



City of Stevenson

Planning Department

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TO: Planning Commission
FROM: Ben Shumaker
DATE: September 9th, 2024
SUBJECT: Public Involvement, Open Public Meetings & Open Public Records

Introduction

This memo presents the required training for Washington governmental bodies related to public meetings and public records. These required trainings are based on the State's Open Public Meetings Act and Public Records Act. This pair of laws are crucial for the preservation of our representative democracy and are commonly known as "Sunshine Laws" after former US Supreme Court Justice Louis Brandeis' quote "Sunshine is the best disinfectant".

The memo also discusses the Planning Commission's own expectations for how the public is involved in decisions made on the public's behalf. It concludes by asking whether the Planning Commission desires any revision to its public involvement expectations.

Open Public Meetings Act

Attachment 1 is a presentation from the Washington Attorney General (AG) designed to help us understand our role serving the citizens of Stevenson as representatives in the democratic process (OPMA) and our role maintaining records in the course of that process (PRA).

Key OPMA Concepts: What is a "meeting"? What is an "action"?

Key PRA Concepts: What is a "writing"? What is "privacy"?

Planning Process

The figure below is taken from the 2013 Stevenson Comprehensive Plan as the organizing structure of phases related the plan's—or any plan's—development. The AG's guidance underscores the importance of the figure's yellow circle—the sunshine—at the center of the planning process. The words "Education, Communication, and Participation" are set in this circle and provide gravity around which the 8 planning phases orbit:

1. Decide to Plan
2. Plan for Planning
3. Inventory & Analyze
4. Create Goals & Objectives
5. Create Action Plan
6. Obtain Public Approval
7. Implement Plan
8. Monitor Performance (until you decide to plan again)

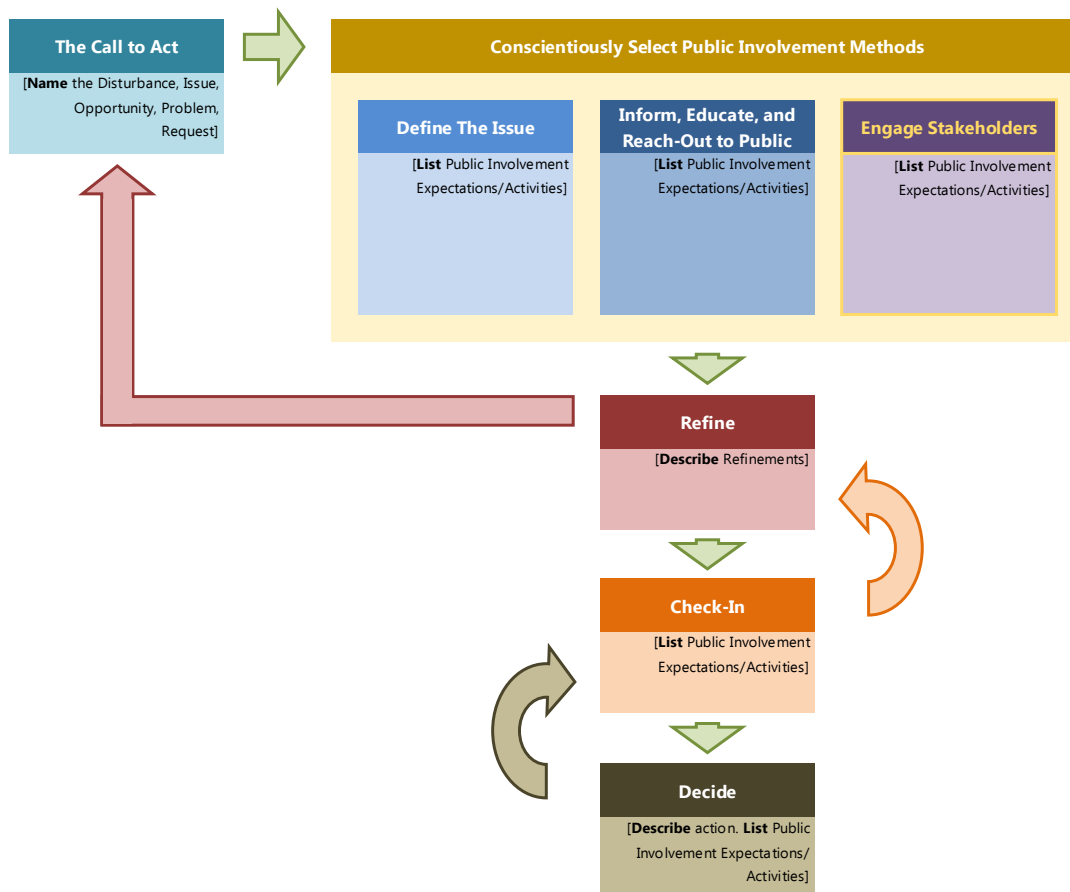
Adherence to the OPMA and PRA are two of the ways the Planning Commission educates, communicates, and invites participation.

FIGURE A-1: PLAN DEVELOPMENT PHASES



Public Involvement Planning

The Planning Commission recommitted to this process in 2021 when it updated its bylaws (Attachment 2) to enshrine a framework for developing topic-specific public involvement plans while they are in the Plan for Planning phase. The figure below is taken from that framework and characterizes 7 slightly different components of planning efforts where public involvement will help the decision-making process.



The framework of the bylaws also provides a menu of activities that could help involve the public in topic specific plans and a catalogue of materials that could be used as well.

City Emails

To help the Planning Commission manage the public records it receives, City of Stevenson email addresses have been set up. When acting as a Planning Commissioner, it is highly recommended that you use these email addresses. If a request for your email correspondence is received, the City's public records officer will be able to access these mailboxes and provide timely responses to the request based on their contents.

Prepared by,

Ben Shumaker
Community Development Director

Attachments:

1. AG Presentation
2. Planning Commission Bylaws

Overview of Open Government in Washington State: Open Public Records and Open Public Meetings



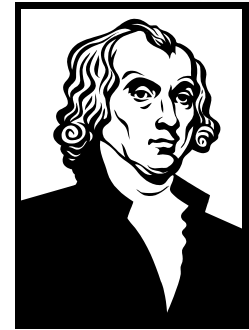
Prepared by Washington State Attorney General's Office

Last revised: October 2016



Historical Open Government Principles

"A popular Government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance...." ~ *James Madison*



"...a nation that is afraid to let its people judge the truth and falsehood in an open market is afraid of its people." ~ *John F. Kennedy*



"It has been said time and again in our history by political and other observers that an informed and active electorate is an essential ingredient, if not the *sine qua non** in regard to a socially effective and desirable continuation of our democratic form of representative government."

~ *Washington State Supreme Court*

**indispensable action*

Open Government Laws are often called “Transparency Laws” or “Sunshine Laws”



This is because they “shine light” on government. U.S. Supreme Court Justice Louis Brandeis once famously said, “*Sunlight is the best disinfectant.*”



Transparency builds public confidence in government.

Washington - Two Different Statutes

Open Public Records

RCW 42.56

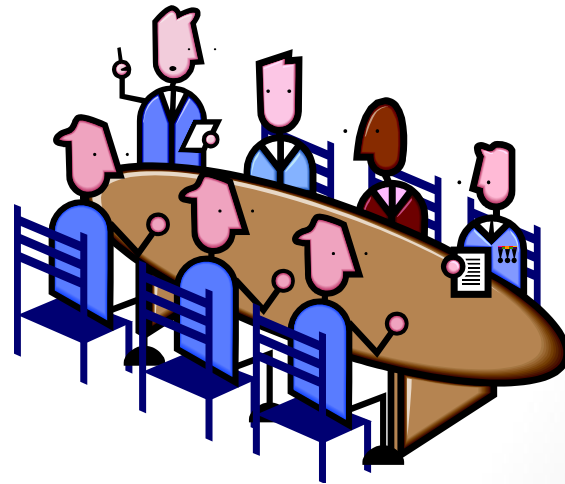
Public Records Act
(PRA)



Open Public Meetings

RCW 42.30

Open Public Meetings Act
(OPMA)



Intent



Open Public Records

- “The people of this state do not yield their sovereignty to the agencies that serve them.”
- “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”
- “The people insist on remaining informed so that they may maintain control over the instruments that they have created.”
- The “free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.”

Open Public Meetings

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History

Open Public Records

- PRA passed via Initiative 276 in 1972. Formerly in RCW 42.17 – now RCW 42.56.
- Applies to all public agencies, state and local.
- Does not apply to courts.
- Limited application to Legislature.
- Applies to “public records” which are defined to include “writings.”
- Records are open unless there is an exemption authorized by law.



Open Public Meetings

- OPMA passed in 1971. RCW 42.30. Minutes requirement in another law - RCW 42.32.
- Applies to all multimember public agency boards and commission governing bodies, and their committees.
- Does not apply to courts.
- Does not apply to Legislature.
- Requires meetings of governing body to be open gavel-to-gavel, unless there is an exception authorized by law.



Touchstone:



Open Public Records

- Records of public agencies are presumed open.
- PRA is to be liberally construed.
- Records or information in records can be withheld only by law (e.g. exemption in law).

Open Public Meetings

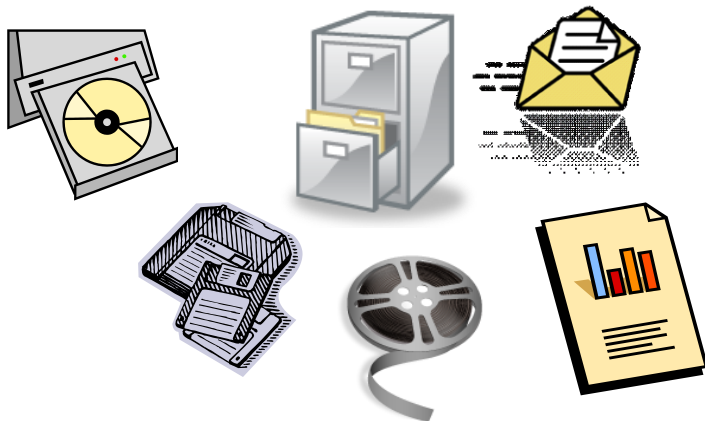
- Meetings of agencies subject to the OPMA are presumed open.
- OPMA is to be liberally construed.
- Meetings or parts of meetings can be closed only by law (e.g. executive sessions).

Scope

Open Public Records

PRA applies to “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”

- Includes paper records, electronic records, emails, overheads, photographs, CDs, microfiche, etc.



Open Public Meetings

OPMA applies to **multi-member public state and local agencies**, as follows:

- Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature.
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of Washington.
- Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.
- Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.



Withholding Records or Closing Meetings



Open Public Records

- Withholding a public record or some information in a public record must be authorized by law.
- Only the exempt information can be withheld.
- Agency must cite basis and give brief explanation.
- Exemptions from disclosure must be narrowly construed.

Open Public Meetings

- Closing a meeting or part of a meeting subject to OPMA must be authorized by law – e.g., for listed purposes in OPMA.
- Agency must provide reason where required, e.g., announce reason for going into executive session.

Enforcement & Penalties



Open Public Records

- PRA enforced by courts, for claims listed in PRA.
- RCW 42.56.550, .565
 - Court can impose statutory penalties to be awarded to requester.
 - Court will order payment of requester's attorneys fees & costs.
 - Court can also order disclosure of all or part of withheld record, or non-disclosure of part or all of record.

Open Public Meetings

- OPMA enforced by courts, for claims listed in OPMA.
- RCW 42.30.120, .130.
 - Court can impose a \$500 civil penalty against each member; \$1000 for repeat violation.
 - Court will award costs and attorney fees to a successful party seeking the remedy.
 - Action taken at an improperly closed meeting can be declared null and void.

Risk Management Tips



Open Public Records

Agencies should:

- Establish a culture of compliance with the PRA, beginning with agency leadership and support.
- Review their PRA procedures.
- Review available resources; institute best practices.
- Keep updated on current developments in PRA; correctly apply law.
- Consult with agency's legal counsel.
- Train appropriate staff and officials about the PRA's requirements.
 - > Legislature enacted training requirements in 2014. RCW 42.56.150 - .152
 - > State Supreme Court said evidence of PRA training for agency staff can reduce penalties, & lack of training can increase penalties.

Open Public Meetings

Agencies subject to OPMA should:

- Establish a culture of compliance with the OPMA, beginning with agency leadership and support.
- Review their OPMA procedures.
- Review available resources; institute best practices.
- Keep updated on current developments in OPMA; correctly apply law.
- Consult with agency's legal counsel.
- Train members subject to the OPMA about the law's requirements.
 - > Legislature enacted training requirements in 2014. RCW 42.30.205.

Information



Open Public Records

- Attorney General's Office has appointed Assistant Attorney General for Open Government to provide information about the PRA.
- AGO has issued Model Rules.
- AGO may provide technical assistance and training.
- AGO has an online *Open Government Resource Manual* and other materials and resources on its website, including training resources.
- AGO can review exemption from disclosure cited in state agency records, and issue informal opinion.
- AGO can issue formal opinions (for qualified requesters).

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Appendix A – Public Hearing Procedures Script for Quasi-Judicial Issues

The following represents a recommended procedure as a general instruction for the conduct of quasi-judicial hearings and may be followed or departed from in the Chair's discretion. Failure to follow this recommended procedure shall not constitute a *prima facie* failure of Due Process.

Opening

- The Chair shall open the public hearing by stating the name of the application.
- The Chair shall direct any persons wishing to be heard to sign in on the sign-in sheet.

Rules of Order Presented by the Chair

- The Chair shall explain that the public hearing will proceed in an orderly manner and ask that members of the public respect the process.
- The Chair shall ensure that everyone will be given an opportunity to be heard. The Chair shall ask that all comments be made standing, at a speaker's rostrum if available, or in an otherwise noticeable fashion. All speakers must first give their name and address for the officially recorded transcript of the hearing. The Chair shall further explain that if there is an appeal, the court must make its decision on the basis of what is said at this meeting.
- The Chair shall ascertain if anyone will require special accommodation in order to speak so that arrangements can be made.
- In fairness to all in attendance, each person wishing to speak will be given an opportunity to address the Commission. Depending on the number of people in attendance, the Chair may limit the initial period of time allowed. If additional time is needed, the Chair may allow additional time after all interested parties have had an opportunity to speak.
- There should be no demonstrations (clapping, cheering, booing) during or at the conclusion of anyone's presentation.
- This public hearing is the time for presentation of testimony, not an opportunity for debate between or among the presenter, the applicant, or the Commission.
- The Commission is interested in promoting an orderly public hearing to give all persons in attendance an opportunity to be heard.

Appearance of Fairness and Conflicts of Interest

- Quasi-judicial actions are defined as actions of the Commission which determine legal rights, duties, or privileges of specific parties in a hearing. The public hearing for these actions must fair in three respects: form, substance and appearance.
- All Commission members should give consideration as to whether they have:
 - A demonstrated bias or prejudice for or against any party to the proceedings;
 - A direct or indirect monetary interest in the outcome of the proceedings;

- A prejudgement of the issue prior to hearing the facts on the record; or
- *Ex parte* contact with any individual, excluding administrative staff, and whether the individual supports or opposes the issue.

Each Commission member must disclose whether any of the factors listed above are at issue and respond to the question "Do you have an Appearance of Fairness or Conflict of Interest issue or disclosure to make?"

- After making any such disclosures, the members in the audience are asked if there are any objections to any Commission members' participation in the proceedings.

Order of Speaking Presented by the Chair

- Staff presentation;
- Request to staff in there were any written materials submitted and summary of any such materials;
- Comments from applicant;
- Comments from proponents;
- Comments from opponents;
- Comments from any others wishing to speak;
- Comments from applicants in response/rebuttal. New material may not be introduced;
- Response from staff to any subjects raised by any of the speakers, or any additional clarifications;
- Questions from Commission members to any speaker or staff person who made comment;
- The Chair may ask if anyone in the audience has any comments to clarify an item raised by a Commission member's questions. No new items can be presented nor should the speaker repeat testimony given previously. This is purely an opportunity for clarification.

Commission Discussion

- The Chair, making certain there is no further testimony, closes the public testimony portion of the hearing.
- Commission discussion is held – Commission should consider discussing issues in terms of findings and potential conditions.
- Request for any further recommendations or comments from staff.
- Chair calls on the Commission members to make a motion (take action) or postpone. If action taken, Chair directs staff to prepare findings and decision.

Appendix B – Public Involvement Framework

The following represents a recommended procedure to evaluate and establish topic-specific public involvement plans. As used in this appendix, “Public Involvement” is an umbrella term incorporating a broad range of ways in which the Planning Commission interacts with the public. This range begins with the minimum requirements established by State statutes where information is shared in a uni-directional manner to ensure public awareness of Commission actions. The Public Involvement umbrella embraces bi-directional dialogue wherein the public informs decisions through their meaningful input. At another end of the range, Public Involvement could result in direct decision-making by the public via referendum to the voters. Along the way the term Public Involvement embraces other public participation methods, whether they are suggested in this appendix or not.

This Public Involvement Framework was recommended in summer 2021 by a subcommittee of the Planning Commission. The committee was composed of residents, property owners, Planning Commissioners, and City staff.

The Public Involvement Framework incorporates 7, non-linear, categories of action beginning with a “Call to Act”. As appropriate within this framework the Planning Commission should “Conscientiously Select Public Involvement Methods” to “Define” the issue identified in the “Call”, “Inform/Educate/Reach-Out” to the public about the issue, and “Engage” community stakeholders to exchange information on the issue. These conscientious efforts allow the Commission to “Refine” the issue based on information received, “Check-in” with the public after the issue is refined, and to eventually “Decide” on an action to address the “Call”.

The intent of the Framework is to allow the Planning Commission to conscientiously evaluate each “Call to Action”, right-size its approach to the action, and communicate its expectations and actions to the public. The non-linear aspect of the framework means that the Planning Commission can evaluate and establish independent Public Involvement expectations for each category in the framework and can reevaluate established expectations as necessary.

Documents assisting this conscientious effort include:

- Exhibit B.1 – Visual Public Involvement Workflow Template. During any topic the Planning Commission chooses to address, this template can be edited and used to convey the established topic-specific public involvement plan and update its progress while the topic is being address.
- Exhibit B.2 – Menu of Public Involvement Methods. This exhibit is not intended to be static. As time goes on, this menu of methods may be supplemented, refined, or edited without a formal amendment to the Planning Commission bylaws.

- Exhibit B.3 – Example Public Involvement Materials. Like the menu of methods, the example materials of this exhibit are not static. Dynamic updates to the example materials can be added at any time without amending these bylaws.

Framework Components

Component	Actors	Actions
Call to Act		
The Call to Act is the instant when an issue is identified. The Call to Act can be considered the identification of an Issue or a Need . The Call results from a disturbance, an opportunity, a problem, a request, or any other catalytic moment when the Planning Commission is asked to act.	The Caller can be anyone from the community: <ul style="list-style-type: none"> • A City elected official • A Planning Commissioner • City staff • Consultants • A partner agency or interest groups, etc. 	Determine whether to answer the Call: <ul style="list-style-type: none"> • Determine whether Issue or Need is accepted • Assess City agency/ability to impact • Assess City responsibility to impact • Assess City capacity
Define the Issue		
Defining the Issue creates clarity by exploring how the Call to Action was created and by whom, identifying who is driving and who is impacted, and identifying available information, observations, public concerns, and determining whether existing data is adequate or more data is required. Defining the issue leads to a reconsideration of whether to answer the Call. Doing so transforms Need into Purpose .	The Planning Commission identifies Potential Stakeholders as necessary. Potential Stakeholders include: <ul style="list-style-type: none"> • Businesses • City officials • Developers • Low Income and/or under represented • Long-term residents • New residents • Those Privileged and Disadvantaged by the issue/topic • Property Owners • Renters, etc. 	Determine Stakeholders: <ul style="list-style-type: none"> • Understand who the Caller represents • Understand who benefits/suffers from the Issue or Need • Understand who benefits/suffers from the Solution to the Issue or Need Propose Solutions <ul style="list-style-type: none"> • Determine when a solution is proposed • Determine who proposes solutions • Determine how many solutions are proposed Select Public Involvement Strategies <ul style="list-style-type: none"> • Assess City capacity to implement individual Public Involvement Methods. • Establish who should be involved • Select level of involvement (Inform, Educate, Engage, Ask) • Select specific Public Involvement Methods (Exhibit B.2)
Inform, Educate, and Reach-Out to Public		
Informing, Educating, and Reaching Out to Stakeholders provides <i>uni-directional information sharing</i> from	The Planning Commission and City staff activate Networks (e.g., SDA,	Make Materials Accessible, Understandable, Timely, and Compelling

<p>the City to the Public. The sharing of information could be a preamble to the Engaging Stakeholders or could stand alone as a form of open governance. Informing, Educating, and Reaching-Out to the Public shares the Purpose with the community to generate greater Communal Understanding.</p>	<p>Volunteers, WAGAP, etc.) to help reach-out to identified Potential Stakeholders.</p>	<ul style="list-style-type: none"> • Share simple information broadly • Provide access to more detailed information • Make available source documents and reference materials <p>Surface Latent Stakeholders</p> <ul style="list-style-type: none"> • Provide opportunities for the Public-At-Large to become more involved
<p>Engage Stakeholders</p>		
<p>Engaging Stakeholders provides <i>bi-directional information exchange</i> between the public and city staff/elected officials. Engaging Stakeholders results supplements Communal Understanding with Collective Wisdom.</p>	<p>The Planning Commission and City staff activate Networks to help engage identified Potential Stakeholders and previously Latent Stakeholders.</p>	<p>Match the Level of Engagement to the Need for Input and the Impact of Change.</p> <ul style="list-style-type: none"> • Share simple information broadly • Provide access to more detailed information • Make available source documents and reference materials <p>Ensure Engagement is Multi-Faceted.</p> <ul style="list-style-type: none"> • Select specific Public Involvement Methods (Exhibit B.2) <p>Solicit Input and Expertise Building upon Work of City Officials.</p>
<p>Refine</p>		
<p>Refining involves validating or reconsidering decisions made in earlier steps. Refining applies Communal Understanding and Collective Wisdom to the Purpose. If the issue is complex, refining may involve several iterations of earlier steps and/or offer widening ranges of options. At one end of this range, refining could even lead the Planning Commission to reconsider whether to answer the original Call to Act.</p>	<p>The Planning Commission and City staff respond to stakeholders based on input received.</p>	<p>Distill stakeholder input for Planning Commission to inform next steps and/or a decision.</p>
<p>Check-In</p>		
<p>Checking-In reconnects Stakeholders with the Need and Purpose, and updates the Communal Understanding with the Collective Wisdom gained through implementation of the Public Involvement Plan.</p>	<p>The Planning Commission and City staff re-activate networks, updating stakeholders on the issue's evolution through the Public Involvement efforts.</p>	<p>Create a feedback loop to determine whether additional Public Involvement is necessary before a decision can be made.</p> <p>Respond to Stakeholders to Improve Upon or Help Inform the Final Decision.</p>
<p>Decide</p>		
<p>Deciding involves advancing an Action to address a Need the Purpose. The</p>		<p>Document the Decision</p> <p>Communicate the Decision Broadly</p>

<p>action should integrate the Collective Wisdom received through implementation of the Public Involvement Plan. Through Action a Need is addressed, the Seed of Community is born and the ground is prepared to receive the next Call.</p>		
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Exhibit B.1 – Visual Public Involvement Workflow Template

The following template can be customized to document the topic-specific Public Involvement Plans.

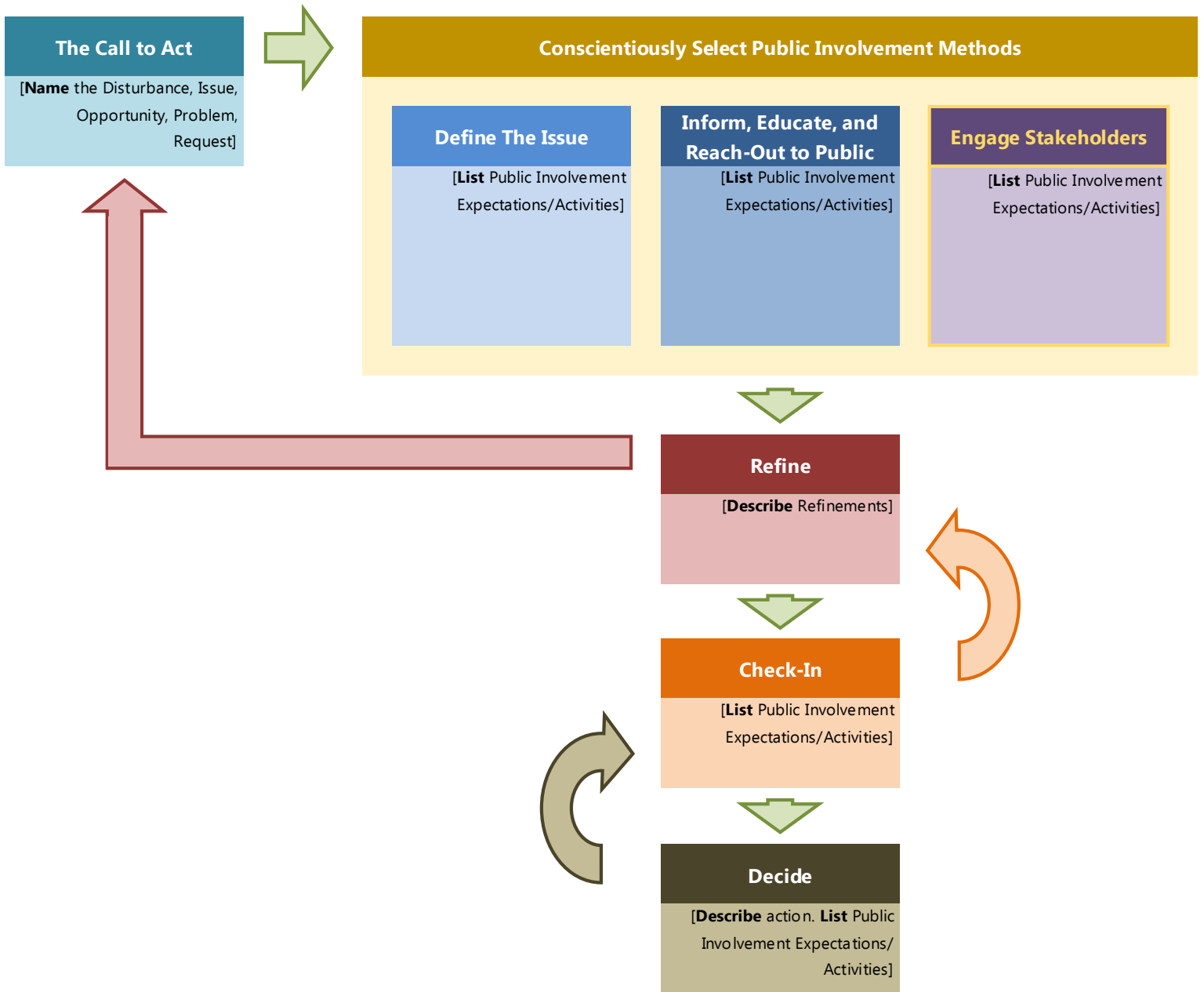


Exhibit B.2 – Menu of Public Involvement Methods.

This exhibit presents several public involvement methods. Some are simple, some more complex. A basic assessment of the impact and associated costs associated with each method is included. This list is dynamic and will grow according to more input and testing of methods.

The menu can be attached to early issue report as a tool for the Planning Commission and shared with the public to share expectations on each Public Involvement Plan.

In general, selected methods to Inform, Educate, and Reach-Out should provide an 1-month timeframe.

Method	Impact	Resource Need	Notes	Included in Plan?
Methods to Inform, Educate, Reach-Out				
Physical Media (posters, informational flyers, newspaper ads)	L M H	\$ \$ \$ \$ \$ \$	Consider posting on bulletin boards and around town (laundry, apartments, post office, workplaces, school/government/semi-public spaces)	Y or N
Targeted Media (postcards with links, invitations to participate)	L M H	\$ \$ \$ \$ \$ \$		Y or N
Requests for neighborhood/group participation	L M H	\$ \$ \$ \$ \$ \$	Planning Commissioners and/or Staff	Y or N
Electronic Media (Facebook page, nextdoor, websites of partners and City)	L M H	\$ \$ \$ \$ \$ \$		Y or N
Press Release, Interviews, Guest Editorial	L M H	\$ \$ \$ \$ \$ \$		Y or N
Sandwich Boards	L M H	\$ \$ \$ \$ \$ \$	Consider placing at Stevenson Downtown Association office, front lawns	Y or N
Guest appearances at events and meetings	L M H	\$ \$ \$ \$ \$ \$	Planning Commissioners and/or Staff	Y or N
Informal community and interest networks	L M H	\$ \$ \$ \$ \$ \$		Y or N
Concise, short and well written flyers delivered to resident's front door by volunteers	L M H	\$ \$ \$ \$ \$ \$		Y or N
Methods to Engage				
Public Workshops	L M H	\$ \$ \$ \$ \$ \$	Accessible and welcoming to all	Y or N
Survey Monkey	L M H	\$ \$ \$ \$ \$ \$	Special attention to language and readability needed	Y or N
Meet & Greets with staff or elected officials	L M H	\$ \$ \$ \$ \$ \$	Requires data collected and staffing of elected, along with public notice	Y or N
Council/Commissioner meetings with focused methods for input/dialogue	L M H	\$ \$ \$ \$ \$ \$	Build upon Commission meetings and allow for back and forth between electeds and community. Add more time for PI (Public Involvement).	Y or N

			Change physical arrangement. Actively promote/welcome PI	
Town Hall - debates or educational forums	L M H	\$ \$\$\$ \$\$\$	Cross talk between electeds, experts, staff with Q&A from audience	Y or N
Story boards - data collection or voting	L M H	\$ \$\$ \$\$\$	Placing story boards in key location to collect input about very specific things OR to get votes on X or Y preference Mimicking this on social media also *Key to have right issue and right language	Y or N
Listening sessions between staff/electeds and public	L M H	\$ \$\$\$ \$\$\$	Planning Commissioners and/or Staff	Y or N
Attend existing meetings of currently organized groups, events and board meetings.	L M H	\$ \$\$\$ \$\$\$	Social service agencies, neighborhood groups, special interest networks, etc	Y or N
Attend large employers meetings (as applicable)	L M H	\$ \$\$\$ \$\$\$	Planning Commissioners and/or Staff	Y or N
Pioneer articles from Council/Commission with key topics needing to be discussed and solicitation of questions for next issue to be answered	L M H	\$ \$\$\$ \$\$\$		Y or N
Form task forces, interest groups, focus groups, etc	L M H	\$ \$\$\$ \$\$\$	Planning Commissioners and/or Staff	Y or N
Pizza party/cook off - casual event	L M H	\$ \$\$ \$\$\$	Planning Commissioners and/or Staff	Y or N
Postcards soliciting input	L M H	\$ \$\$ \$\$\$		Y or N

Exhibit B.3 – Example Public Involvement Materials.

This exhibit presents examples of public involvement materials to effectively implement public involvement plans. These examples will change and supplements will be added in response to the implementation of topic specific public involvement plans.

List of Examples

- Flyer Example.

Flyer Example

ZONING - Your neighborhood could change

We will be discussing how it might change at a meeting next week. Please come.

Then we'd give the time and place where the meeting was going to be held.

Then we would have ended the flyer this way:

For more information on the proposed changes contact _____. Then we'd give three ways to contact this person.