

Laws & Rules

Dean Pentcheff pentcheff@gmail.com

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Let's get one thing clear: I am not a lawyer and this document does not constitute legal advice. Definitive answers to legal and procedural questions *must* come from City legal counsel.

That's important enough that I will repeat it: ***I am not a lawyer***, so take this is document with a grain of salt.

This document does not describe the rationale of Neighborhood Councils (NCs). What I have tried to do is outline the main (though certainly not all) frameworks within which NCs operate.

NCs follow a hierarchy of laws, regulation, and rules. Rules from higher-priority bodies override rules of lower-priority bodies: State law overrides City code, City code overrides NC bylaws, *etc.* Think about this from the bottom up: NCs operate by Robert's Rules of Order (or something similar), except where we choose to override with Standing Rules; NC bylaws override NC Standing Rules; City code overrides NC bylaws; and on up the chain to U.S. Federal law. A Standing Rule that violates a bylaw of its NC is automatically invalid, just as an NC bylaw that violates City law is automatically invalid. Again, starting at the bottom: if it's in Robert's Rules and it's *not* overridden by higher authority, that's what we do.

Federal Law: Americans with Disabilities Act (ADA)

NC meeting places, public events, and communications must be ADA accessible, according to Federal Law.

California State Law: The Brown Act

The Ralph M. Brown Act is a key California State law that affects how elected officials (like NC Board Members) must conduct business. It is important to be familiar with Brown Act clauses that affect neighborhood councils. Violation of the Brown Act can invalidate any NC motions that were associated with the violation. Ultimately, Brown Act violations may be charged as misdemeanor crimes (though that is unlikely to happen unless there is a deliberate and willful attempt to deceive).

The Brown Act's goal is clearly stated in it's first paragraphs (I have *highlighted* key phrases):

54950. Policy declaration

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their *actions be taken openly* and that their *deliberations be conducted openly*.

The people of this State do not yield their sovereignty to the agencies which 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 retain control over the instruments they have created.*

The Brown Act is intended to ensure that information gathering, discussion, and decision-making by elected officials are all done in public, not in private discussions. To avoid actual or perceived preconsideration of a topic outside the public's eye, *all communications* regarding NC matters that involve a quorum or more of the Board or of any Committee *must* take place during prescheduled public meetings. In this context, "communications" include in-person discussions, phone calls, and email, and include "serial meetings" where one person talks to another, who contacts another, who contacts another, *etc.* For the Coastal San Pedro Neighborhood Council (CSPNC), all committees have a quorum of 3, and the Board quorum is 9. Therefore, outside of a Brown Act-posted meeting, any communication relevant to a potential committee action must involve no more than 2 members of that committee, and any communication relevant to any potential Board decision must involve no more than 8 Board members¹.

¹ These numbers are specific to the Coastal San Pedro Neighborhood Council and may differ for other NCs.

Stakeholders must be able to know what topics will be discussed, and must have enough warning that they can reasonably come prepared to listen and contribute. Therefore, Board and committee meetings must be announced, with an agenda, at least 72 hours prior to the meeting, and the agenda must be posted at one physical location, visible 24 hours/day. We also have commitments to post agendas on the NC website.

Every topic to be considered must be on the agenda and no item may be discussed which is not on the agenda. Discussing a topic that isn't on the agenda would prevent interested parties from attending the discussion.

The public has the right to speak to the Board (anonymously, if desired) about any topic within the Board's jurisdiction, whether or not the item is on the agenda. However, because items cannot be discussed by the Board unless they are on the agenda, Board Members cannot directly address public comments on non-agendized items (beyond providing some very basic information). *Do not engage in discussion* with stakeholders during Public Comment. The Board may, however, refer the topic to a committee or direct that it be put on the agenda for the next meeting (or, in exceptional cases, decide to hold a Special Meeting for that topic).

To enable orderly discussion, the Board may choose to limit the time available for public comment (but must base limits on speaking time made available, not on the content of what is said).

All votes of the Board must be by roll-call (or be completely unanimous so that all Members present, including the Chair, are recorded as voting "Yes" with no abstentions), so that a record of each Board Member's vote appears in the minutes. This requirement was an amendment to the Brown Act in 2014.

All meetings of the Board and its committees must occur within the NC's boundaries (unless there is absolutely no available place within the boundaries). Phone or video-conference participation is prohibited.

Many provisions of the Brown Act don't apply to NCs, since NCs do not conduct contract, insurance, or real estate negotiations, don't determine taxes, and almost never meet in closed or emergency session.

California State Law: The Political Reform Act & Ethics Laws

As an elected official, you are subject to state conflict of interest law (the Political Reform Act) and a complex network of ethics laws. The intent is to ensure that officials act in a manner that is fair and unbiased, and that their actions are not influenced by their own financial interests. You are required to receive training on this.

It is your own responsibility to evaluate your behavior regarding ethics issues — it is *not* the responsibility of the Chair or the Board to point out possible conflicts of interest. One of the best pieces of advice is: "If you are wondering whether you have a conflict of interest on a subject, you probably do." If you have any doubt, you *must* contact the City Attorney's office to receive clarification. It is your responsibility to do this yourself — do not wait for it to be suggested by someone else.

To recuse yourself for a conflict of interest or ethics issue, you must do so immediately when the relevant agenda item arises. Announce why you are recusing yourself, then leave the room. Attending quietly is insufficient — you must leave the room. Someone from the meeting should retrieve you for the next agenda item.

California State Law: The California Public Records Act

You are conducting the peoples' business, and they have a legal right to see how you do it. Any member of the public may request (and must be given) access to any written or electronic communications involving official business. This includes anything written, emailed, or otherwise transmitted or accumulated that might be relevant to the request. There are a few exceptions, but the law is strongly on the side of disclosure. Failure to disclose records may be met with a civil lawsuit.

This includes "private" emails if they relate to the conduct of public business, so you may wish to keep separate private and NC email accounts. Be aware that NC-related messages that happen to occur in "private" email *are not exempt* from requests, but responding to a request may be easier if everything is in one account.

Use discretion and be professional in what and how you communicate in your public capacity — always be aware that the records may be requested and published widely.

City of Los Angeles Law

Neighborhood Councils exist by virtue of being in the L.A. City Charter.

Occasionally, the City Council passes ordinances that directly affect NCs. A relatively recent example is the definition of “stakeholder” that NCs must use. Any time the City Council changes L.A. law in a way that affects NC Bylaws or Standing Rules, we incorporate those changes automatically (no bylaws amendment process is necessary).

Board of Neighborhood Commissioners (BONC) and Department of Neighborhood Empowerment (DONE)

The City Charter empowers the Board of Neighborhood Commissioners (BONC) to oversee the neighborhood council system, with the Department of Neighborhood Empowerment (DONE) as the operational unit. BONC sets policy; DONE facilitates operations.

As with City ordinances, policy resolutions of BONC are automatically incorporated into NC Bylaws whenever appropriate. One example is the policy on agenda posting requirements, which explains why CSPNC’s Bylaws have such a long section on “Notifications/Postings”: that text was mandated by a BONC policy.

Neighborhood Council Bylaws

Bylaws define how the Neighborhood Council is structured and the basics of how it gets its business done. The outline (and some content) is mandated by BONC, but most of the content is determined by each NC.

The Bylaws, in essence, are a Neighborhood Council’s contract with its stakeholders.

Maintaining a predictable and consistent relationship with stakeholders is deemed sufficiently important that the process for changing (amending) the CSPNC Bylaws is designed to ensure ample public notice, time for careful examination, and full deliberation. It takes a minimum of three months to change the Bylaws, and there are special voting requirements involving Board Members and stakeholders². Furthermore, changes to Bylaws require legal review and approval by DONE (and DONE may implement a “moratorium” on changes near election times).

Bylaws may not be temporarily suspended by the Board, but Standing Rules generally may be (see below).

Neighborhood Council Standing Rules

Standing Rules are specific operational rules that the NC has chosen to follow. Some Standing Rules simply fine-tune or override minor aspects of Robert’s Rules. An example would be a Standing Rule limiting the time a Board Member may speak to two minutes (Robert’s Rules specifies ten minutes).

Standing Rules remain in effect until they are rescinded — they persist from year to year, and do not have to be “readopted” each year, though a review is certainly advisable³.

Standing Rules may be adopted or repealed by a simple majority vote of the Board (but like any Board action, the action must be agendized beforehand because of Brown Act requirements). With a $\frac{2}{3}$ vote, most standing rules may be temporarily suspended the same way many rules from Robert’s Rules may be suspended (see *Suspend the Rules* (§25) below).

² These amendment rules are specific to the Coastal San Pedro Neighborhood Council and may differ for other NCs.

³ Different Neighborhood Councils may have different rules in their Bylaws regarding changes to Standing Rules.

Robert's Rules

At first, Robert's Rules seem like a roadblock to progress: "Why can't we just get stuff done — why do we have to work with all these fussy rules?" In a small group united to achieve a goal, that objection is reasonable. The problem is that a group like an NC isn't small, its members are there for many different reasons, may have very different styles of communicating in a group setting, and they don't (and shouldn't!) always agree. Without Robert's Rules (or something like them), group discussions are a recipe for undirected rambling, personal argument, and frustrating lack of progress. Robert's Rules form a mutually adopted code to keep discussions focussed, maintain respect, and take action efficiently.

Robert's Rules is based on the principle that deliberative assemblies exist primarily to get things done. Each "thing" to get done is presented as a "main motion" (also known as the question under consideration, the resolution, the action item, or one agenda item). Discussion on other issues is out of order while a motion is being considered, keeping focus on one thing at a time. Besides the main motion, other motions help shepherd the main motion through consideration, modification, and adoption or rejection.

Robert's Rules are designed to:

- protect the rights of the majority (ultimately, the majority opinion should prevail);
- protect the rights of the minority (their views should be heard and given full consideration by everyone);
- protect the rights of individuals (ensure that someone's views cannot be arbitrarily suppressed);
- promote reasoned, productive, and respectful discussion of all sides of an issue (the initial minority may persuade members of the initial majority, and the final vote will reflect that change);
- and last, but not least: work through action items efficiently.

Much of the detail of Robert's Rules has to do with the relative precedence of different rules. Because we run pretty simple meetings, details of precedence seldom matter to us. What is worth checking, on occasion, is which motions need a second, which are debatable or not, and what vote (majority or $\frac{2}{3}$) is necessary for passage. The booklet by O. Garfield Jones (*Parliamentary Procedure at a Glance*) provides a quick way to check (the notes below give that information for the most common motions).

Robert's Rules Highlights to Read

Here, by section and page numbers (with some brief notes), are a few "highlights" in Robert's Rules that are worth reading. Understanding these procedures is essential to being effective in NC meetings.

Introduction — Principles pp. li-lii. Two pages laying out the basic justification for Robert's Rules.

Chapter II Conduct of Business §3–§4 (in part) pp. 20–44. A summary of how a motion is introduced and moves through the deliberative process. Ignore the part on voting, after p. 44 — state law overrides that.

Chapter V The Main Motion §10 (in part) pp. 100–116. The characteristics of a main motion (an action item).

Chapter XII Rules Governing Debate §43 (in part) pp. 385–396. How motions are discussed. In particular, see the section on "Decorum in Debate". Some of the rules seem peculiarly stilted. However (as some of you who have been in NCs for a few years can attest), this seemingly artificial structure is remarkably effective at keeping the discussion focussed on issues and away from people. Notably:

1. Address only the content of the motion — never use the name of a Board Member, and never bring up the intent of a Board Member. "The measure, not the member, is the subject of debate."
2. Always direct questions and remarks through the Chair — do not address another Board Member directly. Yes, that seems odd, but it really cuts down on the personal aspect of debate.
3. To maintain impartial management, the Chair does not participate in debate and should say nothing about the substance of any main motion. In the rare case that the Chair feels the need to participate, he or she should relinquish management of the meeting to another Board Member, who then manages the meeting without speaking to the merits of the motion. When the motion has been disposed of, management returns to the initial Chair.

Chapter XVI Boards and Committees — Committees §50 (in part) pp. 489–492 and 499–501. Describes how committee meetings differ from Board meetings. Key differences: members may speak more than twice on a motion (more informal discussion is welcome in committees), and the Committee Chair may participate in debate (realistically, a Committee Chair is often the main instigator of committee actions).

Chapter XVI Boards and Committees — Informal Consideration §52 (in part) pp. 529–530 and 540–541. “Informal consideration” allows Board Members to speak more than twice on a topic, which may occasionally be useful for broad discussions. Entering informal consideration must be moved, seconded, and voted on.

Following is a list of motions from Robert’s Rules that are most likely to arise in NC meetings, along with some brief notes. For convenience, they are grouped into four sections. Each motion is followed by the Robert’s Rules section number (*e.g.*, §10 for the Main Motion) that discusses it in detail.

The Main Motion (§10)

► Must be seconded; is debatable; passes on a majority vote.

The main motion is the action item (resolution or agenda item) being considered.

Requires a second unless it is a committee motion (because coming through a committee nearly always demonstrates the interest of at least two Board Members). Motions originating in the Agenda Meeting require a second, since there is no evidence that more than one Board Member has an interest.

A motion is introduced by being *moved* by a Board Member, *seconded* (if necessary), then *stated by the Chair*. It is this last action that places the motion before the body for consideration (is “on the floor”). Therefore, *until the motion has been stated by the Chair, it should not be discussed*. Do not introduce or explain a motion before it has been moved, seconded, presented for debate by the Chair, and the Chair has recognized you to speak. Resist the natural impulse to explain before moving the motion.

Also bear in mind that once the motion has been placed on the floor by the Chair, it belongs to the body, not to its mover. The mover may no longer retract the motion without the consent of the body.

According to the Brown Act (not Robert’s Rules), the public must be allowed to comment on every motion. Each Board Member may speak up to twice regarding the main motion, each time up to two minutes (the time limit is a CSPNC Standing Rule). CSPNC places no time limits on public comments.

The Chair may not stop the debate until public comment is over and every Member who wishes to speak has done so (up to twice). Only a $\frac{2}{3}$ vote of the Board can close debate (see *Close Debate... (§16)* below). Calling “Vote! Vote!” if you would like to push to a vote is useless and always out of order.

The main motion may be changed or disposed of in ways other than an up-or-down vote (see below), but its final fate is usually a vote of the Board Members to adopt or reject. The extensive treatment of voting styles in *Robert’s Rules* should nearly all be ignored. The State of California (SB 751 in 2014) added subsection §54953(c)(2) to the Brown Act: “The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.” Therefore we must take roll call votes on all substantive actions (or record that the vote is unanimous).

CSPNC Bylaws (Article V Section 3) specify that passing a motion requires a “Yes” vote from a *majority of Board Members voting* — abstentions, recusals, and absences simply don’t count at all (other NCs may have different voting rules). A tie vote fails to pass the motion. (Some types of motion require a “Yes” vote from at least $\frac{2}{3}$ of members voting — see below.) There must be a quorum present for the meeting to be legitimate, but a legitimate vote does not require that a quorum of Members vote. All that matters is the number of “Yes” vs. “No” votes — there is no such thing as “voting to abstain” or “voting ‘present’”. *These voting rules apply to all Board actions, not just voting on the Main Motion.*

To preserve the convention of impartiality, the Chair usually does not vote, does not participate in debate, and does not move motions. However, the Chair *may* vote, if his or her vote would change the result. If there is a tie vote on a motion, the Chair may add a “Yes” vote, forcing the motion to pass; if a motion would pass by a single vote, the Chair may add a “No” vote to create a tie, forcing the motion to fail.

Motions that modify or dispose of the main motion

Amend (§12)

- ▶ Must be seconded; is debatable; passes on a majority vote.

Members may move to change the text of a motion by adding, deleting, or modifying text. All “Resolved...” clauses (the motion itself) must be amended first, *before* amending any “Whereas...” clauses, since “Whereas” clauses introduce or explain the motion itself (see §50).

Each Member may speak up to twice on the amendment, but *debate must be limited to the amendment, not the main motion* until the amendment is either adopted or rejected.

An amendment may be amended (secondary amendment). No third-level amendment is permitted.

Commit or Refer (§13)

- ▶ Must be seconded; is debatable; passes on a majority vote.

Members may move to send a motion to committee for further work.

Postpone Indefinitely (§11)

- ▶ Must be seconded; is debatable; passes on a majority vote.

A rarely-used way to kill a motion without an explicit up-or-down vote on the motion itself. May be useful if the Board wants to kill the motion, but prefers not to go on record as opposing it.

Postpone to a Certain Time (§14)

- ▶ Must be seconded; is debatable; passes on a majority vote.

Defer consideration of a motion until a future time (which can be a future meeting).

Lay on the Table (§17)

- ▶ Must be seconded; is *not debatable* (though a brief reason may be given); passes on a majority vote.

Delay consideration temporarily (see *Take from the Table (§34)* below to resume consideration). Use this only to interrupt pending business to do something else immediately. To defer consideration, see *Postpone to a Certain Time (§14)* above; to kill a motion, see *Postpone Indefinitely (§11)* above.

Motions to revisit a main motion treated earlier

Take from the Table (§34)

- ▶ Must be seconded; is *not debatable* (though a brief reason may be given); passes on a majority vote.

Bring back a previously tabled motion for consideration (see *Lay on the Table (§17)* above).

Rescind (§35)

- ▶ Must be seconded; is debatable; passes on a majority vote (since state law requires previous notice).

Repeal a previously-adopted motion (very rarely used).

Reconsider (§37)

- ▶ Must be seconded; is debatable; passes on a majority vote.

Though rare, reconsideration of hasty, ill-advised, or erroneous action is possible. A motion may be reconsidered only once, and only *at the same meeting* in which the action was taken, or *at the next meeting*.

Reconsideration must be moved by a Board Member who voted on the prevailing side of the action (in committees, it may be moved by any committee member who did not vote on the losing side).

Renewal of Motions (§38)

Once a motion has been voted on and fails, the same motion (or one that is essentially the same) may not be brought back in the same session (year). However, if the motion is rescinded (see above), it may be reintroduced (very rarely used).

Motions that affect the course of debate on a main motion

Limit or Extend Limits of Debate (§15)

- Must be seconded, is *not debatable*, and *requires a 2/3 vote* to pass.

The time limit on speaking by Board Members (two minutes, by CSPNC Standing Rules) may be shortened or extended, or Members may be limited to speaking only once on a motion. (Allowing Members to speak more than twice is easily achieved using “informal consideration” [see §52].)

A motion to limit debate *is not permitted in committee meetings* (see §50), but an adept committee chair can manage debate in a way that is respectful of everyone’s views but converges to a vote.

Close Debate (technically called “Previous Question”) (§16)

- Must be seconded, is *not debatable*, and *requires a 2/3 vote* to pass.

Terminating debate and moving to a vote requires a formal motion, since it limits the right of Board Members and stakeholders to debate. Just calling out “Let’s vote!” is always out of order.

A motion to close debate *is not permitted in committee meetings* (see §50).

Raise a Question of Privilege (§19)

- *May interrupt proceedings, does not require a second, is not debatable, and is decided by the Chair.*

At almost any time, even interrupting a speaker, a Board Member may raise an urgent issue that affects the safety, rights, or privileges of the group or an individual. Examples include inability to hear the proceedings, unruly conduct of the audience, *etc.*

Point of Order (§23)

- *May interrupt proceedings, does not require a second, is not debatable, and is decided by the Chair.*

At almost any time, even interrupting a speaker, a Member may point out a breach of rules and insist on enforcement. This should be done respectfully, impersonally, and only when really necessary.

Appeal (§24)

- Must be seconded, *has special limits on debate*, and a majority or tie vote sustains the Chair’s ruling.

A ruling of the Chair (for example, on a Point of Order) may be appealed by a Board Member if the Member feels that the Chair’s ruling was incorrect according to parliamentary procedure. During debate on an appeal, the Chair’s decision on any newly-raised Point of Order is final.

Note: there is no right to appeal a Chair’s ruling because one dislikes the result. An appeal must be based on the parliamentary (in)correctness of a Chair’s ruling, not the outcome of the ruling.

Suspend the Rules (§25)

- Must be seconded, is *not debatable*, and usually *requires a 2/3 vote* to pass.

Certain rules of order, including Standing Rules, may be temporarily suspended. Rules that *may not be suspended* include rules prescribed by federal, state, or local law, anything in the Bylaws, and fundamental principles of parliamentary procedure (*e.g.* voting rights or quorum requirements).

A common application of suspending the rules is to take up an agenda item out of order (for example, immediately taking up a distant item on the agenda if there are stakeholders waiting for it).

Requests and Inquiries — Parliamentary Inquiry & Request for Information (§33)

- *May interrupt proceedings, does not require a second, is not debatable, and is handled by the Chair.*

At almost any time, a Board Member may request an opinion from the Chair in order to clarify parliamentary procedure (rules of operation). Also, a Member may request a particular piece of clarifying information from the Chair or ask the Chair to request the current speaker to yield to a question (the speaker may refuse, as this takes away from the speaker’s allowed time).

This request may not be used to start discussion or make a comment, but must request specific information. As with any interaction between Board Members, questions (and answers) are always in the third person and always directed through the Chair (not directly between Members).

Resources

If this is a PDF, the links below should lead directly to the relevant documents.

The Brown Act

http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf

This pamphlet includes an extensive interpretation by the Office of the Attorney General as well as the Brown Act itself. Skim things that don't concern NCs (contracts, taxes, *etc.*). There have been a few amendments since this was published (notably, the requirement for roll-call votes).

DONE handout on The Brown Act and Neighborhood Councils

<http://www.cspnc.org/wp-content/uploads/2015/02/3.-Brown-Act-and-NCs-4-2011.pdf>

Clarifies some implications of the Brown Act for NCs.

DONE handout on out-of-meeting discussions by Board Members:

<http://empowerla.org/wp-content/uploads/2012/04/Brown-Act-Serial-Communications.pdf>

Very helpful guidance on how the Brown Act affects when Board Members may (and may not) talk about NC-relevant topics outside of publicly-announced meetings.

Coastal San Pedro Neighborhood Council's Bylaws and Coastal San Pedro Neighborhood Council's Standing Rules

<http://www.cspnc.org/about-cspnc>

Current versions are available at the Coastal San Pedro Neighborhood Council website.

Robert's Rules of Order Newly Revised 11th Edition

The Coastal San Pedro Neighborhood Council loans you a copy of this book. Really, unless you're slightly compulsive, don't read the whole thing — think of it more like a dictionary or encyclopædia. Read the list of “highlights” from this document, then refer to sections as you feel you'd like to get more detail. *You have a copy of this defining set of rules*, so please don't plead ignorance — look it up.

Parliamentary Procedure at a Glance (O. Garfield Jones)

A clever quick-reference that is very useful for a fast check on parliamentary rules.

Revisions

I will gladly revise this document based on comments. Please let me know of errors, ambiguities, or improvements you think would be helpful.

Particularly if you're new to Neighborhood Councils, I'd appreciate hearing about aspects of law or rules that surprised you when you learned about them, but are not (yet) in this document. Even harder, let me know about content in this document that seems unnecessary — I'd like it to be as short as it can be.

Help me be as informative as possible to the next generation. Thank you.

Epperhart's Rules

Doug Epperhart (full disclosure: a current Member of CSPNC's Board) has been working on, at, and about neighborhood councils longer than just about anyone. He was kind enough to share these guidelines with me, and I'm taking the opportunity to pass them on to you. They're good advice.

Don't be a jerk.

Learn the rules.

Do your homework.

Don't make promises you can't keep.

When writing motions or making arguments, keep it simple.

Don't take it personally if someone opposes your position.

Debate is about persuasion, not intimidation.

The person who shouts the loudest always loses.

If you don't have something useful to contribute to the conversation, shut the hell up.

Always be guided by the principle that it is not your agenda, but that of the people you serve, which is most important.