

THE BROWN ACT AND NEIGHBORHOOD COUNCILS

Office of the City Attorney - Neighborhood Council Advice Division

AB1234 ETHICS TRAINING

What Is The Ralph M. Brown Act?

The Brown Act is a state law which governs open meetings for local governmental bodies. The Brown Act (also "Act") is contained in the Government Code at § 54950 *et seq.*, and establishes rules designed to ensure that actions and deliberations of commissions, boards, councils and other public bodies of local agencies are taken openly and with public access and input.

Why Are Neighborhood Councils Subject To The Brown Act?

The Brown Act governs the meetings of all local "legislative bodies," that is, all multi-member councils, boards, commissions, committees and the like, of a local governmental agency. Only bodies created by charter, ordinance, or the formal action of another legislative body are covered by the Act. Neighborhood councils are covered by the Brown Act because the City Charter created the system of neighborhood councils, which required the approval of a plan to implement the system, and an ordinance to implement that plan. The ordinance provides for the City to certify, and otherwise recognize neighborhood councils, as an official component of the City. This combination of features, *i.e.*, the Charter-created system and adoption of the plan and ordinance, satisfies the "creation by charter, ordinance or formal action" test of the Act. Thus, meetings of neighborhood councils are covered by the Act.

What Constitutes A Meeting Of A Neighborhood Council?

A meeting of your neighborhood council will occur when a majority of the members of your board, or whatever term your bylaws use to define its "governing body," meet at the same time and place to *hear, discuss, or deliberate* upon any matter which is under the subject matter jurisdiction of your neighborhood council. The jurisdiction of your neighborhood council will be broad since neighborhood councils are advisory bodies to *all* of the City decision-makers. Some neighborhood councils may have defined the particular areas of importance to them in their bylaws, so those areas will also provide guidance as to matters over which a neighborhood council will have jurisdiction.

Many neighborhood councils have provided in their bylaws that decisions of their governing body are made by a majority of the total number on the board. Others provide that decisions are made by a majority of the number of board members *present* at the meeting. Still others provide for decision by action by a majority of the *quorum* of the board. If your bylaws provide that some number *less* than a simple majority of the board can make a decision on behalf of the neighborhood council, the gathering of that group of

people is an official meeting under the Act.¹ The least number of persons under your bylaws who can take an official action for your neighborhood council is the number to be aware of for purposes of compliance with the Act. Meetings subject to the Act may lawfully be held only if the notice and agenda requirements discussed in this paper are followed.²

One might think that the Brown Act applies only when a board is making decisions at a public meeting. In fact, the Brown Act will also apply whenever a majority of your neighborhood council board meet to simply *discuss, deliberate* or *acquire* information about a matter within the subject matter of your neighborhood council.

A meeting may also include a conference or retreat attended by a majority of neighborhood council board members. If a conference (or similar gathering) is open to members of the public, involves issues of general interest to the public or to a number of public agencies, it is not a meeting subject to the Act, and neighborhood council board members are free to attend so long as the majority of board members do not discuss among themselves, other than as part of the scheduled program, specific issues within the jurisdiction of the neighborhood council. Retreats held by a neighborhood council, however, would be subject to the open meeting laws of the Act because, by definition, they do not involve a number of different public agencies but rather, would likely involve issues relating solely to the neighborhood council. Thus, members of the public must be allowed to attend, and the retreat would be subject to the Act's notice requirements, as described below.

If your neighborhood council decided to hold a lunch meeting or dinner meeting, at which matters within the jurisdiction of your neighborhood council will be discussed, the lunch or dinner meeting would need to be noticed as a meeting of the neighborhood council, and members of the public must be allowed to attend, without having to pay for the lunch or dinner although they need not receive the meal.

Committee Meetings. Committee meetings of your neighborhood council may also be subject to the notice and agenda requirements of the Act. Standing committees, which are committees that have a continuing jurisdiction over a particular subject matter, are subject to the Act, even if the committee comprises less than a majority of board members or includes or is made up of only stakeholders from your neighborhood council. If your bylaws have created several standing committees, these will be subject to the provisions of the Act.

In addition, interim boards that act on behalf of the neighborhood council after certification but prior to the initial election of the board are subject to the Act. Similarly, the committee that is drafting your initial election procedures is subject to the Act.

¹ Accordingly, whenever this paper uses the term "majority" to define a meeting, we include the term "quorum" as well.

² Less than a majority of board members may meet together or over the phone or by e-mail to discuss a subject within the jurisdiction of the neighborhood council without having to comply with the Act.

Many neighborhood councils have *not* created an interim board, but have allowed the people who are listed on the original certification as “contact people” to be the liaisons with the Department, until a board is elected. The gathering of *those individuals* would not constitute a meeting of a legislative body unless they engage in making decisions on behalf of their neighborhood council.

Ad hoc, or temporary committees, created by the board from among its members, numbering less than a majority, are normally not subject to the Brown Act. Generally, a temporary committee is designed to address a specific issue for a limited time and report back to the full board. As long as the committee is made up of *only* less than a majority of your neighborhood council board members and the committee is of a temporary nature, the committee will not have to meet in public, nor comply with the other provisions of the Act. However, if you include *any* non-board member on a temporary committee, the Brown Act provisions will apply. Standing committees, and temporary committees that are subject to the provisions of the Act, do not need to establish a regular time and place for their meetings.

In addition, there are some common situations that you need to be particularly alert to, such as informal gatherings, “serial” meetings, including serial meetings that may be conducted through the use of electronic mail (“e-mail”) and the conduct of neighborhood council elections, all of which raise Brown Act concerns.

Informal Gatherings. Since your board members will be stakeholders in the community of your neighborhood council, it is likely that they will have occasion to gather together informally at picnics, fund-raisers, carwashes or other community events. Not every gathering of a majority of neighborhood council board members will necessarily constitute a meeting under the Act. Informal, social gatherings of board members are not meetings and neighborhood council board members do not need to comply with the provisions of the Act in order to attend gatherings of that nature. However, even at these purely social occasions, a majority of the board may not gather together to discuss matters within the subject matter under the council’s jurisdiction and must guard against discussing matters that are likely to be issues within the subject matter jurisdiction of your neighborhood council.

Serial Meetings. The Act prevents, what courts have called, “serial meetings,” that would be employed by a majority of your board members to develop a consensus as to action to be taken on a matter coming before your neighborhood council. This is because the Act’s main goal is to ensure that the public’s business is in fact conducted *in public*. A serial meeting is a series of separate communications that ultimately involves a majority of a legislative body. The Act prohibits this type of communication if it contributes to the development of an agreement among the majority on any particular item.

For example, if you have an 11-person board, the quorum of your board is 6 people and official actions are taken by a majority of the entire board, a chain of communications between six of those members could result in a serial meeting in violation of the Act. This can occur either if one person contacts the other five members or if, for example, member A contacts member B who contacts member C, *etc.*, until six or more of the board

members have discussed and agreed to the action they want to take on a particular item. These types of communications are prohibited under the Act.

The Act also prohibits the use of technological devices to assist in a majority of a board in arriving at any decision. Therefore, as noted earlier, you must always be aware of the least number of board members under your bylaws who can take official action on behalf of your neighborhood council and be particularly cautious of communicating by telephone, fax, or e-mails with a majority of your members on matters of substance coming before your neighborhood council. However, communications between board members and an executive officer, such as a Secretary, to discuss times, dates and placement of matters on the agenda, and the availability of board members to assess whether an upcoming meeting will have a quorum, may occur without violating the Act. Similarly, merely sending or receiving a written communication to or by a majority of the board members (including an e-mail), does not result in a serial meeting in violation of the Act if the communication becomes a public record and there is no *exchange* of these communications among board members on a substantive issue coming before your neighborhood council. A majority of board members should also refrain from circulating motions, proposals and similar documents among themselves for review and signature other than at a noticed public meeting.

In addition, a serial meeting may occur through the use of an intermediary. Thus, you cannot use any person for the express purpose of polling a majority of the neighborhood council board members to gain a consensus on an item coming before the council. In addition, you may not ask a third party to communicate among the board to obtain a consensus; you cannot use intermediaries to accomplish the actions that you are directly prohibited from undertaking.

Elections. For purposes of electing its officers or board members, a neighborhood council may hold an election day at which stakeholders, including board members, may cast their votes for their representatives. These type of elections which envision using a ballot to cast votes anonymously, *i.e.*, “secret ballots”, would not constitute a “meeting” under the Act. As long as no other neighborhood council business is conducted, these gatherings, if conducted solely for election purposes, would not constitute a meeting subject to the Act. However, if any type of neighborhood council business is to be conducted at the venue for the election, the entire election would be subject to the Act, unless there is a clear and absolute demarcation between the election and the business meeting. Otherwise, traditional secret balloting is not allowed since the Brown Act prohibits voting by secret ballot and all voting would have to occur openly where the person’s voting choices are readily ascertainable.

Some neighborhood councils provide for the election of their *officers* to be conducted by the elected board members, rather than by a general vote of the stakeholders. This procedure does not occur at an election day, but instead at a public meeting. At a meeting for the election of officers, an item appears on the agenda for the election of officers. That meeting must otherwise comply with the notice and agenda requirements of the Act. In addition, the election itself may *not* be conducted by secret ballot. Thus, the board members exercising their right to elect their officers must record

their votes openly, either by voice or hand vote or by a written ballot that can be identified to the voter and the results are publicly tallied.³

What Type Of Rules Will Govern The Conduct Of Neighborhood Council Meetings Under The Act?

Regular Meetings. The Act will require that neighborhood councils hold their meetings at a regular time and place. The Plan for a Citywide System of Neighborhood Councils (“Plan”) provides that every neighborhood council must meet at least quarterly. Your council may, of course, choose to meet more often than the minimum time set forth in the Plan. Your council should already have included the minimum meeting requirement in your bylaws and you should establish, either in your bylaws, or subsequently adopted Rules of Order, a regular meeting place as well.

Open Meetings. The Plan already provides that meetings of your neighborhood council must be open to the public. The Brown Act also specifically requires that your meetings must be open. This means open not only to your neighborhood council stakeholders, but to any member of the public. Your neighborhood council may not charge a fee for admittance, nor can you require members to sign in or identify themselves as a condition of attending a meeting. (For voting or membership identification purposes, although we recommend against any process that discourages stakeholder participation, it is appropriate for your group to create a registration form to identify your stakeholders as members of the neighborhood council, if you choose. However, if a registration form is posted or circulated at a meeting, *it must clearly state that completion of the document is voluntary and not a precondition for attendance*). Use of speaker cards to organize the order of people who wish to speak, is allowed without violating the prohibition of requiring people to register to attend a meeting. However, a neighborhood council may not prohibit a member of the public from speaking if s/he refused to fill out a speaker card. Discussion and deliberation of agenda items by your council’s board must be done openly -- no secret ballots or secret deliberations are allowed. Again, the purpose of these requirements is to allow members of the public to hear and observe the proceedings. Finally, meetings may not be held in facilities that are inaccessible to disabled persons or in facilities that prohibit the admittance of any persons on the basis of race, religious creed, color, national origin, ancestry or sex.

Location of Meetings. The Brown Act provides that regular and special meetings must be held within the boundaries of the territory over which the legislative body has jurisdiction. This means that your neighborhood council meetings should be conducted within the City of Los Angeles and should be held within the boundaries of your neighborhood council area. However, there are provisions that allow for the occasional “field trip” outside your boundaries. The Act does allow neighborhood council meetings to be held by teleconference. A teleconference is a meeting where your council members

³ The Attorney General has opined that “members of a [legislative] body may cast their ballots either orally or in writing so long as the written ballots are marked and tallied in open session in a way that identifies the voter and how s/he voted and the ballots are disclosable public records. See, 59 Ops Atty. Gen 619 (1976).

are not all at the same location and are connected by electronic means, through either audio or video or both. During a teleconferenced meeting, board members may discuss and vote on agenda items. However, the Act has strict requirements governing how teleconferenced meetings may occur:

☞ Agendas must be posted at *all* teleconferencing locations, all of which must be listed on the agenda;

☞ Members of the public must be allowed to attend any of the teleconferencing locations and to address the neighborhood council board directly at any of the locations;

☞ At least a quorum of the neighborhood council board shall participate from teleconferencing locations within the neighborhood council area;

☞ The neighborhood council must comply with all other provisions of the Brown Act.

Notice and Agenda Requirements

Regular Meetings. The agenda for a regular meeting of a neighborhood council that sets forth the time and place of your meeting must be posted *at least 72 hours* before the meeting.⁴ The agenda must list all items that will be discussed or acted upon by your neighborhood council. That listing should be described in an informative way so that members of your council as well as members of the public understand the general nature of the agenda item and can make an informed decision whether to attend the meeting or not. The Brown Act provides that this description need not exceed 20 words, but you are certainly free to use more words if necessary. The goal of the description is to provide a reasonably clear understanding of what is to be considered by the board at its meeting. You may include general categories on your neighborhood council agendas, such as “General Announcements” or “Correspondence” or “Committee Reports.”

However, if a committee of your neighborhood council plans on making a particular recommendation to the board, that report should be listed specifically with a reference to the committee’s recommendation. The same would be true if your neighborhood council is making a recommendation about a particular project or issue that it wants to formally communicate to the City decision-makers. Those matters should be separately listed on the agenda with enough information to identify the project, such as the address, type of project, *etc.* Board members of the neighborhood council will be limited to acting on (as well as discussing) only those matters which have been listed on the agenda, with limited exceptions which are described below.

Special Meetings. The agenda for a special meeting (and the call and notice for it) must be posted, stating the time and place of the meeting, *at least 24 hours* prior to the special meeting and provided to each local newspaper, radio, or television stations that has requested in writing to be provided with these notices. Only matters that are on the agenda

⁴ The 72 hours *may* be calculated to include Saturdays and Sundays but the location you choose must be accessible during these weekend hours so that the agenda may be viewed.

for that meeting may be discussed at that meeting. Your bylaws should specify whether your neighborhood council may hold special meetings. The Brown Act provides that special meetings may be called by the presiding officer of your neighborhood council or by a majority of the board members by delivering written notice to each board member of the council.

Emergency Meetings. The Act provides that emergency meetings may be called under certain specified circumstances defined in the Act without having to comply with either the 24-hour notice or posting requirements.⁵ *Neighborhood councils will never have the need to call an emergency meeting within the definition of the Act and should not invoke this section.*

Exceptions to the Agenda Requirement. The general rule is that a matter may not be discussed or decided unless it is listed on the agenda. *This is very important, but there are exceptions to this broad rule:*

a) *Board Member Comments*

☞ board members may make very limited comments and *briefly* respond to statements made or questions posed by persons exercising their general public comment rights (*no action may be taken on matters brought up during general public comment*); board members may make a *brief* announcement or a *brief* report on his or her own activities; and board members may take action to direct their secretary (or whoever is in charge of placing items on the agenda) to place a specific matter on the agenda for a future meeting; *Note: It is preferable, if your neighborhood council wants to take board member comments, to have an item on your agenda called "Board Member Comments" as part of the agenda, even though the specific discussion under these parameters is not known in advance of the meeting.*

b) *Continuances*

☞ if an item was posted pursuant to the Act for a prior meeting of the neighborhood council occurring not more than five calendar days prior to the date action is taken on the item and the prior action had been continued to the meeting at which action is being taken, your neighborhood council may act on the matter even if it is not on the agenda. *Note: This situation is not likely to occur unless your council plans to hold weekly meetings;*

c) *Immediate Action*

☞ board members may take action if, by two-thirds votes of the neighborhood council board, it determines that there is a need to act immediately, that the neighborhood council's consideration of the matter cannot await the next meeting of the council and that the need for immediate action arose after the posting of the agenda. *This should only occur in very rare occasions, and you should consult with the Department of Neighborhood*

⁵ Those circumstances speak of dire emergencies or crippling disaster justifying a legislative body to take action to protect the health and safety of the community.

Empowerment or the City Attorney's Neighborhood Council Advice Division before relying on this exception. (Note: If an item does come up after the posting of the 72-hour agenda, but before the meeting, you should consider whether you have time to notice a 24-hour special meeting that could follow your regular meeting and allow discussion only of that item.)

What Rights Do Members Of The Public Have At Neighborhood Council Meetings?

Except when closed sessions are permitted (see below), all meetings of your neighborhood council must be held in public. Members of the public, not just the stakeholders in your particular neighborhood council, are allowed to attend and participate by speaking about specific items on the agenda. Indeed, *before* your board takes action on any particular item on the agenda, members of the public have a right to testify or otherwise address the neighborhood council board members about each item.

Your agendas should also provide for an item designated "Public Comment" because the Act allows members of the public to comment on any item within the subject matter jurisdiction of your neighborhood council that is not specifically listed on the agenda. It is up to your neighborhood council where you want to put this item on the agenda. Some agencies put general public comment at the front of the agenda, while some place it at the end. It does not matter where you put it as long as you provide for that opportunity at every regular meeting of your neighborhood council. (Special meetings do not require a *general* public comment item; however, this does not mean that the public can be prohibited from speaking on the *agendized* items for the special meeting.) Your neighborhood council is allowed to adopt reasonable rules to govern the length of time for public comment on agenda and non-agenda items.

Members of the public also have a right to criticize the policies or practices of your neighborhood council during public comment and have a right to videotape and audiotape the proceedings. The Act does allow your neighborhood council to control disruptions and ask disruptive members to leave the meeting room. *However, this power must be exercised with caution and the City Attorney should be consulted to discuss how and when this provision of the Act may be invoked. At no time should you engage in physical confrontations or force or attempt to physically remove a disruptive person.*

Members of the public also have a right to see materials that are distributed to your neighborhood council at its meetings. The Act provides that materials distributed during a public meeting be made available for public inspection *at the meeting* if prepared by the local agency or member of the legislative body. This means that if your neighborhood council or, if applicable, staff at the Department of Neighborhood Empowerment, prepare materials for distribution at your meetings, copies must be made available for the public. Otherwise, if materials are distributed by other individuals, such as other stakeholders or members of the public, these must be retained and be made available after the meeting.

Are There Any Circumstances Where A Neighborhood Council Can Hold A Meeting That Is Closed To The Public?

It is not likely that there will be many circumstances which would allow your neighborhood council to discuss matters in closed session. The Act provides for very specific and limited circumstances under which a closed session may be held by a legislative body. The most likely circumstances, *if at all*, that would apply to a neighborhood council would be to discuss personnel matters or pending litigation.

Personnel Matters. The Act could allow your neighborhood council to meet in closed session to discuss the appointment, employment, evaluation of performance, discipline or dismissal of a public employee under limited circumstances.⁶

Pending Litigation. A neighborhood council *may* be allowed to meet in closed session with attorneys from the Office of the City Attorney to discuss pending litigation to which the neighborhood council is or may be a party under certain specific circumstances:

- ☞ when litigation has been formally initiated;
- ☞ there is significant exposure or threat of litigation

What you cannot do is use a closed session to discuss items because you might be uncomfortable discussing the item in public or because you want to confer with legal counsel. As such, the need for a closed session is unlikely to arise for a neighborhood council. *Moreover, because these issues are complicated, before attempting to assert any of the exceptions under the Act to hold a closed session, your neighborhood council should consult the City Attorney's Neighborhood Council Advice Division for advice.*

May A Majority Of Neighborhood Council Board Members Attend Other Neighborhood Council Meetings Or Other Public Meetings Without Having To Notice That Attendance As A Meeting?

A majority of neighborhood council board members may attend meetings held by a person or organization as long as the board members do not discuss among themselves neighborhood council business. Similarly, a majority of a council's board may attend a meeting of another public body, including another neighborhood council meeting, City commission or City Council meeting without having to notice their attendance as a meeting, again, as long as the board members do not discuss among themselves neighborhood council business.

However, if a neighborhood council and another body or agency wishes to conduct a *joint meeting*, both the neighborhood council board and the other body or agency with which it wants to meet, will need to notice the meeting as a joint meeting of the two bodies.

⁶ The term "public employee" in the City of Los Angeles context would mean a City employee.

A majority of council board members may attend meetings of its own committees without having to comply with the notice requirements for the board, as long as the board members attend *only* as observers. For example, if a majority of the board wanted to attend one of its standing committee's meetings, it may do so without having to comply with the Act. However, if any of the board members wish to participate by addressing the committee members, then the meeting would have to be noticed as both a meeting of the committee and the neighborhood council itself.

What Can Happen If A Neighborhood Council Board Member Violates The Brown Act?

Criminal Penalty. Violations of the Act can carry misdemeanor penalties for certain actions if a member of a neighborhood council board merely attends a meeting where action is taken in violation of the Act. However, a showing must be made that the member *intended* to deprive the public of information to which the member knows (or has reason to know) the public is entitled.

Civil Remedy. Violations of the Act may also result in a civil lawsuit being filed to seek judicial (injunctive or writ) relief to prevent or correct violations. Under certain circumstances, the court can declare a decision made in violation of the Act void. Before filing a civil action, a complaining party would have to first demand that your neighborhood council correct the violation. That demand must be made in writing within 90 days after the alleged violation occurs. In cases involving an alleged violation of the rules governing agendas, the written demand must be made within 30 days after the occurrence.

Interested In Learning More About The Brown Act?

For more information about the Brown Act, the Attorney General has an excellent pamphlet that discusses the Act, which can be accessed over the Internet at: <http://caag.state.ca.us>, by clicking into "Publications" and then scrolling down to: "Brown Act, Pamphlet 2003." With Adobe Acrobat Reader, it can be read on screen or printed. To request a copy by mail, simply call the Attorney General's Public Inquiry Unit at: (800) 952-5225.

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