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Subject: From Judy Goldman: Common Legal Questions Regarding Brown Act and Sub Committees
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Reference Library | Newsroom | Contact Info

Neighborhood Councils

How To

Training

Office Space

Funding

Elections

Mayor's NC Budget Process

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the link to Common Legal Questions Regarding Neighborhood Councils.
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Common Legal Questions Regarding Certified Neighborhood Councils

1. Does the Brown Act apply to Neighborhood Councils?

YES, because the City Charter created Neighborhood Councils, Neighborhood Councils will be subject to the provisions of the Brown Act. The Brown Act is applicable to "a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution or formal action of a legislative body." § 54952 (b) (Emphasis added).

2. What are the major components of the Brown Act that will apply to Neighborhood Councils?

The Brown Act will generally apply * when there is a quorum or majority of the governing body of a Neighborhood Council present. The essential provisions that should be complied with include: meetings must be open (§ 54953.3); agendas of meetings must be posted 72 hours in advance for regular meetings and 24 hours in advance for special meetings (§ 54954.2 and § 54956); at the meeting the legislative body is limited to acting on the matters on the agenda (§ 54954.2); members of the public must be given an opportunity to speak to the legislative body on agenda items and non-agenda items within the jurisdiction of the Neighborhood Council ballots or deliberations are permitted (§ 54953); and agendas of public meetings and any other distributed writings are public records and shall be made available upon request without delay (§ 54957.5).

* There are some statutory exceptions that allow for a majority of the governing board to meet without compliance with these provisions depending upon the circumstances.

3. Does the Brown Act apply to Neighborhood Council committees?

YES, if the committee has an ongoing jurisdiction over a specific matter, it is considered a standing committee and would be covered under the Brown Act. However, if a Neighborhood Council establishes a temporary committee to review and make recommendations on a specific task or issue, the Brown Act does not apply because after the committee finishes its review and has given recommendations to the full governing body of the Neighborhood Council, the committee would be disbanded and thus no longer has jurisdiction over that matter. However, the temporary committee must comprise less than a quorum of the governing body, or else the Brown Act will apply since its provisions govern "meetings" of a legislative body at which a majority of the members are present. (Ralph M. Brown Act § 54952(b))

For example: The Board of Neighborhood Commissioner's (BONC) Ad Hoc Committee on Certification Application was not subject to the Brown Act, because it was a temporary committee, had a specific assignment to contend with, and comprised less than a quorum of its members.

4. Do meetings of committees, for example Executive, By-Laws, and Filming Committees, have to be open to the public (difference between standing and ad hoc committees)?

Yes, assuming Neighborhood Councils established subcommittees, and only members of

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the Neighborhood Council serve on these subcommittees. The Brown Act provides that meetings of standing committees (those that have on-going jurisdiction of a particular subject matter) are subject to the provisions of the Act. However, temporary, ad-hoc committee meetings are not subject to the provisions of the Brown Act, so long as the members of that committee do not constitute a majority of the governing body of the Neighborhood Council.

5. Must there be a prior public notification if an announcement is added to the agenda?

Not necessarily. The Brown Act provides that "at least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting." Having a category on the agenda entitled "Announcements" or "Announcements of Upcoming Events and Next Meeting Date" or whatever description is appropriate for any particular Neighborhood Council is sufficient to satisfy this requirement of the Brown Act. While the better practice might be to itemize the announcements that will be made to allow the public prior knowledge of the general nature of the announcements, the Brown Act does not require that every announcement of the Neighborhood Council be listed with specificity on the agenda. Moreover, any member of the public can also make an "announcement" during the public comment period without that specific announcement having to be placed on the agenda.

6. What notice has to be included in the agenda posting regarding a committee report, i.e., is it sufficient simply to state that XYZ Committee will give a report?

The Brown Act merely provides that "a general description of each item of business to be transacted or discussed at a meeting" be set forth on the agenda, and that "a brief description need not exceed 20 words." Since the purpose of the Brown Act is to provide notice to the public as to what will be discussed at a particular meeting, the description of the committee report should be geared toward that goal. In some instances, merely identifying the committee and that it will give a report will be sufficient, depending on that committee's jurisdiction; in other cases, it may be more appropriate for the committee as well as the general subject matter of its report, to be identified on the agenda. Those determinations will be judgment calls dependant upon the facts in any one situation. If, however, the report contains a recommendation for future action by the Neighborhood Council as a whole, the agenda should indicate that fact, briefly summarizing the nature of the recommendation.

7. Can an ad hoc committee have members that are not part of the governing body?

Yes. The Brown Act places no restrictions on the ability for a Neighborhood Council's committees to include individuals that are not part of the governing body. However, that may affect the application of the Brown Act.

8. Does a person who lives in an adjoining neighborhood, or perhaps in an area outside the City of Los Angeles, but who shops in a particular neighborhood constitute a stakeholder in the neighborhood in which he or she shops?

No. Both the adopted Plan for a Citywide System of Certified Neighborhood Councils and the City Charter define a stakeholder as everyone who "lives, works or owns property" in the neighborhood. The Plan provides further definition to include participation in all different types of community groups. See Article II, Section 1. However, mere passersby or even those who regularly shop in a particular neighborhood are not considered a "stakeholder" under the Charter or the Plan.

9. Does a method of selection for membership on the governing body of a Neighborhood Council which provides for an organization to have a "permanent representative" on the governing body impinge on the requirement that the governing body "to the extent possible, reflect the diversity of Neighborhood Council's Community Stakeholders?"

With respect to a Neighborhood Council, the Plan does not allow for a permanent officer on its governing body. Article III, Section 2 (c) (ii) 2) (b) provides that "no person may serve more than eight consecutive years in any office of a Certified Neighborhood Council's Governing Body." (See Plan, page 5.) However, nothing in the Plan prohibits a Neighborhood Council from reserving a permanent seat on the governing body for a certain stakeholder group, as long as "no single Stakeholder group shall comprise a majority of a Certified Neighborhood Council's governing body, unless extenuating circumstances are warranted and approved by DONE." Article III, Section 2(c) (2) (a) at page 5.

10. Will organizations that will have a representative on a governing body of a

Neighborhood Council have to change the method by which representatives to the governing body are selected if those organizations currently appoint (rather than elect) their representatives to certain community organizations?

Not necessarily, depending upon how the forming Neighborhood Council decides how it wants to choose its officers. The Charter provides that the regulations shall not restrict the method by which members of a Neighborhood Council are chosen. The term "members" mean members of the board or governing body of a Neighborhood Council. Neither the regulations nor the Plan dictate how a Neighborhood Council's officers are selected. The Plan only provides that a Council's bylaws must include a list of its offices and provide a "method for regularly electing or selecting officers who shall serve as the Governing Body.

11. Does the Plan's requirement that each Neighborhood Council keep "a book of accounts that complies with Generally Accepted Accounting Principles," impose duties upon a Treasurer which, in addition to complying with "applicable local, state and federal laws, "exceed those currently undertaken by a Treasurer who simply lists deposits and their sources and lists payees of expenditures?

This question refers to the language in the Plan in Article III, Section 2 (d)(i) at page 6, which provides, in pertinent part, that: "each Certified Neighborhood Council shall: (i) prescribe a method for keeping a book of accounts that complies with applicable local, state, and federal laws, which includes any or all provisions of Generally Accepted Accounting Principles that apply to a Certified Neighborhood Council, according to the type of entity established by a Certified Neighborhood Council."

The Plan also provides that the duties of the Treasurer shall include "maintaining the Neighborhood Council's book of accounts, as prescribed by DONE, and submitting account statements to DONE..." Article III, Section 2 (d) (iv) at page 6. The Department will be promulgating guidelines as to what standards will apply to maintaining the book of accounts and what additional responsibilities, if any, a Treasurer of a potential Neighborhood Council may have in order to comply with the Generally Accepted Accounting Principles language found in the Plan.

12. Can an organization obtain information provided by the "Early Notification System" without being a Neighborhood Council?

Yes. The Early Notification System (ENS) is a public website and available to anyone. The ENS is designed to provide a mechanism for disseminating information as soon as possible regarding issues to be discussed by the City Council, City Council Committees, boards or commissions and any other City official who is required to hold a public noticed meeting. It is also designed to "receive input" from Neighborhood Councils. Everyone will have access to the ENS.

13. Can a Neighborhood Council communicate directly with any other public agency which is not part of the City of Los Angeles?

Yes. Nothing in either the Plan, the ordinance, or the City Charter limits Neighborhood Council's ability to communicate with other public agencies.

14. Do Neighborhood Councils have the same immunities and liabilities like other advisory bodies of the City

YES, as long as they are acting within the scope of their responsibilities under the Charter and ordinance. Under these circumstances, the City would be obligated to defend Neighborhood Councils and assert any immunities and defenses the City might have on behalf of Neighborhood Councils.

15. (a) In case of a lawsuit, can the governing body of the Neighborhood Council be held personally liable?

(a) YES, while unlikely, it is possible for personal liability to occur. Personal liability can occur when the conduct is fraudulent, corrupt, malicious, or where unlawful expenditures have been made.

16.(b) Will the City be obligated to defend the governing body of a Neighborhood Council in case of a lawsuit?

(b) YES, unless the conduct falls outside the scope of the Neighborhood Council's duties, or in certain limited conflict of interest situations. The City will provide legal defense for the governing body of a Neighborhood Councils as long as the governing body cooperates with the defense, and the alleged offense falls within the scope of the Neighborhood Council's work.

17. Can a Neighborhood Council raise funds to support political candidates and still receive funding from the City?

NO. Neighborhood Councils cannot endorse a political candidate and cannot raise or spend money under its control to support a political candidate. However, individual

members of a Neighborhood Council and its governing body are free to make personal endorsements, to work for an election or raise money for a candidate as long as the individual is not undertaking these activities as representative of a Neighborhood Council, but solely in his or her personal capacity.

For example: John Doe supports Jane Smith for President, instead of XYZ Neighborhood Council supports Jane Smith for President.

18. Can the City provide funding to Neighborhood Councils that include faith-based organizations?

YES. Including faith-based organizations in Neighborhood Councils does not prohibit the City from giving funds to Certified Neighborhood Councils. By funding Neighborhood Councils, the City's intent is neither to advance nor inhibit religion, but to provide a source of funds for the function of Neighborhood Councils, a secular purpose, and the inclusion of faith-based groups does not prevent the City from funding these Neighborhood Councils. Moreover, the City Charter contemplates that Neighborhood Councils are intended to be inclusive; therefore, churches and other religion entities are not prohibited from joining.

19. Will Neighborhood Councils have to comply with the City's Conflict of Interest Rules?

YES. Neighborhood Council are considered "public officials" within the meaning of the Political Reform Act, and therefore subject to the conflict of interest requirements of that Act.

20. Do Neighborhood Councils have to comply with the Americans with Disabilities Act (ADA)?

YES. Neighborhood Councils are entities, and must therefore comply with the provisions of the Act and ensure that their meeting sites are accessible and communications can be accessed through assistive devices.