

CITY COUNCIL
Brown Act Training

February 14, 2023

INTRODUCTION

Intent of the Brown Act:

- Ensure the deliberations and actions of legislative bodies are public.
- Provide adequate notice of meetings and agenda topics to the public.
- Offer the public an opportunity to participate at meetings.

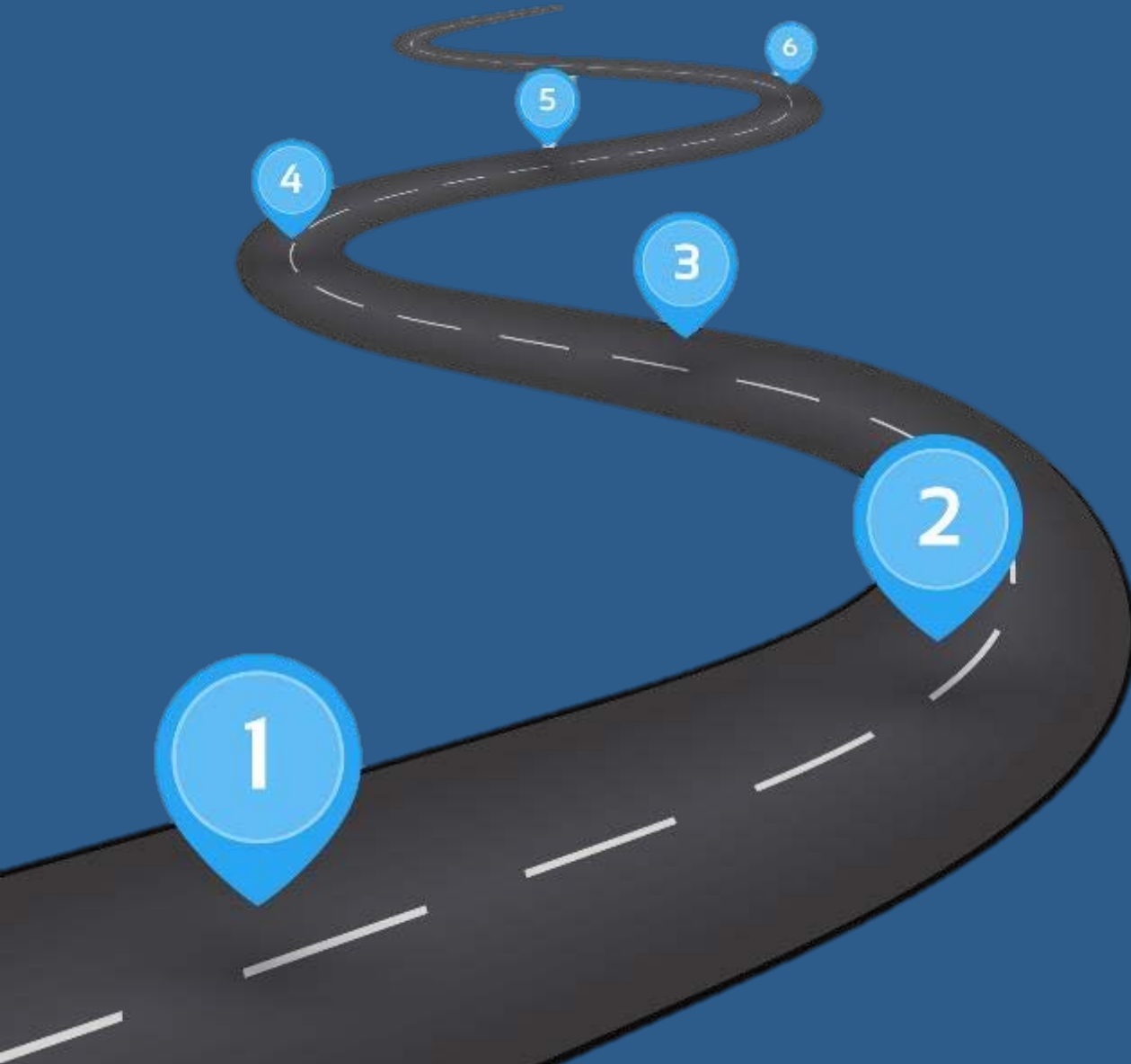


PURPOSE

Purpose of Presentation:

- A. Refresh your Brown Act knowledge.
- B. Receive updates on changes to Brown Act.
- C. Review Rules of Order for City Council meetings.

PURPOSE



Presentation Road Map:

1. Meetings
2. Notice and Agendas
3. Public Comment
4. Teleconferencing
5. Closed Session
6. Rules of Order

MEETINGS



Who is subject to the Brown Act?

“Legislative body” of a local agency, including:

- Governing Body (City Council)
- Advisory Bodies (Commissions: Planning, Human Relations, Library Advisory, Recreation, Youth Advisory, etc.)
- Standing Committees (City Council-Fremont Unified School District Liaison Committee, East Bay Regional Park Liaison Committee)

MEETINGS

What is a meeting?

- Any congregation of a majority of the members of the body,
- at same time and location (including teleconference location),
- to hear, discuss, deliberate, or take action,
- on any item within its subject matter jurisdiction.

MEETINGS

Meetings that are not subject to Brown Act:

- Individual contacts (except for serial meetings)
- Conferences open to the public
- Community meetings open to the public
- Meetings of other legislative bodies
- Social and ceremonial events

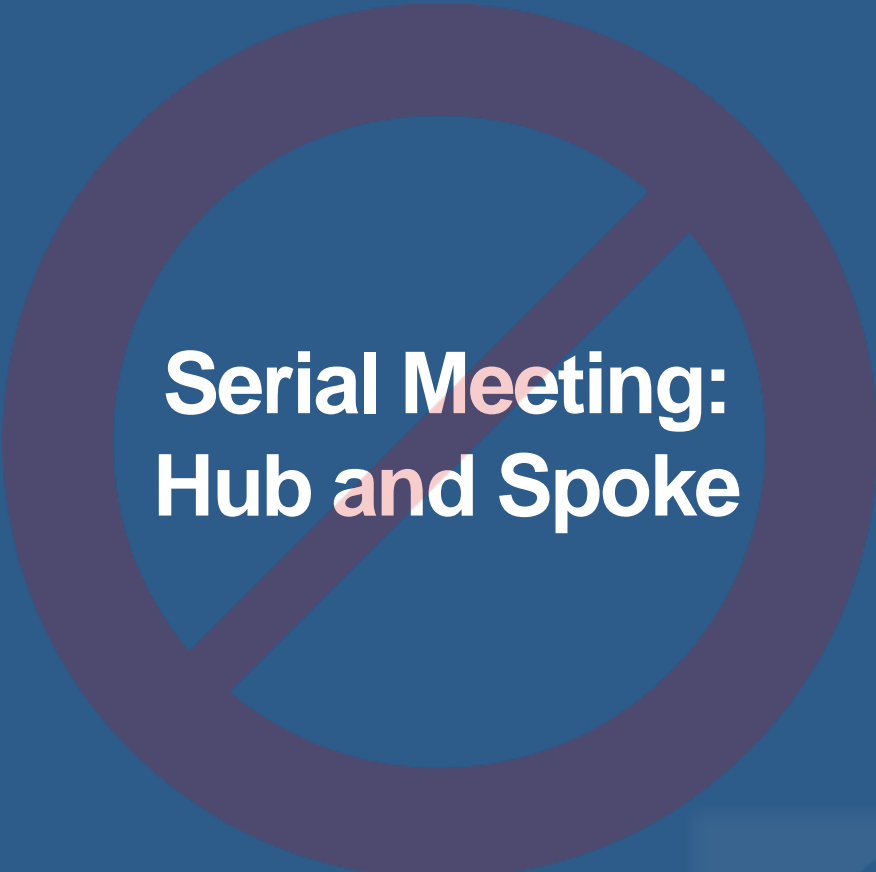
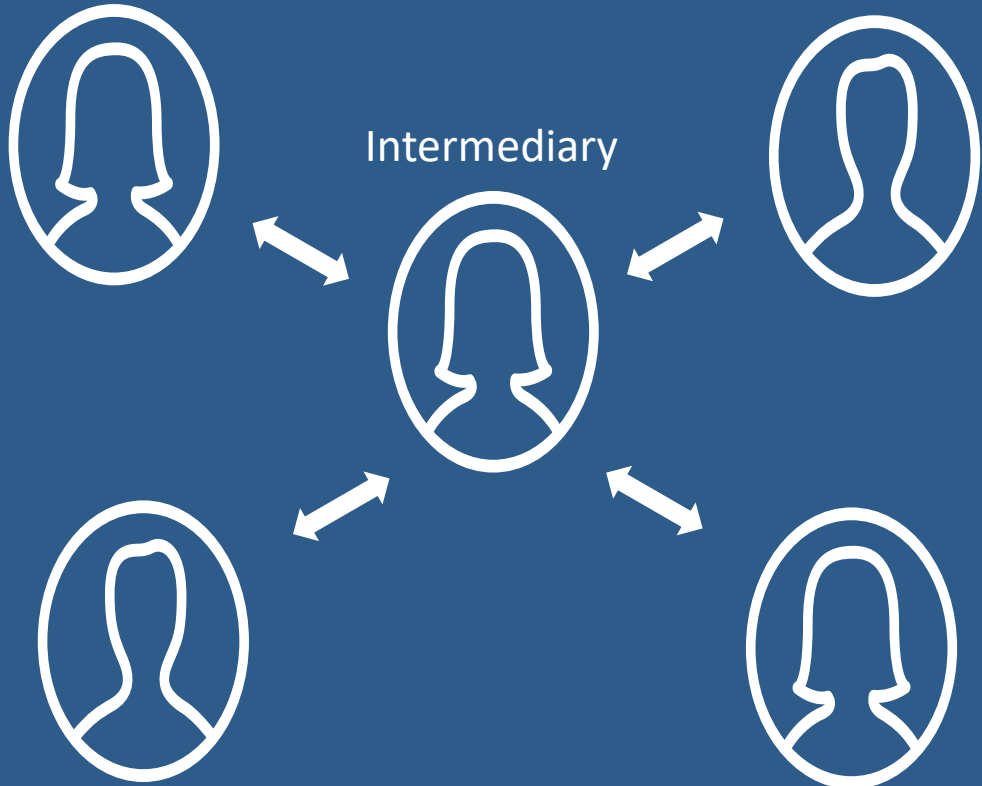
What is a serial meeting?

- A series of communications outside of public view (direct or through intermediaries),
- employed by a majority of the body,
- to discuss, deliberate, or take action,
- on business within the subject matter jurisdiction of the body.

Types of Serial meetings:

1. Hub and Spoke
 2. Daisy Chain
- Update: Social Media Platforms

MEETINGS

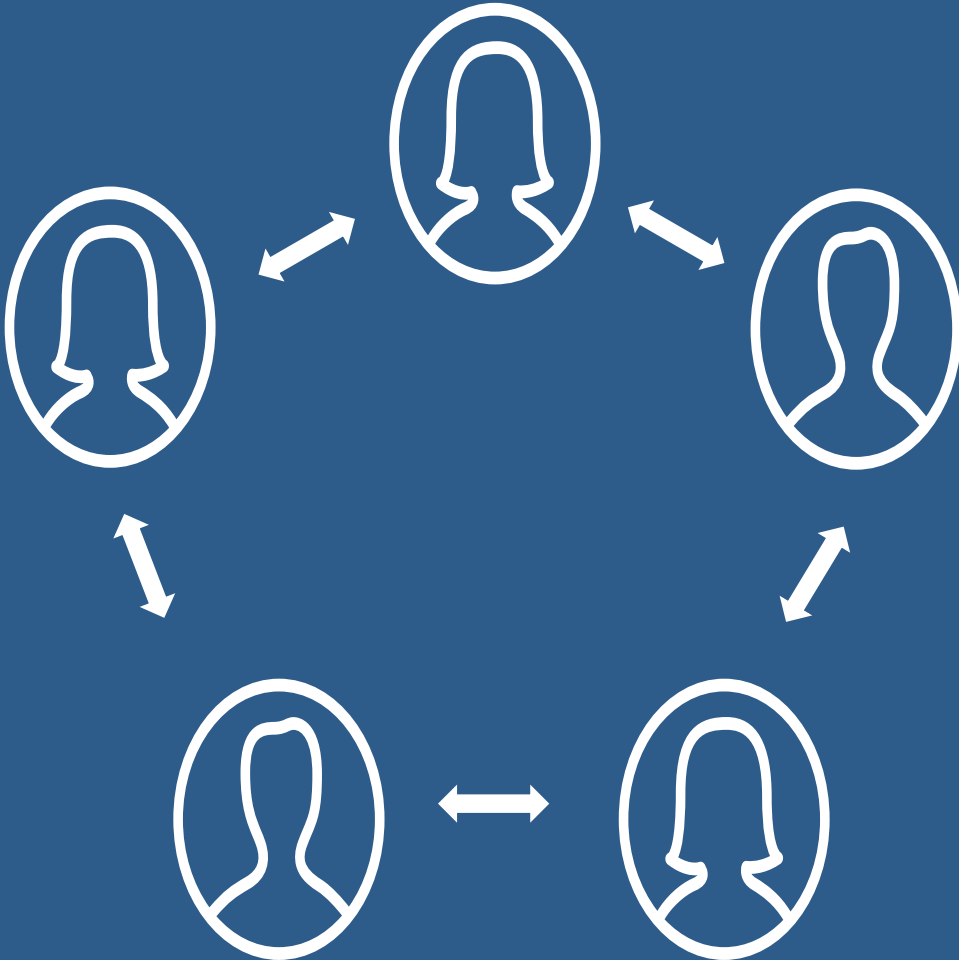


**Serial Meeting:
Hub and Spoke**

What About Individual Briefings?

- A City employee may:
 - Communicate with individual Council members outside of a meeting;
 - Answer questions or provide information;
 - Not communicate to other members the comments or positions of any other members.

MEETINGS



**Serial Meeting:
Daisy Chain**

Practice Tip:

- Be wary of the following circumstances:
 - Communicating via email or texts with another Council member(s) regarding City business;
 - Pre- and/or post-City Council meeting member gatherings.

Social Media Platforms – AB 992 (2020)

- Public officials may communicate on social media platforms to:
 - answer questions,
 - provide information to the public, or
 - solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction.

Social Media Platforms – AB 992 (2020)

- Still Prohibited:
 - Directly responding to any communication on a social media platform regarding City business that is made, posted, or shared by any other member of the legislative body.
 - Communicating about personal matters is okay.

NOTICE AND AGENDAS



NOTICE AND AGENDAS

Meeting Type	Notice Deadline	Agenda Content	Other Considerations
Regular	72 hours notice.	Brief general description of each item of business to be transacted or discussed.	Agenda posted in a publicly accessible location and on City website.
Special	24 hours notice.	Same as regular meeting.	Notice to Council members and press.
Emergency	1 hour notice.	Same as regular meeting.	Meeting for health or safety reasons only.

Items Not on Agenda:

- Rule: No discussion or action on non-agendized items.
- Exceptions:
 - Council majority decides there is an emergency situation; or
 - 2/3 of the members present (or unanimous if less than 2/3 present) vote that immediate action is needed and the need came to the Council's attention after the agenda was posted.

Practice Tip:

- For non-agendized items, a Council member may:
 - Make a brief response to a public comment;
 - Refer a matter to staff for follow-up on a public comment;
 - Request staff to report back on a future agenda or employ the City Council referral process;
 - Make a brief announcement.

PUBLIC COMMENT



PUBLIC COMMENT

Rules of the Road:

- Public must be allowed to comment on agendized items.
- Public must be allowed to comment on non-agendized items (e.g., public forum) at regular meetings.
- A time limit on public comment is acceptable.
- Disruptive behavior need not be permitted, but a legislative body cannot prohibit public criticism.

Disruptive Behavior – SB 1100 (2022)

- Authorizes removal of an individual for disruptive behavior during a City Council meeting.
- Behavior that actually disrupts, disturbs, impedes or renders infeasible the orderly conduct of the meeting.
- A warning is required.

TELECONFERENCES



TELECONFERENCES

Traditional Rule:

The Brown Act allows teleconferencing if certain statutory requirements are met.



TELECONFERENCES

Standard Requirements:

- A Council quorum must be present within Fremont.
- Agenda must be posted at each teleconference location and include the full teleconference address.
- Teleconference location must be accessible to the public and have technology to enable public participation.

Teleconferencing – AB 2449 (2022)

- A Council quorum must be present within Fremont.
- Council meeting must occur via two-way audio visual platform, or two-way telephonic services and live webcasting.
- Teleconference location is not required to be noticed or publicly accessible.

Teleconferencing – AB 2449 (2022)

- Council members may participate remotely (i.e. teleconference) in one of two circumstances:
 - “Just cause.”
 - “Emergency circumstances.”

Teleconferencing – AB 2449 (2022)

- Just cause: (a) a family childcare or caregiving need; (b) a contagious illness; (c) a need related to a physical or mental disability that is not otherwise accommodated; or (d) travel while on official business.
- Council member must notify Council at earliest opportunity and provide a general description of the just cause.
- Limited to two meetings per year.

Teleconferencing – AB 2449 (2022)

- Emergency circumstances: a physical or family emergency that prevents the member from attending in person.
- Council member must request approval from the City Council to participate remotely.
- Teleconference not allowed for more than 3 consecutive months or more than 20% of regular meetings within calendar year.

CLOSED SESSION



CLOSED SESSION

Introduction:

- General Rule: The Brown Act requires the City Council to conduct its meetings in public.
- Exception: The Brown Act authorizes the City Council to conduct a “Closed Session” in private without the attendance of the public.

CLOSED SESSION

Who May Attend?:

- City Council members
- City management
- Agency counsel
- Support staff and consultants

CLOSED SESSION

Authorized Subject Matter:

- Litigation (*pending and anticipated*)
- Labor negotiations (*employee salaries and benefits*)
- Real estate negotiations (*price and terms*)
- Public employment (*Council-appointed officers*)
- Threats to public security

CLOSED SESSION

Confidentiality:

- Rule: A person may not disclose confidential information that has been acquired by being present in a closed session ... to a person not entitled to receive it, *unless the legislative body authorizes disclosure of that confidential information.*

(California Government Code section 54963)

CLOSED SESSION

Practice Tip:

- Individual Council members are specifically prohibited from disclosing closed session information outside of closed session.
- Any disclosure must be authorized by the City Council as a body.
- Courts have rejected the notion that an elected official has a First Amendment right to share confidential information.

Remedies for Violation:

- Civil action to invalidate a violative act.
- Court injunction against City to prevent future violations.
- Censure of a Council member.
- Referral of a member to the grand jury.
- Disciplinary action against an employee.

CLOSED SESSION

Remedies for Violation:

- Criminal action:
 - A member attends a meeting at which action is taken in violation of the Brown Act with the intent to deprive the public of information to which the member knows or has reason to know the public is entitled by the Brown Act.
- This is a misdemeanor.

Case Example – Harron v. Bonilla (2005):

- Two elected officials disclosed to the press the reasons for terminating an employee in closed session.
- The employee sued for slander and the officials tried to get the action dismissed as an exercise of their First Amendment rights.
- The elected officials lost and the agency settled with the employee (\$372,000 plus retirement benefits, \$300,000 in employee's attorney fees, and an apology to the employee).

RULES OF ORDER



RULES OF ORDER

Sources of Rules of Order:

- Brown Act
- City Council Handbook
- Parliamentary Procedure Manuals



RULES OF ORDER

City Council Handbook:

- Chapter V – Procedural Rules:
 - Withdrawal of Motion.
 - Voting, Failure to Vote, Abstaining, Tie Votes.
 - Appeal from Mayor's Decision.

City Council Handbook:

- Appendix A – Describes 15 Procedural Rules, including:
 - Substitute the motion
 - Amend the motion
 - Motion to reconsider
 - Postpone indefinitely

RULES OF ORDER

Parliamentary Procedure:

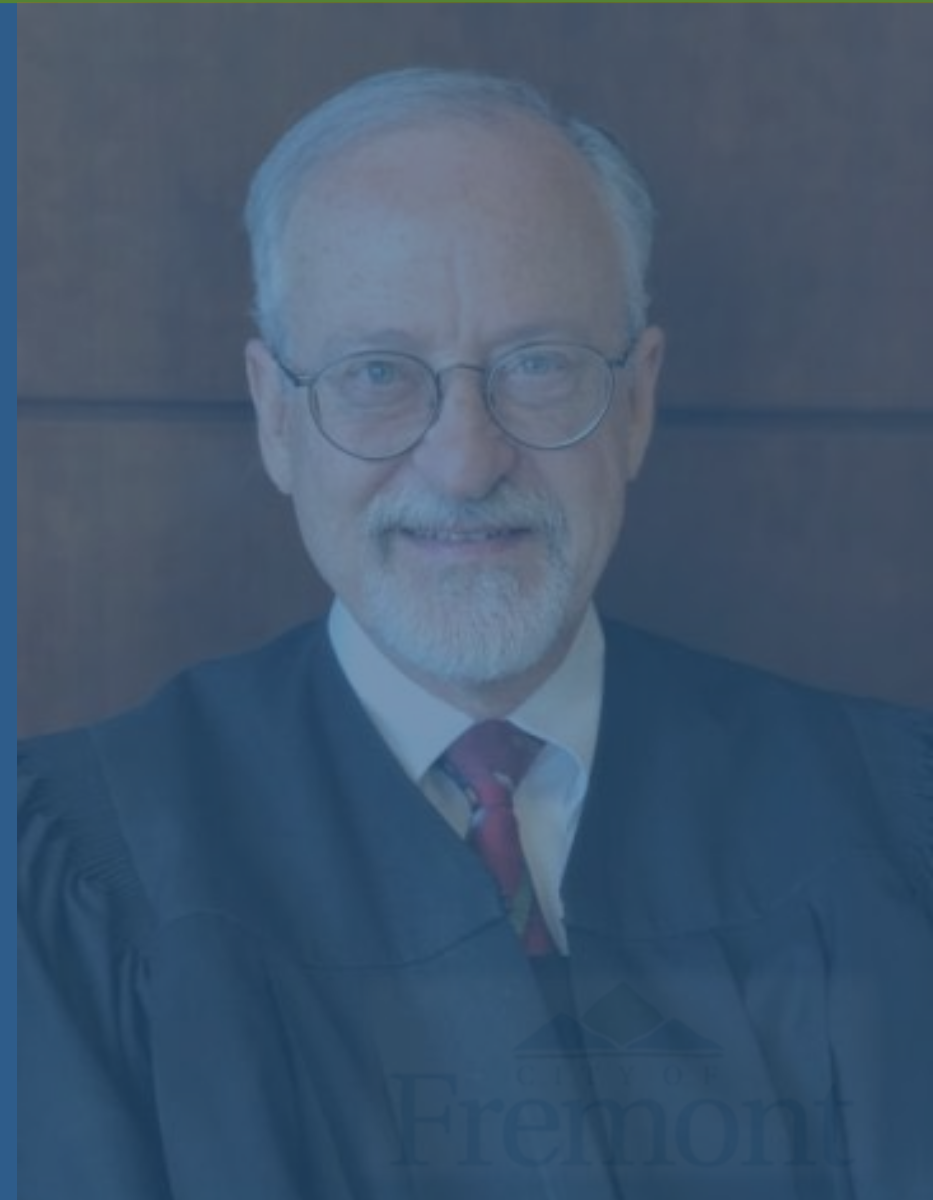
- Robert's Rules of Order.
 - Manual of parliamentary procedure.
 - Not a legal document.
 - Council Handbook covers most important procedural motions.



RULES OF ORDER

Parliamentary Procedure:

- Rosenberg's Rules of Order.
 - Abridged parliamentary procedure.
 - Many local governments have adopted Rosenberg's Rules.



RULES OF ORDER

Role of the Chair:

- Charged with applying the rules of conduct of the meeting.
- Makes final ruling on rules unless overruled by the body.
- Strives to be the last to speak at the discussion and debate.
- Refrain from making or seconding a motion unless no other member of the body will do so.

RULES OF ORDER

Format for an Agenda Item Discussion:

Chair performs the following procedural functions:

1. Announces the agenda item.
2. Recognizes the presenter of item/report.
3. Allows Council members to ask clarifying questions.
4. Opens public comment or public hearing.

RULES OF ORDER

Format for an Agenda Item Discussion:

5. Invites a motion.
6. Determines if there is a second to motion.
7. Invites Council member discussion.
8. Takes a vote and announces result.

QUESTIONS?
