

# THE BROWN ACT AND NEIGHBORHOOD COUNCILS

Office of the City Attorney - Neighborhood Council Advice Division

## AB1234 ETHICS TRAINING

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### 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

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.<sup>3</sup>

## **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

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<sup>3</sup> 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).