

THE BROWN ACT AND NEIGHBORHOOD COUNCILS

What is the Ralph M. Brown Act?

The Brown Act is a California state law governing 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. 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 Council 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," meets at the same time and place to *hear, discuss, or deliberate* upon any matter 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 particular areas of importance to them in their bylaws, so those areas will also provide guidance as to the Neighborhood Council's jurisdiction.

Many Neighborhood Councils' bylaws state that decisions of their governing body are made by a majority of the total number of board members. Others state that decisions are made by a majority of the number of board members *present* at the meeting. Still others state that decisions are made by action of a majority of the board's *quorum*. 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 complying 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 Act also applies when a majority of your Neighborhood Council board meets to simply *discuss, deliberate* or *acquire* information about a matter within your Neighborhood Council's subject matter jurisdiction.

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 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. Thus, 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 Neighborhood Council's jurisdiction. However, Neighborhood Council retreats are subject to 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, 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 decides to hold a lunch or dinner meeting, where Neighborhood Council matters will be discussed, the lunch or dinner meeting must be noticed as a meeting of the Neighborhood Council, and 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. Neighborhood Council committee meetings may also be subject to the Act's notice and agenda requirements. Standing committees, which are committees having 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 comprised of only stakeholders from your Neighborhood Council. If your bylaws have created several standing committees, these will be subject to the Act's provisions.

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.

In addition, interim boards acting on behalf of the Neighborhood Council after certification but prior to the initial election or selection of the board are subject to the Act.³

Ad hoc or temporary committees created by the board from among its members and numbering less than a majority are normally not subject to the Act's posting and notice requirement. 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 be required to notice and post its meetings. However, if you include *any* non-board member on a temporary committee, the meetings must be noticed and posted. Unlike the Neighborhood Council's governing board, 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 Brown Act concerns involving informal gatherings, serial meetings and Neighborhood Council special elections, initiatives or referenda, see discussion below.

Informal gatherings. Since Neighborhood Council board members are also stakeholders within the community, it is likely that they will have occasion to gather informally at picnics, block parties, fund-raisers, and a variety of 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. However, even at these purely social occasions, a majority of the board may not gather together to discuss matters within the Neighborhood Council's jurisdiction and must guard against discussing matters that are likely to come before your Neighborhood Council.

Serial meetings. The Act also prevents, what courts have called, "serial meetings," conducted by a majority of your board members to develop a consensus on a matter coming before your Neighborhood Council. This prohibition exists 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.

³ Many Neighborhood Councils did not create an interim board, but 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 or officially selected. 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.

For example, assume you have an 11-person board, your board's quorum is 6 people and your board takes action 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 board members from communicating via e-mail and through other technological devices to assist a majority of the 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 or dates for a future meeting, 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 to poll a majority of the Neighborhood Council board members to gain a consensus on an item coming before the council, ask a third party to communicate among the board to obtain a consensus, or use intermediaries to accomplish the actions that you are directly prohibited from undertaking.⁴

⁴ The Act does allow City staff members to engage in "separate conversations or communications outside of a meeting with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that staff member does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body." Section 54952.2 (b) (2), as amended 2008.

Special Elections, Initiatives, Referenda, Officer Elections. Some Neighborhood Councils hold special elections on an “election day” to fill vacancies, or conduct elections for initiatives or referenda where a Neighborhood Council when stakeholders, including board members, cast votes for the matter before them. These types 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. However, if any type of Neighborhood Council business is to be conducted at the venue for the special 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 their *officers* to be elected by the Neighborhood Council board members, rather than by a general vote of the stakeholders. This election does not occur at an election day, but instead at a public meeting, which must be held in compliance with the Act. At that meeting where the officers are to be elected, an item should appear on the agenda for the election of officers and the election may *not* be conducted by secret ballot. The votes must be recorded openly, either by voice, hand vote or by a written ballot that can be identified to the voter and the results must be publicly tallied.⁵

What type of rules will govern the conduct of Neighborhood Council meetings under the Act?

Regular meetings. The Act requires 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 must establish, either in your bylaws, or subsequently adopted Rules of Order, a rule establishing the time and place of your board’s regular meetings.

Open meetings. The Brown Act specifically requires that your meetings must be open to the public.⁶ 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

⁵ 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).

⁶ The Plan requires that Neighborhood Council operate in compliance with the Act.

identify themselves as a condition of attending a meeting.⁷ 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 must be conducted within the City of Los Angeles and must be held within the boundaries of your Neighborhood Council area. However, there are provisions allowing for the occasional "field trip" outside your boundaries and other limited exceptions. The Act also allows Neighborhood Council meetings to be held by teleconference. A teleconference is a meeting where your council members 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.

⁷ 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.*

Notice and agenda requirements.

Regular meetings. The agenda for a regular meeting must set forth the time and place of your meeting and must be posted *at least* 72 hours before the meeting.⁸ 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 board members and 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.* Neighborhood Councils are 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 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 allows emergency meetings to be called under specified circumstances without having to comply with either the 24-hour notice, one-hour notice, or posting requirements.⁹ *However, Neighborhood councils will*

⁸ 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.

⁹ Those circumstances include a dire emergency or crippling disaster justifying a legislative body to take action to protect the health and safety of the community and are designed to apply to bodies of the City such as the City Council to take immediate action to avoid "the disruption of public facilities."

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 will not be 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 immediate action on an item if, by two-thirds votes of the Neighborhood Council board, there is a need to act immediately, 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 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 Neighborhood Council meetings 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 even if the matter 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. (Special meetings do not require a *general* public comment item; however, the public must still be provided an opportunity to speak on the agenda 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. Writings that are public records, related to a matter on your agenda, and are distributed less than 72 hours to a majority of your board must be made available for public inspection at the time of their distribution and your agenda should state where (address/location) such materials may be viewed.

Are there any circumstances when a Neighborhood Council can hold a meeting that is closed to the public?

The Act provides for specific and limited circumstances under which a closed session may be held by a legislative body. The only circumstance, *if at all*, that would apply to a Neighborhood Council would be to discuss pending litigation.¹⁰ Depending upon the circumstance, a Neighborhood Council *might* be allowed to meet in closed session with the Office of the City Attorney to discuss pending litigation to which the Neighborhood Council is or may be a party when litigation has been formally initiated or when 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 for non-litigation purposes. As such, the need for a closed session is unlikely to arise for a Neighborhood Council.

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.

A majority of Neighborhood 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,

¹⁰ The personnel exception in the Act which allows a body to discuss the "appointment, employment, evaluation of performance, discipline or dismissal of a public employee does not apply to Neighborhood Councils because the term "public employee" in the City of Los Angeles context would mean a City employee. Neighborhood Councils have no authority over personnel matters of City employees. The other exceptions listed in the Act are not applicable to Neighborhood Councils.

then the meeting would have to be noticed as both a meeting of the committee and the Neighborhood Council.

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.