners for the Center for Management Strategies training and technical assistance offerings. This listing of key resources was compiled in an effort to provide such guidance. While every effort was made to appropriately represent work in the field, it should be noted that the listing does not contain every available resource on the topic.

Organizations

Center for Management Strategies at ICMA
Davenport Institute for Public Engagement and Civic Leadership
Deliberative Democracy Consortium
Everyday Democracy
Institute for Local Government
International Association for Public Participation (IAP2)
Kettering Foundation
National Civic League
National Coalition for Dialogue and Deliberation
National League of Cities' Democratic Governance & Civic Engagement Page
National Research Center
Peak Democracy
www.participedia.net

Key Resources & Tools

International Association or Public Participation (IAP2) Spectrum of Public Participation
IAP2 Core Values of Public Participation
IAP2 Public Participation Toolbox

General Overviews & Guides

Fagatto, E. & Fung, A.(2009). Sustaining Public Engagement. Everyday Democracy

Lukensmeyer, C.J. and Torres, L.H. (2006). Public Deliberation: A manager's guide to civic engagement. IBM Center for the Business of Government

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Planning and Evaluating

Institute for Local Government's Assessing Public Engagement's Effectiveness: Rapid Review Worksheets

Leighninger, M. and Mann, B. (2011). Planning for Stronger Local Democracy. National League of Cities' Center for Research & Innovation

Luckensmeyer, C. et al (2011). Assessing Public Participation in an Open Government Era: A review of federal agency plans. IBM Center for the Business of Government

Nabatchi, T. (2012).A Manager's Guide to Evaluating Public Participation. IBM Center for the Business of Government

Online Tools

Black, L.W. (2011). The Promise and Problems of Online Deliberation. Kettering Foundation

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