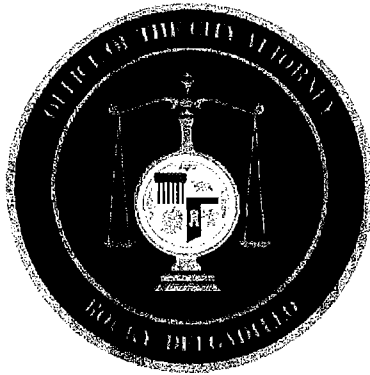


# **NEIGHBORHOOD COUNCIL TRAINING MANUAL**

## **LEGAL ISSUES FOR NEIGHBORHOOD COUNCILS**



**Office of the City Attorney  
Rockard J. Delgadillo  
City Attorney**

**■ Neighborhood Council Advice Division ■  
(213) 978-8132  
General Counsel Practice Group**

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## OFFICE OF THE CITY ATTORNEY

ROCKARD J. DELGADILLO

CITY ATTORNEY

Dear Neighborhood Council Boardmember:

Congratulations on your selection or election as a Neighborhood Council Boardmember. Our City government benefits tremendously from the participation of volunteers such as yourselves who have embarked upon the new journey of neighborhood empowerment that are Neighborhood Councils. The City Attorney's Office stands ready to assist in any way we can to make your tenure on your Neighborhood Council board a productive and rewarding experience.

Because Neighborhood Councils are an important part of City government, an appreciation and understanding of City governance, City rules and the applicable laws will undoubtedly assist you in your efforts. To that end, this office has provided materials for you that we think you will find useful:

- General Issues Regarding Neighborhood Councils
- Information on the Ralph Brown Act, the Conflict of Interest Laws and the Public Records Act
- An overview of How to Conduct A Public meeting
- A Discussion of Liability Issues of Concern to Neighborhood Councils
- Information regarding the Americans With Disabilities Act
- Election Issues
- A summary of this office's most significant legal opinions and advice letters; and
- Sample forms/resources to aid in the operation of your Neighborhood Council.



As City Attorney, this office possess a number of responsibilities, including serving as legal advisors to all City Commissions, department officers, and entities, as well as certified Neighborhood Councils. To assist Neighborhood Councils, I created a Neighborhood Council Advice Division, which is headed by Managing Assistant City Attorney Gwendolyn Poindexter. The Division attorneys are available to assist you in performing your duties under the City Charter, the Plan for a Citywide System of Neighborhood Councils, and the implementing Ordinance. Tom Griego advises the Neighborhood Councils in the South Valley, Harbor and West areas. Peter King advises the Neighborhood Councils in the South and East areas of the City and Darren Martinez, the North Valley and Central areas. The Division attorneys can be reached by telephone at: (213) 978-8132.

We hope these materials are helpful to you in performing your duties as a Neighborhood Council board member. We thank you for your dedicated service to the City of Los Angeles.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rockard J. Delgadillo', is written over the printed name and title.

ROCKARD J. DELGADILLO  
City Attorney

RJD/GRP/pb



# **GENERAL ISSUES REGARDING NEIGHBORHOOD COUNCILS**

## **History Of Neighborhood Councils**

The system of neighborhood councils became a feature of Los Angeles city government following the enactment of a new City Charter in 1999. For the first time in the City's history, a citywide system of neighborhood councils was created to "promote more citizen participation in government and make government more responsive to local needs. . . ." Charter § 900.

## **What Is A Neighborhood Council?**

Now that the City has embarked on certifying neighborhood councils, some councils are still asking the question: What *is* a neighborhood council in relationship to the City of Los Angeles and how does it fit in the "City family" compared to other City boards or commissions?

The City Charter states that neighborhood councils will have an "advisory role on issues of concern to the neighborhood," provide input to decision-makers before decisions are made and should include representatives of the "diverse interests in their area." However, nowhere in the Charter is there a precise *definition* of a neighborhood council.

Neighborhood councils, once certified, are part of the City family. As such, neighborhood councils are not unlike other advisory boards and commissions.

However, the difference between neighborhood councils and other City advisory boards or commissions is that the jurisdiction of the neighborhood council is, in some sense, self-defined, as opposed to being defined by ordinance, and the board members are self-selected, rather than appointed. The system was designed to allow neighborhood councils to decide for themselves what issues are important to them and what input they wish to give to the various decision-makers on these issues. Because they *are* part of the City's governmental structure, they are doing the public's business and must comport with the same type of rules as do other advisory bodies, such as the Brown Act, Public Records Act and the City's conflict of interest and ethics rules. However, as a City advisory body, neighborhood councils are protected from liability in the same manner as other City boards and commissions. (See discussion below.)

## **What Is The Status Of Their Advice?**

The Charter provides that neighborhood councils should have input before decisions are made. Charter § 907. This means that neighborhood councils may take positions at their meetings as to what recommendations or advice they wish to communicate (either in writing or orally) to the decision-makers. The City decision-makers will take the

recommendations of the neighborhood council into consideration when they render a decision on whatever matter is before them.

### **May A Neighborhood Council Also Incorporate Itself As A Non-profit Corporation?**

The Plan for a Citywide System of Neighborhood Councils ("Plan") recognizes that "certified neighborhood councils shall be as independent, self-governing, and self-directed as possible" and that the Department shall assist certified neighborhood councils to pursue tax-exempt or non-profit incorporation "to strengthen their independence." Plan, Article II, Section 4. Thus, neighborhood councils may pursue non-profit status, but the creation of that entity, a non-profit corporation, becomes a separate and distinct entity that is *not* part of the City family. One of the reasons for this is because a non-profit corporation has separate obligations to the State of California that may differ from the rules established under the Charter and the Plan. Thus, "a neighborhood council could incur separate and distinct liability for a breach of its duties as a non-profit corporation. . . ." City Attorney letter dated April 5, 2001.

As an alternative to this approach, a non-profit support group could be formed to support a neighborhood council. See, Summary of City Attorney Opinions, Tab 8, Section 3j.

### **What Kind Of Liability Protection Is There For A Neighborhood Council?**

Generally, as an advisory body to the City, members of governing boards of neighborhood councils are subject to the same immunities as other City employees, boards and commissions. While the legal liability arena is complex and often is fact dependant, the general rule is that the City has an obligation not only to defend, but to indemnify a City official or employee for a court judgment against him or her as long as the conduct that resulted in the award of liability was within what the law defines as the "scope of employment." In the context of a neighborhood council, official activities that result from its role as an advisory body (such as conduct of meetings, recommendations that it makes, neighborhood improvement projects under Departmental rules and guidelines) would most likely fall within this rule. However, often what activities fall within the "scope of employment" depends on the facts of a particular case. The objectives of the Plan and Charter as well as each neighborhood council's by-laws will provide some general guidance should issues of liability arise based upon a particular set of facts.

### **May Neighborhood Councils Sue the City or Take Administrative Appeals from City Decisions?**

No. Neighborhood Councils are part of the City and may not file administrative appeals from other City actions or file a lawsuit against the City. However, this does not preclude any individual, including a board member, from filing an administrative appeal or a lawsuit against the City.



**May Neighborhood Councils spend money on items not related to their role of neighborhood councils?**

No. Moneys appropriated to Neighborhood Councils are public funds and neighborhood councils must spend City money only for a public purpose. The Regulations that implement the Plan for a Citywide System of Neighborhood Councils identify that money may be spent for costs related to the "functions, operations, and duties of being a certified neighborhood council" and for "neighborhood improvement project." See, Regulations, Los Angeles Administrative Code, Section 22.810.1 (g), Tab 8.

**May Neighborhood Councils spend public funds to lobby their stakeholders or other members of the public to support the neighborhood council's position on its recommendations?**

No. Because neighborhood councils are public agencies, they may not use public funds to encourage members of the public to support their position. Public agencies may not spend money on "grassroots lobbying" effort. 42 Ops. Cal. Atty Gen 25 (1963). Although Neighborhood councils are authorized by the City Charter to take positions on matters and make recommendations to the City's decision makers, they may not 'lobby' or attempt to persuade their stakeholders or other members of the public to also support its decision. *Miller v. Miller* (1978) 87 Cal. App. 3d 672. However, nothing prohibits neighborhood councils from encouraging stakeholders and members of the public to attend public meetings or hearings to gather information on issues and provide public input on issues coming before the City's decision makers.

**May Neighborhood Councils take positions on state or federal legislation?**

No. While individuals may lobby or advocate their desired position to state and federal officials, Neighborhood Councils, as City entities, lack authority and are precluded from taking official positions on state and federal legislation. The Mayor and City Council have exclusive power over the City's intergovernmental relations, which includes advocating the City's position on laws that are pending with state or federal governmental agencies.

[93337]

# 1. The Brown Act

# The Brown Act and Neighborhood Councils

## -Quick Hits-

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**Meeting.** Any congregation of a majority of members (or the number that constitutes a quorum), to hear, discuss, or deliberate upon any matter within the NC's jurisdiction.

- ▶ Must be open to the public.
- ▶ Must be conducted at an ADA accessible facility
- ▶ Agendas of regular meetings must be posted (and allowed to be viewed) 72 hours in advance/special meeting agendas must be posted 24 hours and delivered to board members; Agendas must include mandatory ADA language
- ▶ NC board members may only discuss items that are listed on the agenda.

**Exceptions:** May discuss and direct that future items be put on the agenda; May *briefly* discuss own activities or *briefly* respond to comments made or questions asked during general public comment portion of meeting.

- ▶ No secret ballots/anonymous voting by board or committee.
- ▶ No closed meetings or "executive sessions." **Limited exceptions:** a) pending litigation against the NC or; b) personnel exception only involving city employee.<sup>1</sup>
- ▶ **What isn't a meeting.** Individual contacts or conversations with a board member/a majority attending; purely social or ceremonial events; other public meetings, conferences advertised to the public.<sup>2</sup>
- ▶ **No serial meetings.** A series of separate communications (usually non-public), each of which involves less than a majority of the legislative body, but which taken as a whole, ultimately involves a majority (or the least number of board/committee members that can take action) of that legislative body. **Rule:** May not use direct communication, personal intermediaries, or technological devices (phone, fax, e-mail) by a majority to develop a collective concurrence as to action to be taken.

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<sup>1</sup> These exceptions shall not be invoked before conferring with the Office of the City Attorney.

<sup>2</sup> A majority of members at public events may not discuss among themselves business of a specific matter under the NC's jurisdiction.

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- ▶ Standing committee meetings are subject to the Act/ Ad hoc Committee meetings are not if committee is comprised *solely* of less than a majority of the NC board members.

### **Location of Meetings**

- ▶ Meetings (including retreats) must be held within the boundaries of the Neighborhood Council, unless an exception under the Act can be met.
- ▶ Teleconferencing allowed under carefully defined conditions and the meeting notice must identify all teleconference locations and each location must be fully accessible to members of the public.
- ▶ Accessible to the public under the ADA/Non-discriminatory facilities

### **Rights of the Public**

- ▶ Members of the public may comment on each agenda item which opportunity must be offered before decisions/recommendations are made regarding that item; NC has right to limit public testimony by time per individual, or total subject matter. *Chaffee v. San Francisco Public Library Commission* (2005) 134 Cal. App 4th 109.
- ▶ Members of the public may make general public comments on items not specifically listed on the agenda but within the NC's jurisdiction.
- ▶ Members of the public have a right to see materials that are distributed at meetings.
- ▶ Members of the public may record (audio/video) meeting.
- ▶ No sign-in requirement. (Although speaker cards may be used- no one may be required to fill it out to speak or attend).

### **Remedies/Penalties**

- ▶ Civil Remedies. Individuals or the district attorney may file a civil lawsuit for injunctive, mandatory or declaratory relief or to void actions taken in violation.
- ▶ Criminal Penalties. The district attorney may seek misdemeanor penalties against wilful violations. **Standard:** the member intended to deprive the public of information that the member knows (or has reason to know) the public is entitled to.



# THE BROWN ACT AND NEIGHBORHOOD COUNCILS

## 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.<sup>1</sup> 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.<sup>2</sup>

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.

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

<sup>2</sup> 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.<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).

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.<sup>4</sup> 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

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<sup>4</sup> 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.<sup>5</sup> *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*

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<sup>5</sup> 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.<sup>6</sup>

**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.

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<sup>6</sup> 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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## **THE BROWN ACT'S LIMITATIONS ON DISCUSSIONS BY NEIGHBORHOOD COUNCIL BOARD MEMBERS**

### **Are there limits on the ability of board/committee members to communicate with one another outside of Neighborhood Council meetings?**

Yes. The Brown Act prohibits Neighborhood Council board members and committee members from engaging in any form of communication among one another outside of a public meeting that leads to a majority developing a concurrence on an action to be taken. The Brown Act states "any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a concurrence as to action to be taken on an item by members of the legislative body is prohibited." (Gov. Code § 54952.2)

### **Why does the Brown Act prevent communications outside of public meetings?**

The purpose of the Brown Act is to avoid secrecy in government. Neighborhood Council board members and committee members are representatives of the stakeholders in their area. The discussions and actions of the Neighborhood Council must be conducted at publicly noticed meetings. (Gov. Code § 54952.2) Government Code Section 54950 states:

"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."

### **What are examples of communications that trigger a concern under the Brown Act?**

The Brown Act applies broadly to any type of discussion or communication. Communications may include oral or written discussions, the use of personal intermediaries, agents, family members or messengers to convey information, or the use of technological devices, such as e-mail or website conferencing to disseminate information. Communication includes sharing or distributing information, hearing a proposal, or communicating information that allows members of the body to gather information or formulate a point of view on an issue that is within the subject matter jurisdiction of the legislative body.

## **What is a “serial communication?”**

The Brown Act prohibits serial communications that lead to a concurrence among the majority of the members of the legislative body. Any type of communication is prohibited if that communication allows the majority of the members of the body to engage in a communication that should instead occur at a public meeting. The term “serial communication” is often used because it describes a communication that, for practical purposes, results in a meeting of the members although the members are not present at a publicly posted and conducted Brown Act meeting. The serial communication may involve a series of communications, each communication involving less than a quorum of the board, but when taken as a whole, involve a majority of the board.

A serial communication may arise under a number of circumstances. For example, a serial communication occurs when one board member contacts all or a majority of the other board members. A serial communication occurs if one board member contacts another board member, then that board member contacts another board member, then that board member contacts another ... *etc.* A serial communication also occurs if a board member’s representative, agent, or intermediary directly or indirectly contacts the other board members, *e.g.*, a spouse, a messenger, or an alternate board member communicates with the majority of the other board members.

The concern under the Brown Act is not *how* the discussion was communicated among the board. Instead, the concern is whether an inappropriate number of persons received the serial communication and whether the serial communication led to a concurrence among the majority of the members on an issue that is likely to be considered by the legislative body.

## **What does the term “developing a concurrence” mean?**

The Brown Act prohibits serial communications that lead to “developing a concurrence.” Developing a concurrence on an item is broadly construed. It means any discussion or information that assists you in voting. It means any information that assists or clarifies your understanding of an issue. It means any information that leads to an agreement or compromise among the members. It means any discussion or information that advances the resolution of an item that is on the agenda or within the board’s subject matter jurisdiction. (California Attorney General, *The Brown Act: Open Meetings for local Legislative Bodies*, 2004, p. 11.)

## **How many board members are allowed to communicate outside of a meeting before an improper serial communication occurs?**

The number will depend on the Neighborhood Council’s bylaws. The *least* number of people who could make a decision at a public meeting should not be engaging in communications outside of the public meeting. For example, if the Neighborhood Council bylaws state that the board is 21 members, the quorum is 11, and the board takes action by a majority of those members present at the meeting, then if 6 people

engaged in a discussion that led to a concurrence on an item there would be a Brown Act violation. This concern also applies to the board's committees. For example, if the committees are comprised of 5 members, the quorum is 3 and decisions are made by a majority vote of the entire committee, then 3 committee members may not engage in a discussion that leads to a concurrence on an item outside of their committee meeting.

#### **What are some examples of prohibited serial communications?**

- E-mails among a majority of the board or committee members that discuss or argue a member's opinion or point of view.
- A meeting with the majority of the board or committee members that discusses or seeks clarification on an issue that will be heard by the board or committee.
- A majority of members participating in a website conference, internet list service or chat room where opinions or information are discussed on a matter that lies within the jurisdiction of the board or the committee.
- Circulation of minutes or other documents for approval by the board outside of a public meeting.

#### **What are some examples of proper communications?**

- The board or committee members may discuss their availability for an upcoming meeting, *e.g.*, the dates and times of an upcoming meeting.
- Providing information to the other members on an upcoming matter on the agenda by distributing reading materials, information necessary to prepare for a meeting, newspaper articles, scientific journals, or magazines. (However, the Neighborhood Council should adopt a rule that allows the distribution of information by one board member, *e.g.*, the Board Secretary, and the information should be distributed by the Board Secretary along with distributing the agenda for the public meeting.)
- Distributing legal advice to the board/committee from the Office of the City Attorney.
- Distributing general public announcements. For example, notifying the other board members of a City Council meeting or a community event.

#### **What should a board member do if it is believed that there are serial communications occurring among the board?**

If a board member becomes aware of improper communications, the board member should notify the Neighborhood Council President of the improper discussions. The President should notify the board regarding the prohibition against serial

communications and provide this handout along the warning that the matter being discussed should be reserved for discussion at a public meeting.

The Department and the Office of the City Attorney have prepared a video regarding the Brown Act that should be reviewed by each board/committee member. In addition, the Department offers regional training on the Brown Act to those groups requesting assistance.

### **What are the penalties for engaging in serial communications?**

Violations of the Brown Act may result in civil and criminal penalties. There are a number of civil remedies that a person may pursue if it is believed that there are impermissible serial communications occurring by board/committee members, including making a demand to cure upon the Neighborhood Council or filing a complaint with the Department of Neighborhood Empowerment. A demand to cure might include requesting that a meeting item be set aside and re-hear that item with a disclosure of the improper communications. Also, a decision made in violation of the Brown Act is subject to being set aside as void. The Neighborhood Council may be required to remedy its improper actions and pay attorney fees and costs from its own fund to a person who brings a challenge. In addition, individuals may be criminally prosecuted for misdemeanor violations of the law.



# **Standing and *Ad Hoc* Committees of Neighborhood Councils Under the Brown Act**

## **Standing Committees.**

Standing committees of Neighborhood Councils are subject to the Brown Act (also, "Act"). The Act describes a standing committee as one which has "continuing subject matter jurisdiction." This means that a permanent committee that is designed to handle an issue or issues on a continual basis will be a standing committee and is subject to the Act's notice and posting requirements. For example, many Neighborhood Councils have established various committees through their bylaws, such as Land Use and Planning Committees, Public Safety Committees, Election Committees, *etc.*<sup>1</sup> These committees, because of their subject matter, generally are of an ongoing nature and regardless of their configuration, (whether comprising solely less than a majority of board members, or of a combination of board members and stakeholders) are subject to the notice and posting requirements of the Act.<sup>2</sup>

Standing committees need not establish a "regular meeting time and place" in any operating rules but they must meet in public and post notices of their meetings. The Act presumes that whenever a standing committee holds a meeting that is posted at least 72 hours in advance, that noticed meeting is considered the "regular meeting" of the standing committee. See Gov't Code § 54954.

## **Establishing Standing Committees.**

Standing committees, as noted above, are generally established in the operating bylaws of the Neighborhood Council by simply listing their titles and functions. However, a Neighborhood Council may also create additional committees by formal board action (*i.e.*, a vote or resolution of the board to establish a committee). In situations where the board creates a new standing committee that has not been listed in the bylaws, the best practice is for the Neighborhood Council to amend its bylaws to identify this new standing committee.

## ***Ad Hoc* Committees.**

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<sup>1</sup> Many Neighborhood Councils also have Executive Committees, comprised of the Governing Body's officers. The functions depending upon the Neighborhood Council may vary, but generally since this Committee is set up by the bylaws, it too is a standing committee, subject to the Act.

<sup>2</sup> A standing committee can also be created if it has a meeting schedule that is fixed by charter, ordinance, or resolution, or formal action of a legislative body.

*Ad hoc* or “temporary” committees are treated differently under the Act. *Ad hoc* committees are *not* subject to the notice and posting requirements of the Act so long as the committee:

- is comprised *solely* of members of the governing body, *i.e.*, the committee may not contain individuals other than the members of the governing body;
- consists of less than the number of board members who, if present at a meeting, would be able to make a decision, (*e.g.*, if a Neighborhood Council has 21 board members, a quorum of 11 and makes decisions by a majority of those board members present at a meeting, then as few as 6 board members would have the ability to make a decision; therefore, the *ad hoc* committee should be comprised of less than the majority or, as stated in this example, less than 6 board members);
- has a defined purpose and a time frame to accomplish that purpose; and
- is advisory, *i.e.*, the committee has not been delegated any decision-making power and will be returning to the full board on its recommendation. See, *Joiner v. City of Sebastopol* (1981) 125 Cal App. 3d 799.

*Ad hoc* committees are commonly used in City government. For example, the President of a City commission or the commission itself might choose to appoint three or fewer commissioners (depending upon the size and quorum of the board) to evaluate and report on a particular issue or subject relevant to that commission. Once that committee has completed its work, the committee is then disbanded.

Neighborhood Councils may create *ad hoc* committees in similar fashion by having the board or the President, depending on the bylaws, appoint *less than a majority of the Neighborhood Council board members* to evaluate a particular issue and report its findings, conclusions or recommendations to the full body. However, should any person other than an existing Neighborhood Council board member be appointed to the *ad hoc* committee, then the committee must operate under the notice and posting requirements of the Brown Act.

### **Establishing *Ad Hoc* Committees.**

Members of *ad hoc* committees designed to be advisory to the Neighborhood Council may be appointed by the President, on behalf of the entire board, or by action of the entire board, depending upon the rules under which the Neighborhood Council operates. Although, as noted above, the *ad hoc* committee itself is not subject to the Act, if the board desires to create an *ad hoc* committee, then the *action* to *create* the committee should be done at a publicly noticed meeting under the Act and the item should be placed on an agenda for that purpose.<sup>3</sup>

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<sup>3</sup> The *appointments* to that Committee, if made by the President, may occur either in or outside a public meeting, depending upon the Neighborhood Council's rules; however, the better practice is for this

## **Establishing Committees That Are Not Subject to the Brown Act.**

Advisory committees composed of non-Neighborhood Council board members may be created that are not subject to the Brown Act but only if they are advisory to a single-decision maker, rather than to the entire Neighborhood Council board and were not created by any formal action of the Neighborhood Council. See, 56 Ops. Cal Atty Gen 14 (1973).

Thus, an individual board member could create an advisory committee that reports directly to him or her. For example, a board member could ask a group of stakeholders (not during a public meeting to avoid the appearance that the entire board has created the advisory body by "consent") to investigate a particular item, report to the appointing board member, after which the board member could then make a recommendation or initiate discussion on the item that the committee investigated. As long as it is clear that the advisory committee is not created by the Neighborhood Council itself, these types of committees are not subject to the Brown Act.<sup>4</sup>

## **Implementing Projects - Not a Committee.**

One point that may need clarification: Groups that are formed to implement a project are not treated as a standing or *ad hoc* committee under the Act; thus, gatherings to implement a project would not be considered a "meeting" subject to the Brown Act. For example, if a Neighborhood Council approves an action to conduct a tree-planting project along a street, the gathering of those people at a certain place and time to plant the trees would not be treated as a "meeting" under the Act. That would be true of other activities such as, purchasing goods and supplies for the Neighborhood Council or implementing other projects approved by the board, such as a graffiti abatement projects, *etc.*, or activities designed to outreach to stakeholders.

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to be done publicly.

<sup>4</sup> Of course, stakeholders may also separately, and on their own initiative, form advisory groups and report the results, findings or recommendations to the Neighborhood Council board.



## 2. Conflict of Interest

# STATE AND CITY CONFLICT OF INTEREST LAWS: INFORMATION FOR NEIGHBORHOOD COUNCILS

## Conflict of Interest Laws Governing Neighborhood Councils

Board members of Neighborhood Councils who are given governmental decision-making authority, must be mindful of the following conflict of interest laws: The Political Reform Act of 1974, as amended (Government Code § 81000, *et seq.*), Government Code § 1090 *et seq.*, and the common-law conflict of interest rules. Because of the enactment of Ordinance No. 176477<sup>1</sup>, Neighborhood Councils are not required to have a conflict of interest code, are not required to fill out the state (Form 700) disclosure statement and no longer are subject to the City's Governmental Ethics Ordinance (Los Angeles Municipal Code § 49.5.1 *et seq.*) However, compliance with state and common law conflict of interest laws is still required. A brief explanation of these laws follows.

### The Political Reform Act.

The Political Reform Act is a state law that sets up rules and regulations to ensure that governmental officials are free from bias caused by their own financial interests and act in an impartial matter.

**Basic Prohibition.** Under the Act, public officials are disqualified from participating in government decisions in which they have a financial interest. There are four basic tests to ascertain whether a neighborhood council board member might have a financial interest under the Act. When all of the following are true, the board member would have a disqualifying interest:

- ☐ the neighborhood council board member makes, participates in making, or uses his or her official position to influence the making of a decision;
- ☐ the neighborhood council board member has a statutorily defined economic interest (his or her own finances or those of members of his or her immediate family, investment in a business, interest in real property, source of income or gifts, management position in a business) that may be affected by the decision;
- ☐ it is reasonably foreseeable that the decision will have a *material financial effect* on the neighborhood council board member's economic interest;
- ☐ the decision will affect the neighborhood council board member's economic interest in a way that is distinguishable from its effect on the public generally

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<sup>1</sup> See, Los Angeles Administrative Code § 2.20.1.

or a significant segment of the public.

A neighborhood council board member who is disqualified must abstain from making, participating in making or attempting to use his or her official position in any way to influence the government decision.

**Persons Covered.** The Act treats “members of local governmental agencies” as public officials. Public officials who make, participate in the making of, or influence or attempt to influence a governmental decision must comply with the Act’s provisions. Neighborhood Councils have been treated as “local governmental agencies” and board members as “public officials” for the purposes of the Act. <sup>2</sup>

**Participation In Decision-Making.** Neighborhood Councils are advisory bodies. Their role is to make recommendations to the various City decision-makers, including City boards, commissions, City Council committees and the City Council. City Charter § 907. This role falls within the “make, participate in making, or attempting to influence a government decision” provision of the Act. Since the Neighborhood Councils have been delegated the authority to make “governmental decisions,” even the board member’s votes on “non-governmental” or purely advisory recommendations will be subject to the conflict-of-interest provisions.<sup>3</sup>

**Economic Interests Covered.** What is a financial interest is often complicated and fact-based, but there are basic types of economic interests that the Act covers:

- ☐ a business entity in which a neighborhood council board member, or his or her immediate family, owns an investment or in which the neighborhood council board members is an officer or director or holds a management position in that business entity;
- ☐ real property in which a neighborhood council board member or his or her, immediate family, owns an interest;
- ☐ any person or entity that is a source of income or loans to the neighborhood

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<sup>2</sup> Making *recommendations* as to whether the City should or should not enter into a contract will also trigger the Act’s requirements. In this instance, this means making a recommendation about a *specific* contract which is coming before the City for action or recommending qualifications/specifications for a city contract. Merely advising the City as to whether, for example, the City should pave a certain street or install lighting, which decisions might ultimately result in the City entering into a contract for those services, would not trigger the Political Reform Act requirements for the neighborhood council providing this advice.

<sup>3</sup> Thus, a board member who makes “governmental decisions” must also be aware of, and comply with, the disqualification rules even when making a purely advisory recommendation, for example, to a City Council Committee or Area Planning Commission regarding a conditional use permit for a project located within the boundaries of that Neighborhood Council.

council board member or spouse;

- ☐ any person or entity that has given the neighborhood council board member a gift within the last year; or
- ☐ a neighborhood council board members' personal expenses, income, assets or liabilities, including those of his or her immediate family.

***Business Investments and Business Positions.*** An investment of **\$2000 or more** in a business entity by a board member, his or her spouse or dependent children is considered an economic interest. If a board member is a director, officer, partner, trustee, employee or holds a position of management in a business entity, that is also considered an economic interest.

***Real Property-*** An investment of **\$2000 or more** in real property by a board member, his or her spouse, or his or her dependent children or anyone acting on his or her behalf, is an economic interest.

***Sources of Income and Gifts-*** The receipt by a board member of income of **\$500 or more** from an individual or organization within 12 months prior to the decision in question is an economic interest. Gifts totaling **\$360** or more received from a single source within 12 months prior to the decision is an economic interest.<sup>4</sup>

***Personal Financial Effects-*** Expenses, income, assets or liabilities of board members or their immediate family are considered an economic interest if those expenses, income, assets or liabilities are likely to go up or down by **\$250** as a result of the decision at issue.

Once a board member determines that he or she has an economic interest, the next step is to determine whether the decision will have a direct or indirect impact upon the board member's interest and whether it is reasonably foreseeable that the decision will have a material effect on the board member's economic interest.

***Direct v. Indirect Interest.*** Whether a particular impact is material or not also depends upon whether the economic interest is directly or indirectly affected by the decision. A direct interest is generally one that is the subject of the decision; an indirect interest is one that may be impacted because of some connection or relations to the decision.<sup>5</sup> A direct

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<sup>4</sup> Note: The gift limit is adjusted for inflation every two years. Gov't Code § 89503(f).

<sup>5</sup> For example, if a neighborhood council board member owns a business that is subject to a permit or approval about which the Neighborhood Council is making a recommendation, that is a *direct* impact of that economic interest. If a neighborhood council board member owns a business that is located more than 500 feet away from a piece of property that is seeking, for example, to obtain conditional use approval to sell alcoholic beverages about which the Neighborhood Council is making a recommendation, the decision potentially has an indirect impact on that economic interest, i.e., the business of the board

interest is more likely to create a greater risk of a conflict of interest than an economic interest that is indirectly involved in the decision.

***Foreseeability and Materiality.*** To have a conflict of interest the effect on the board member's economic interest must be foreseeable (in other words, likely to occur) and be considered "material." In other words, a conflict of interest results if a board member can reasonably predict that his or her decision on a particular matter will have some economic impact (positively or negatively) on his or her economic interest. The Act sets up some basic thresholds to determine whether an economic interest is material:

***Business Investments and Business Positions.*** As a *general* rule, if a decision directly involves a business entity in which the neighborhood council board member has an interest, the board member must disqualify himself or herself. However, if the only interest in the company is less than \$25,000 in stock, the board member may still be able to participate in the decision after a detailed examination of the state's regulations. If the decision indirectly involves a business entity in which the board member has an interest, a decision's impact would be material if, for large companies such as Fortune 500 companies, the impact on the interest would result in an increase or decrease of the business' gross revenue of **\$10,000,000** or more in a fiscal year; or results in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of **\$2,500,000**; or results in an increase or decrease in the value of the business entity's assets or liabilities of **\$10,000,000** or more. At the other extreme, for smaller companies the impact is material if the decision would result in an increase or decrease in revenues of **\$20,000** or more or increase or reduce expenses by **\$5000** or more in a fiscal year, or result in an increase or decrease in the value of its assets or liabilities by **\$20,000** or more.<sup>6</sup>

***Real Property-*** If the decision affects a board member's property which is located **within 500 feet** of the boundaries of the property subject to the decision, disqualification from acting is generally required *unless* the decision will have no financial impact on the property. If the board member's property is located **more than 500 feet**, there is a presumption that the decision will not have a material financial effect. However, that presumption can be rebutted by proof that there are specific circumstances that would make it reasonably foreseeable that a financial effect will result from the presumption. Leasehold interests may also implicate the conflict of interest rules and have to be evaluated on a case-by-case basis.

***Sources of Income-*** If the decision will have **any** financial effect upon an individual who is a source of income for the board member and that source is directly involved in the

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member.

<sup>6</sup> The Political Reform Act also describes the impacts of other businesses that fall *between* these parameters, which are not discussed here.

decision, the effect is determined to be material. The most common source is the employer of the board member or spouse. If a board member or his or her spouse owns 10% or more of a business, clients of that business may also be sources of income. However, if the source of income is indirectly involved in the decision, application of the state's regulations on the particular facts of this source is required to determine if the board member has to recuse himself or herself from acting on the matter.

***Distinguishable From The Public.*** Even if a board member's economic interest is foreseeable and material, he or she does not have a legal conflict of interest unless the decision's impact on his or her economic interest is *different* from the general public's impact. In other words, if a board member is participating in a decision on an issue that will affect the general public's financial interests in the same manner as his or her own interests, even though the decision will have a material economic impact on the board member's financial interest, it does not create a conflict of interest. Under this rule, the decision must affect the board member's interest in *substantially the same manner* as the interests of the public. An example of this would be if the City is embarking upon a plan amendment and zone change for a community plan area and a board member's property is subject to a zone change as is every other property within the community plan area. Although the board member's property is directly affected by the zone change, the property is impacted in substantially the same manner as other members of the public since all are being rezoned, so there is no conflict of interest requiring recusal. The state has developed specific percentage and numerical thresholds for determining when a group of people constitute a significant number to make a determination whether a decision affects the public in the same manner.

#### **Decisions Related to Contracts - Government Code § 1090, et seq.**

In addition to the requirements of the Political Reform Act, state law contains special rules governing conflicts of interest relating to government contracts. A neighborhood council board member may not be *financially interested* in *any City contract* that he or she is involved in making. Thus, any participation by a board member in the process by which a contract is developed, negotiated or approved, *including making a recommendation on the contract*, is a violation of Government Code § 1090 if the board member has a financial interest in that contract. **Also, if the board member has a financial interest in a contract, the entire neighborhood council board might not be able act on the matter.** However, there are some interests called "remote interests" which would disqualify a board member but not the entire neighborhood council board. Gov't Code §1090 prohibitions apply to oral as well as written contracts. Financial relationships in a contract would include, but are not limited to: employee of a contracting party, attorney, agent or broker of a contracting party, supplier of goods or services to a contracting party; landlord or tenant to a contracting party; officer, employee or board member of a nonprofit corporation of a contracting party.

## **Common Law Conflict of Interest Rules.**

Although Los Angeles City Charter § 222, contains its own conflict of interest provisions based on an “appearance standard,” these standards for disqualification are not applicable to neighborhood council board members. However, neighborhood councils are free to develop their own appearance standards and ethics rules in their bylaws.

Furthermore, basic principles of bias and conflict of interest rules that the courts have developed over time (common law) also apply to the board’s decisions even if the statutory rules may allow a board member to participate in an action. As the Attorney General has concluded, “[t]he common law doctrine against conflicts of interest . . . prohibit public officials from placing themselves in a position where their private, personal interests may conflict with their official duties.” 64 Ops. Cal. Atty Gen 795. As put by the court of appeal, “[a] public officer is impliedly bound to exercise the powers conferred on him with diligence and primarily for the benefit of the public.” *Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51.

This doctrine applies in situations involving both financial *and* nonfinancial interests. This means that simply having a personal relation to the matter could be construed as tainting a board member’s decision-making because he or she is perceived to be biased or making the decision based on his or her personal interest, rather than for the good of the public.<sup>7</sup>

However, having general personal views and opinions about a matter is generally not sufficient to show bias. *Andrews v. Agricultural Labor Relations Board* (1981) 28 Cal. 3d 781. The mere appearance of bias is generally not sufficient for disqualification; but a disqualifying bias may be found if a showing can be made that a public officer has a specific prejudice against a person affected by a decision or a showing that a public officer’s decision making ability is so impaired such that s/he cannot render a decision based on appropriate grounds. *Id.* at 792. Thus, neighborhood council board members should always be alert to whether their private interests, whether financial or otherwise, would be enhanced by any particular action they take on an item before them. Although not legally required, neighborhood council members should avoid even the appearance of bias to avoid allegations that might cause the integrity of the neighborhood council and its members to be questioned.

## **Penalties.**

Violations of the Political Reform Act and Government Code § 1090 can carry significant

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<sup>7</sup> Even without a financial interest, the public officer must have some personal advantage or disadvantage at stake. See, e.g., *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152; 88 Op. Atty. Gen. Cal 32 (2005).

penalties.<sup>8</sup>

Violations of the Political Reform Act can result in civil actions, criminal prosecution and/or administrative sanctions, injunctive relief or in some cases, prohibition against holding future elective office, depending upon the nature of the violation and the jurisdiction of the enforcement agency.

Violations of Gov't Code § 1090 are prosecuted as a felony and a conviction could, in addition to the imposition of a criminal fines and potential imprisonment, result in a lifetime ban from holding any public office in the State of California. In addition, contracts that are entered into in violation of this statute are void as a matter of law.

Finally, any person can file suit in civil court alleging violations of the Act.

### **Identifying Conflicts and Disqualification.**

Because severe penalties may apply to a neighborhood council board member for violations of the conflict of interest laws it is important that board members identify their economic interests that may pose potential conflicts. The eight part test set forth earlier should help board members identify what type of economic interests they have.

If a board member has either an economic interest in a decision that requires disqualification or is disqualified due to the application of the "common law doctrine" of a conflict of interest, the board member must disclose the interest which is the subject of the conflict as well as the fact that he or she is disqualifying himself or herself from any participation in the decision. The board member also may not do anything to influence the decision.

If a board member is disqualified from acting on a meeting agenda item and he or she is present at the meeting, he or she should make a public announcement identifying the economic interest which is the subject of the conflict and the fact that he or she is disqualified from any participation. After announcing the recusal from participation, the board member should excuse himself or herself and leave the room while that item is pending.

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<sup>8</sup> Note: The City Attorney's Office cannot defend or indemnify a board member who is charged, either civilly or criminally, with a violation of either the Political Reform Act or Gov't Code § 1090. In addition, regarding the attorney-client privilege, the privilege applies to confidential communications between the attorney and the client. Although the City Attorney is the legal advisor to the neighborhood council board, the City's client is the municipal corporation, the City of Los Angeles, and not to any individual board member. While the City Attorney's Office is willing and able to assist individual neighborhood council board members with legal advice, the advice given may be disclosed to the neighborhood council board and to any other City entity.



## Summary.

Any time any City business is before a neighborhood council board member that involves:

- ☐ a business in which he or she or a member of his or her family has an investment;
- ☐ an entity of which he or she is an officer or director or holds some position of management;
- ☐ real property in which he or she or a member of his or her family has an interest;
- ☐ a source of income to him or her or a member of his or her immediate family;
- ☐ a source of gifts to him or her; or
- ☐ any person or entity with which he or she has a relationship other than in his or her capacity as a City official (e.g, a friend, person with whom he or she has a business relationship or an organization in which he or she holds some position of importance),

board members should contact the Department of Neighborhood Empowerment with the pertinent facts, and the Project Coordinator for the board member's neighborhood council will confer with the City's attorney for advice to assist the board member.<sup>9</sup> The information will be communicated either directly from the Office of the City Attorney or through the Department of Neighborhood Empowerment's Project Coordinator, orally or in writing, depending upon the complexity of the board member's inquiry.

You may also seek advice from the Fair Political Practices Commission (FPPC) at their toll free help line at 1-866-ASK-FPPC, or may ask for a formal written opinion.<sup>10</sup>

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<sup>9</sup> The Project Coordinator generally will not provide information relating to allegations of conflict of interest matters relating to third persons (persons other than those making the inquiry); only the board member who is concerned about his/her own economic or common law conflict of interest should contact the Department. The one exception is that any board member can and should inquire about the ability of its board to enter into a contract that might implicate Gov't Code § 1090.

<sup>10</sup> Formal written opinions take a minimum of 21 days but *only written advice from the FPPC* provides immunity from prosecution if acting consistent with that advice.



# CONFLICTS OF INTEREST IN PUBLIC CONTRACTING

[GOVERNMENT CODE SECTION 1090, et seq.]

## Introduction.

This handout discusses the specific conflict of interest concerns that arise when a neighborhood council spends its public funds, enters into a contract, or makes a recommendation regarding a City contract and a board member or committee member on the neighborhood council has a financial interest in that transaction. While other situations, e.g., the neighborhood council making advisory recommendations to the City on specific subjects, may also present conflict of interest concerns,<sup>1</sup> this handout focuses on situations involving contracting or the expenditure of public funds by neighborhood councils under Government Code section 1090 (also referred to as "Section 1090"). In addition, while this handout is prepared for neighborhood councils, the principles set forth herein apply equally to other boards that are subject to this law.<sup>2</sup>

In 2004, the City Attorney issued an opinion stating that Government Code section 1090, et seq., applies to board and committee members serving on the City's certified neighborhood councils. Section 1090 is one of the primary conflict of interest statutes applicable to public servants involved in the public contracting process and is a State law that prohibits public officials, including employees, from making a public contract in their official capacity when those persons also hold a private financial interest in that same contract.<sup>3</sup>

The California Attorney General's office oversees compliance with this law and violations of Section 1090 are subject to civil and criminal penalties. Thus, board and committee members serving on the neighborhood council should become familiar with this law and seek assistance from the Office of the City Attorney whenever such questions arise.

## Purpose.

The purpose of Section 1090 is to discourage self-dealing and ensure that public servants do not have divided loyalties.<sup>4</sup> Section 1090 developed from a body of decisions by the courts in what is referred to as the "common law." In *Thomson v. Call*, the California Supreme Court explained the reasons underlying Section 1090 and stated

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<sup>1</sup> E.g., the California Political Reform Act, common law, City ordinances and, in the case of neighborhood councils, their bylaws and board rules may pertain.

<sup>2</sup> Government Code section 1090, a California statute, applies equally to, among others, "city council members", "commissioners", "board members", "officials", and "employees". Herein, reference is alternatively made to such persons to illustrate a point or as discussed in case law.

<sup>3</sup> Government Code section 1090 also applies to City Council members, commissioners, officials, and employees.

<sup>4</sup> See, *Breakzone Billiards et al. v. City of Torrance* (2000) 81 Cal. App. 4<sup>th</sup> 1205, 1230 and *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4<sup>th</sup> 1152, 1170-1171 [citing, *Noble v. City of Palo Alto* (1928)].

that “no man can faithfully serve two masters whose interests are or may be in conflict ...”<sup>5</sup> The State legislature codified this common law into Section 1090.

Generally, neighborhood council representatives are agents of the people and the constituents they represent. Section 1090 is intended to ensure that “every public officer be guided solely by the public interest rather than personal interest when dealing with contracts in an official capacity.”<sup>6</sup> In interpreting the law, the courts caution public servants that they may not act in their official capacity to *influence* or *participate in* making a public contract when they simultaneously hold a private financial interest in the same contract.<sup>7</sup> The purpose of the conflict of interest laws and the conduct expected of public servants is captured by the California Supreme Court, quoting the U. S. Supreme Court:

“The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. The broad proscription embodies recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning people when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, *the statute is more concerned with what might have happened in a given situation than with what actually happened.*”<sup>8</sup>

Thus, Section 1090 is also “aimed at ... avoiding the appearance of impropriety...”<sup>9</sup>

### **Application of Section 1090.**

Specifically, Government Code section 1090 states:

“Members of the Legislature, state, county, district, judicial district, and *city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.* Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.” (Emphasis added.)

This law means that neighborhood council board members cannot be financially interested in any contract *officially* made by that body or board. Under Section 1090, the first determination that must be made is what type of financial interest exists. The type of financial interest that exists will determine what permissible activities are allowed by the person with the financial interest or the neighborhood council board. In general,

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<sup>5</sup> Thomson, 38 Cal. 3d at 647-648 [citing, *San Diego v. S.D. L.A.R.R. Co.*, (1872) 44 Cal. 106, 113.

<sup>6</sup> *Id.* at 650.

<sup>7</sup> Stigall, 58 Cal 2d 565, 569; Finnegan, 91 Cal. App. 4<sup>th</sup> 572, 579 and *People v. Honig* (1996) 48 Cal. App. 4<sup>th</sup> 289, 314.

<sup>8</sup> Stigall, 58 Cal 2d 565, 570 citing *U.S. v. Mississippi Valley Generating Co* (1961) 364 U.S. 520. (emphasis added)

<sup>9</sup> *Honig*, 48 Cal.App.4<sup>th</sup> at 314.

if a financial interest exists, the entire board is prohibited from acting on the contract unless a legal exception applies.

There are several exceptions. There is an exception if the financial interest is a "remote interest" under Government Code section 1091. A "remote interest" requires the person with the financial interest to be disqualified from participating in the transaction but, upon disclosure of the financial interest in the neighborhood council's records, allows the neighborhood council board to enter into the transaction. In addition, there is an exception that exists if the financial interest is deemed a "non-interest" under Government Code section 1091.5. A "non-interest" means that the person with the financial interest may participate in the transaction, as well as the neighborhood council board, if in certain cases an appropriate disclosure is made.

Section 1090 applies to a variety of public officials and employees representing government agencies in California.<sup>10</sup> It "also applies to members of [governmental] advisory bodies if they participate in the making of a contract through their advisory function."<sup>11</sup> It applies to board members serving on the City's certified neighborhood councils because these boards spend public funds for their operations through contracts executed by the Department of Neighborhood Empowerment (DONE) for the benefit of neighborhood councils.<sup>12</sup> Moreover, Section 1090 applies to a variety of public contracts, including employment contracts, leases, sales of goods, consulting services, and development agreements. Neighborhood council boards regularly require contracts for their operations, including supplies, office space, and for neighborhood improvement projects. These contracts are executed in compliance with City contracting rules on their behalf.<sup>13</sup> By recommending the approval of a specific contract for services or neighborhood improvements, neighborhood council board members are part of the City's public contracting process.

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<sup>10</sup> *Stigall*, 58 Cal. 2d 565; *Thomson*, 38 Cal. 3d 633; *Bailey*, 103 Cal. App. 3d 191; [council members]; *Honig*, 48 Cal. App. 4th 289 [elected state official]; *City Council of the City of San Diego v. McKinley* (1978) 80 Cal. App. 3d 204 [park board member]; *People v. Sobel* (1974) 40 Cal. App. 3d 1046 [a city employee]; and 46 Ops. Cal. Atty. Gen. 74, (1965) [contractors/consultants who perform a public function].

<sup>11</sup> *Conflicts of Interests*, California Attorney General's Office (pamp.) 2004, p. 68; 82 Ops. Cal. Atty. Gen. 126 (1999).

<sup>12</sup> Certified neighborhood councils are also referred to herein simply as "neighborhood councils" or "councils".

<sup>13</sup> Under the Neighborhood Council Funding Program, developed by the DONE, neighborhood council boards vote to approve all expenditures. Currently, under the Neighborhood Council Funding Program, the DONE prepares the appropriate written agreements for the neighborhood councils to ensure compliance with City contracting rules. City departments and agencies do not ordinarily prepare written agreements for purchases valued under \$1,000.00. (*Los Angeles Administrative Code* section 9.5) Certified neighborhood councils, therefore, purchase goods for their operations through their Stored Value Cards or from petty cash disbursements unless goods are obtained directly through the City and its established vendors.

## **“Making a Contract” Within The Meaning Of Section 1090.**

If a person is prohibited from participating in a transaction under Section 1090, the prohibition applies to the “making of a contract.” Under Section 1090, a contract having been “made” does not simply refer to the point in time when a neighborhood council member or an official approves, or signs the contract.<sup>14</sup> It also includes when a member or an official, in their official capacity, participates during the preliminary stages of the contracting process.<sup>15</sup> That participation can include preliminary discussions, solicitation of bids, negotiations, and directly or indirectly influencing the decision to make a contract.<sup>16</sup> Thus, a neighborhood council board could be prohibited from entering into a contract if a board or committee member was financially interested in the matter and engaged in early negotiations or discussions of the contract.

Mere membership on the board has import.

“California courts have consistently held that a public officer cannot escape liability for a [S]ection 1090 violation merely by abstaining from voting or participating in discussions or negotiations. [Citation.] Mere membership on [a] board or council establishes the presumption that the officer participated in the forbidden transaction or influenced other members of the council. [Citation.]”<sup>17</sup>

Courts have held that,

“[w]here section 1090 applies, it is an absolute bar to a board or commission entering into the prohibited contract. Even if the interested board or commission member abstains from any participation in the matter, [S]ection 1090 applies to prevent fellow board or commission members from being influenced by their colleague. [Citations.]”<sup>18</sup>

Applying this principle to neighborhood councils, a neighborhood council board member with a financial interest who has influenced the board to enter into a contract, for example, cannot avoid a Section 1090 violation by resigning from the board just before it recommends approving the contract, or by not appearing at the meeting where the contract is approved.<sup>19</sup> Again, “[t]he purpose of the prohibition is to prevent a situation where a public official would stand to gain or lose something with respect to the making of a contract over which he could exercise some influence in his official capacity.”<sup>20</sup>

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<sup>14</sup> *Stigall*, 58 Cal 2d at 571; *McKinley*, 80 Cal. App. 3d at 212; *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal. App. 2d 222, 237.

<sup>15</sup> *Stigall*, 58 Cal 2d at 569.

<sup>16</sup> *Id.* at 571; *Sobel*, 40 Cal. App. 3d at 1052.

<sup>17</sup> *Thomson*, 38 Cal. 3d at 649.

<sup>18</sup> *Thorpe v. Long Beach Community College District* (2000) 83 Cal. App. 4<sup>th</sup> 655, 659.

<sup>19</sup> *Stigall*, 58 Cal.2d 565.

<sup>20</sup> *Id.* (quoting, *People v. Vallergera* (1977) 67 Cal. App. 3d 847, 867-868, fn. 5).

## The Meaning Of “Financially Interested.”

Although Section 1090 is directed at an interest in a contract, the statute does not specifically define the term “financial interest.” Thus, we look at case law to provide further guidance as to the meaning of the term and to understand how the courts have upheld the legislative intent of this statute.

In *City of Imperial Beach v. Bailey*, the court found that a city council member had a conflict of interest due to her ownership of a concession stand (Concession) on a municipal pier, which lease was coming up before the city council for renewal.<sup>21</sup> Council member Bailey had obtained her financial interest in Concession – a bait, tackle and refreshment stand – under an existing lease with the City of Imperial Beach before she became a councilmember. Although the lease came up for renewal after she became a council member, the court found that Section 1090 prohibited Bailey from exercising the “option” to renew the lease while simultaneously serving as a city council member. The court stated that:

“it is conceded that Hazel Bailey’s integrity is above reproach and we sympathize with her position of having to choose between remaining on the Council or continuing as owner of Concession. However, the purpose of [S]ection 1090 is not only to strike at actual impropriety, but to strike at the appearance of impropriety.”<sup>22</sup>

The California Attorney General has identified two unique situations where it found a “financial interest” in a contract: 1) where a public entity board member requested reimbursement for a conference attended by a board member of the spouse and, 2) where a public entity entered into a development agreement with a developer.

Courts have generally agreed with, and have applied, the Attorney General’s analysis when confronted with similar scenarios. For example, the courts have found that “a member of a board or commission *always* is financially interested in his or her spouse’s source of income for purposes of section 1090. This is true even if the husband and wife have an agreement that their own earnings are to be treated as their separate property, since each spouse is liable for the necessities of life for the other [citations omitted].”<sup>23</sup>

And, in *Thomson v. Call*, the California Supreme Court held that Section 1090 was violated where a city council member for the City of Albany sold his land to the city through a third party corporate developer.<sup>24</sup> The developer, Interstate General Corporation (IGC), sought a zone change and use permit to allow denser housing development on property it owned on Albany Hill. As part of IGC’s request, it also agreed to purchase property that it would convey to the City of Albany for a public park.

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<sup>21</sup> *Bailey*, 103 Cal.App.3d 191.

<sup>22</sup> *Id.* at 197.

<sup>23</sup> 78 Ops.Cal.Atty.Gen. 230 (1995); *Honig*, 48 Cal. App. 4<sup>th</sup> at 319 and *Thorpe*, 83 Cal. App. 4<sup>th</sup> at 659.

<sup>24</sup> 38 Cal. 3d 633.

Councilman Call had such a parcel to sell on Albany Hill and he sold it to IGC. The property was thereafter conveyed by IGC to the City for the park to fulfill the conditions of the zone change approval. Although Call technically sold his property under contract to IGC, not directly to the City, the Court found that section 1090 had been violated. It said “[a]s part of the transaction at issue Call sold his property to the City using IGC as a conduit. Whether we regard his interest as direct or indirect, it is clearly a pecuniary interest forbidden by section 1090 and by the decisions applying conflict-of-interest rules generally.”<sup>25</sup>

Of significance, the benevolent purpose of the transaction – a public park carried no weight with the Court in the *Thomson* case. It found that “if the interest of a public officer is shown, the contract cannot be sustained by showing that it is fair, just and equitable as to the public entity.”<sup>26</sup>

Courts have also found that it does not matter that the financial interest in the contract is immaterial or a small amount for section 1090 to apply. For example, in *People v. Honig*, an elected State official was prosecuted for using his position to steer Department of Education contracts to a non-profit organization employing his wife.<sup>27</sup> The court said that to be “‘financially interested’ in a contract within the meaning of section 1090 does not require that the prohibited interest have a material effect on the public official’s source of income. Any interest, except a remote one, which would prevent the official from exercising absolute loyalty and undivided allegiance to the best interest of the state is prohibited under the statute [citation.]”<sup>28</sup> The court found that the fact that the officer’s interest “might be small or indirect is immaterial so long as it is such as deprives the [state] of his overriding fidelity to it and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good. [citation]”<sup>29</sup> Indeed, the court added, “the prosecution [did] not have to prove fraud, dishonesty, or loss.”<sup>30</sup>

Another example illustrating a financial interest can be found in *Fraser-Yamor Agency, Inc. v. County of Del Norte*.<sup>31</sup> There, the County (insured) procured insurance from an insurance company (insurer) that was brokered through the Fraser-Yamor Agency, Inc (agency). Fraser, a principal and major shareholder in the agency, also served as a Del Norte County supervisor, the insured. The court found that Fraser held a financial interest in the contract between the County and the insurance company and stated that “[h]is interest in the agency and in any contracts from which it derives a

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<sup>25</sup> 38 Cal.3d at 646.

<sup>26</sup> *Id.* at p. 649; citing, *Capron v. Hitchcock* (1893) 98 Cal. 427 and *Honig*, 48 Cal. App. 4<sup>th</sup> 289, 314.

<sup>27</sup> 48 Cal.App.4<sup>th</sup> at 305-313.

<sup>28</sup> *Id.* at 328.

<sup>29</sup> *Id.* at 315.

<sup>30</sup> *Id.* at 322.

<sup>31</sup> *Fraser-Yamor Agency, Inc., v. County of Del Norte* (1977) 68 Cal. App. 3d 201.



pecuniary benefit is clearly a financial one because the success of the agency inures to his personal benefit."<sup>32</sup>

Finally, in *People v. Watson*, a case involving a City of Los Angeles Harbor Commissioner, the court found a financial interest based on a debtor-creditor relationship.<sup>33</sup> This case involved bringing the vessel *S.S. Princess Louise* from Seattle to the Port of Los Angeles to serve as an attraction and a restaurant at the port. Charles Sutton, a local restaurateur, spearheaded the effort and needed to lease space from the Port of Los Angeles to dock the ship. Sutton also sought a liquor license as part of the business. City Harbor Commissioner Watson loaned Sutton's corporation \$10,400 to acquire a liquor license and, at a commission meeting, Watson voted to approve the Los Angeles port lease to dock the ship.<sup>34</sup> The floating restaurant opened for business in September of 1966 and, thereafter, Sutton repaid the loan.

In affirming Commissioner Watson's conviction for violation of sections 1090 and 1097, the court appeal upheld the use of the following jury instruction:

" 'financially interested' means any financial interest which might interfere with a city officer's unqualified devotion to his public duty. The interest may be direct or indirect and includes any monetary or proprietary benefits, or gain of any sort, or the *contingent possibility* of monetary or proprietary benefits." (Emphasis added/portions omitted)<sup>35</sup>

As it considered Watson's appeal, the court stated that "[w]e must disregard the technical relationship of the parties and look behind the veil which enshrouds their activities in order to discern the vital facts [citation]. However devious and winding the trail may be which connects the officer with the forbidden contract, if it can be followed and the connection made, a conflict of interest is established."<sup>36</sup>

As we explain below, however, not every "financial interest" constitutes a prohibited interest that would prohibit a board member or the board from acting on a contract. That statute identifies exceptions that would allow board or board member participation based upon the type of interest held.

## Exceptions.

**Section 1091: Remote Interest.** Section 1091 defines the circumstances when a public board may take action despite the fact that one or more of its members holds a

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<sup>32</sup> *Id.* at 215. [The court left unresolved whether Fraser's financial interest might be deemed a *remote interest* under section 1091.]

<sup>33</sup> *People v. Watson* (1971) 15 Cal. App. 3d 28.

<sup>34</sup> Although Commissioner Watson's wife was the putative owner of the engineering company that loaned Sutton the money for the license - he had transferred his interest in the company to her before his appointment to the Board of Harbor Commissioners - Sutton, nevertheless, delivered a check that was endorsed by Commissioner Watson.

<sup>35</sup> 15 Cal.App. 3d at 37.

<sup>36</sup> *Id.* at 37.

financial interest in a contract. These statutorily described circumstances are known as *remote* interests. Section 1091(a) states:

“An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member ... *if* the officer has only a remote interest in the contract and *if* the fact of the interest is disclosed to the body or board of which the officer is a member and noted in its official records, *and* thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose *without counting the vote of the officer or board member with the remote interest.*”<sup>37</sup> (Emphasis added)

Thus, even if a board member has what is considered a “remote interest,” the board may still enter into the contract so long as any member with a financial interest actively disqualifies him or herself from voting.<sup>38</sup> Section 1091(b) lists 14 types of interests which are statutorily defined as being “remote.” Examples of remote interests that might apply to neighborhood councils would include an officer or employee of a non-profit corporation or a landlord or tenant of a contracting party.

Section 1091(b) also sets forth the way that a council, commission, or board may vote to approve a contract without the participation of its financially interested member. Besides abstaining from any participation in the contracting process, the member with the financial interest must specifically disclose the nature of the conflict and have it noted in the official records if a vote is contemplated at a public meeting.

Applied to neighborhood councils, this would mean that a neighborhood council board is permitted, for example, to recommend approval of a contract with a non-profit corporation when one or more of its board members also serves as “an officer or employee of [the] nonprofit corporation” since the interest involved here is statutorily defined as a *remote* financial interest.<sup>39</sup> The only requirement in this instance is that the board member with the financial interest abstains from participation.

**Section 1091.5: Noninterests.** Section 1091.5 defines the circumstances when a board member’s financial interest is statutorily deemed a “noninterest.” An example of a noninterest that might apply to neighborhood councils would include: “. . . a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.”<sup>40</sup> If a neighborhood council member is found to hold a noninterest, the board member (as well as the entire board) may participate in making the contract.<sup>41</sup>

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<sup>37</sup> Government Code section 1091(a). [portion omitted].

<sup>38</sup> *Conflicts of Interests*, California Attorney General’s Office (pamp.) 2004, p. 82.

<sup>39</sup> Government Code section 1091(b)(1).

<sup>40</sup> Government Code section 1091.5(a)(3).

<sup>41</sup> *City of Vernon v. Central Basin Municipal Water District* (1999) 69 Cal. App. 4<sup>th</sup> 508, 515 (1986); 83 Ops.Cal.Atty.Gen. 246, 247 (2000); 78 Ops.Cal.Atty.Gen. Cal. 362, 369-370 (1995).

## **Remedies and Penalties.**

Violations of the statute can potentially result in civil remedies and/or criminal penalties.

**Civil Remedies: Government Code section 1092.** Contracts made in violation of any of the provisions of Section 1090 are "invalid" or void.<sup>42</sup> Any payment made by the City on a void contract is recoverable and disbursements and future payments on the contract are not enforceable.<sup>43</sup>

**Criminal Penalties: Government Code Section 1097.** Violations of the provisions of Section 1090 are also "punishable by a fine of not more than one thousand dollars (\$1,000), or by *imprisonment in the state prison*," and a person can be "*forever barred from holding any office in this state*."<sup>44</sup> (Emphasis added)

## **Conclusion.**

Invariably, it is necessary to evaluate the factual circumstances that pertain when a conflict of interest question arises. When answering such questions intuition will rarely suffice. Therefore, neighborhood council board members are encouraged to seek assistance from the City Attorney's Office to avoid conflict of interest problems.

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<sup>42</sup> Government Code section 1092; *Millbrae Association for Residential Survival*, 262 Cal. App 2d at 236. *Accord, Thompson*, 38 Cal. 3d at 646.

<sup>43</sup> Government Code section 1095.

<sup>44</sup> Government Code section 1097.



## **CONFLICT OF INTEREST EXAMPLES**

### **Questions**

[Government Code Section 1090]

1. John is on the board of the Neighborhood Council. Earlier the Council voted on putting on a community fair in the neighborhood to further publicize the Council and to outreach to its stakeholders. At a meeting, the Neighborhood Council discusses wanting to contract with a vendor for the purchase of t-shirts that the board members could wear at the event. John says he owns a company that prints t-shirts and that he would be happy to provide the t-shirts to the Neighborhood Council at cost. May the Neighborhood Council enter into this agreement?
2. A Neighborhood Council desperately needs office space. However, at the last meeting the board members voted down a proposal to spend money on office space. The consensus was that they should attempt to find donated space. Susan is a property owner of several commercial units and is on the board. She has offered to donate space in her building to the Neighborhood Council. May the Neighborhood Council accept the space?
3. A Neighborhood Council wants to purchase booth space for an event being sponsored by the Chamber of Commerce. They want to put flyers, registration forms etc. at the booth to advertise the Neighborhood Council. However, Mitchell, a Neighborhood Council board member, is also on the Chamber of Commerce board. May the Neighborhood Council enter into an agreement with the Chamber to purchase booth space?

[Political Reform Act]

4. [Investments/Business Position]: Kylie is a board member on the Neighborhood Council. Her husband owns \$2,000 worth of stocks from Microsoft and owns his own Software Company. Microsoft is building a computer center in Los Angeles and seeks the board's support. May Kylie participate in the decision?
5. [Interests in Real Property]: Mike is a board member on the Neighborhood Council. His spouse is a 50% partner in a Downtown Skyscraper. The property owner next to the Downtown Skyscraper seeks to develop the property into a mall and seeks the Neighborhood Council's support. What are Mike's economic interests? Is Mike disqualified from participating on the proposal to develop property next to the Downtown Skyscraper?

## **CONFLICT OF INTEREST EXAMPLES**

### **Answers**

#### **Answer to Example 1:**

No. John is a supplier of goods and services. The Act considers this a FULL financial interest and the ENTIRE board is unable to enter into an agreement with John. As a general rule, a Neighborhood Council may not enter into agreements with their board members.

#### **Answer to Example 2:**

No. Even though the space is being offered for free, because Susan is on the board and is also a landlord, Government Code 1090 prohibits the board from entering into this agreement, even though Susan will not personally benefit from the arrangement, and even if the deal to the public entity is beneficial to it.

#### **Answer to Example 3:**

Yes, PROVIDED that Mitchell recuses himself from participation, discloses his interest and the matter is noted on the Neighborhood Council's records. Mitchell's interest in the Chamber (officer of a nonprofit corporation) is treated as a REMOTE interest. Mitchell also must not have any discussions with board members about the booth, or have suggested it to the board - otherwise, the board may *not* act on the matter.

#### **Answer to Example 4:**

This question presents an example where a conflict of interest may arise. The answer to whether disqualification is required depends on a specific analysis of the facts. What is Kylie's interest in the stocks? What impact would approval or disapproval of the computer center have on the stocks? Whether Microsoft is a Fortune 500 company? The type of stock, the interest in the stock, the value of the stock and the size of the company holding the stock have varying answers under the Fair Political Practice Commission regulations.

#### **Answer to Example 5:**

Mike is disqualified from voting. Mike has an indirect interest in the downtown skyscraper due to his wife's 50% ownership. Since the mall is next door to the skyscraper, or within 500 feet of the skyscraper, Mike is deemed to have a material interest that is financially affected by a decision on the mall.



## Neighborhood Council Street Repair Program

### CONFLICT OF INTEREST GUIDELINES

Office of the City Attorney

The City of Los Angeles is embarking upon a program to allow Neighborhood Councils to assist the Department of Public Works, Bureau of Street Services, in establishing street repair priorities in each Neighborhood Council area.

The City will earmark \$100,000 for street repairs within the geographic boundaries of every Neighborhood Council which has an operating Governing Body. It is anticipated that each Neighborhood Council will vote on the priority guiding which of the eligible streets within their Neighborhood Council should be repaired and communicate those recommendations to the Department of Public Works.

#### Background

Neighborhood Councils are subject to the Political Reform Act and must comply with the conflict of interest rules under that Act when they make decisions and recommendations to the City decision makers. In addition to the rules set forth in the Political Reform Act, courts have developed principles of law (the "common-law") regarding conflicts of interest. Those rules generally "prohibit public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." *Noble v. City of Palo Alto* (1928) 89 Cal. App.47, 51.

In the context of the Street Repair Program, conflict of interest concerns may arise when Neighborhood Council board members make decisions/recommendations in selecting and/or prioritizing the streets for repair in the Neighborhood Council area. Neighborhood Council board members must be aware of those concerns and take appropriate action when those conflicts arise. Thus, Neighborhood Council board members who reside on streets that are on the City's qualification list should be aware of these rules.

In general, conflict of interest concerns arise if a Neighborhood Council board member has an *economic* interest that may be affected by a decision or a *personal* interest that affects the ability to evaluate the matter fairly and impartially.

Economic interests may include real property in which you, or a member of your family owns an interest. Leasehold interests may also be treated as an economic interest. Economic interests may also include those who have a 10% interest in a business which owns real property.

Under the Political Reform Act, a decision affects your property which is located within 500 feet of the boundaries of the project subject to the decision. However, the Act provides that if the decision solely concerns "repairs, replacement, or maintenance of existing streets" the interest is presumed to be an "indirect interest" which does not



result in automatic disqualification to act on the matter. Regulation 18704.2 (6) (b) (2). Applying this provision to the Neighborhood Council Street Repair Program, if a board member resides within 500 feet of a street or even *upon* a street being considered for repair, the board member would not be required to disqualify him or herself from acting on the matter under the Political Reform Act

However, as noted above, the courts have developed principles of law to prevent public officials from acting on matters in which an individual has a personal or economic interest<sup>1</sup> from which it can be construed that the person has a bias or a sufficient interest in the matter such that those private interests conflict with their official duties. In the words of one court, where the factual circumstances "can conceivably raise a substantial question of fairness and bias, prejudice or influence . . . obvious enough to have an effect on public confidence in such process" disqualification should occur. *Kimura v. Roberts* (1979) 89 Cal. App. 3d 871, 875.

In the context of the Street Repair Program, Neighborhood Council decisions in establishing priorities for street repairs should be made based upon objective standards of need and what will benefit the good of the community, as contrasted with a personal desire for the street upon which a board member resides to be repaired. Thus, applying the common law principles of conflicts of interest, it is our view that public confidence in the process of deciding which residential streets should be repaired may be eroded should Neighborhood Council board members who reside upon a residential street being considered for street repairs participate in the decision-making process.<sup>2</sup>

### Guidelines

Applying the rules under the common law conflict of interest principles, the City Attorney offers the following guidelines for Neighborhood Councils when making decisions about prioritizing their streets for improvements:

1. Board members who reside upon any street that qualifies for street repairs within its own Neighborhood Council area as listed by the Department of Public Works are disqualified from participating in any decision-making with respect to prioritizing those streets for repair.
2. In the case where paragraph 1 applies, at a public meeting at which the decisions are being made, the affected board member(s) must publicly announce the nature of

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<sup>1</sup> Even though an interest may not be considered an economic interest under the Political Reform Act which would require recusal, the same economic interest may require recusal under the common law principles of conflict of interests.

<sup>2</sup> Even if board members disqualify themselves from voting on whether to repair his or her street, board members could collectively decide to vote against any street upon which a board member does not reside, effecting by default, a decision to repair those streets upon which all the board members reside. For this reason, we conclude that board members who reside on a street which is on the list for consideration should not participate at all in the decisions to prioritize the streets for repairs.

the conflict (that he/she resides on a street that qualifies for repair), announce that he/she is unable to participate in the matter and excuse him/herself from the room while the board is discussing the item.

3. If a board member knows in advance that he/she will likely be disqualified from participating in the matter, he/she should immediately contact the President of his/her Neighborhood Council but no later than 48 hours prior to the meeting at which the decision will take place. This will allow the President to assess whether there is an adequate number of board members present (a quorum) who are able to take action on the item.

4. If due to the conflict of interests of several board members, there will likely not be an adequate number of board members available to act, the President should immediately contact the City Attorney's Office, Neighborhood Council Advice Division for consultation and advice.

***Please contact the City Attorney's Office, Neighborhood Council Advice Division at (213) 978-8132 if you have any questions regarding these Guidelines.***

### 3. The Public Records Act

# THE PUBLIC RECORDS ACT AND NEIGHBORHOOD COUNCILS

## ***What is the purpose of the Public Records Act?***

The Public Records Act (the "Act") is a California State Law and is codified in Government Code Section 6250 et seq. The Act was initially adopted over 50 years ago and its purpose was to make the government's operations open to greater public scrutiny by increasing the public's access to its records. Courts interpreting the Act's provisions emphasize that the Act's primary purpose is for the public to be able to monitor an agency's functions. Under the Act, a member of the public is allowed to make a request and obtain information that is a public record from a government agency.

Although there is information that is protected from disclosure, most information in the government's possession is a public record that is subject to inspection. "[A]ccess to information concerning the people's business is a fundamental and necessary right of every person in this state." (Gov't Code § 6253.)

## ***Are Neighborhood Councils subject to the Public Records Act?***

Yes. The Act applies to "local agencies." The Act defines a local agency to include any subdivision or agency of a chartered city. (Gov't Code § 6252(b).) Neighborhood Councils fall within that definition because they are a City-entity, created as an advisory body of the City, and established under the Los Angeles City Charter.<sup>1</sup>

## ***What are public records?***

Most information in the possession of the Neighborhood Council will be a public record.<sup>2</sup> Public records include "... any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by the [Neighborhood Councils] regardless of its physical form or characteristics." (Gov't Code § 6252(e).)

"'Writing' means handwriting, typewriting, printing, photostating, photography, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols or any combination thereof, and all

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<sup>1</sup> The Los Angeles City Charter was adopted and approved by the voters during the June 1999 election.

<sup>2</sup> The Act allows access to existing records. It does not create any obligation to create records in order to respond to a request.

papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.” (Gov’t Code § 6252(f).) These definitions in the Act create a broad net that encompasses most information that will be retained by the Neighborhood Councils.

***What must the Neighborhood Council do if it receives a request under the Act?***

A request for public records may be made either orally or in writing. *Los Angeles Times v. Alameda Corridor Transp. Auth.* 88 Cal. App. 4th 1381, 1382 (2001). After receiving a request, it is critical that the Neighborhood Council **immediately contact** its Department of Neighborhood Empowerment Project Coordinator. There are fast-approaching deadlines that require immediate action by the Neighborhood Council. The Project Coordinator will work in conjunction with the Office of the City Attorney, Neighborhood Council Advice Division, to insure that the Neighborhood Council meets its obligations under the Act.

Under the Act, the Neighborhood Council must respond to a request within 10 days. The Neighborhood Council's response must state whether the requested records will or will not be provided.<sup>3</sup> If the Neighborhood Council states that it is not providing all or any part of the records in its possession, then the Neighborhood Council must state the legal basis for non-disclosure of the record. Your Project Coordinator, again with assistance from the City Attorney's Office, will help you with composing this letter so that the proper legal objections are raised.

In addition to providing a response to the request, the Neighborhood Council also must provide access to the non-objectionable information that was requested.<sup>4</sup> Providing the information to the person making the request may occur under any number of circumstances. The Neighborhood Council may decide how to best provide access to the records e.g., by mailing copies to the person making the request or by allowing that person to inspect the records at the site where the records are maintained. If copies will be made the Act allows you to charge for the statutory costs of duplication. Currently, under the Los Angeles Administrative Code, the City charges \$1.00 for the first page, and \$.10 for every page thereafter. The Neighborhood Council's obligation under the Act is to make the non-objectionable information available to the person making the request as reasonably prompt as possible.

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<sup>3</sup> In unusual circumstances and with proper notification, this 10-day deadline may be extended an additional 14-days.

<sup>4</sup> The costs of duplication are passed on to the person making the request for records.

### ***What are examples of information that is protected from disclosure under the Act?***

The Act does prevent some information from disclosure. In order to protect information from disclosure, the Neighborhood Council must state the specific statutory basis under the Act for asserting its objection to releasing the information. There may be any number of records that may be protected from disclosure. In working with your Project Coordinator through the City Attorney's Office, an analysis will be made evaluating the request for the public record, the records in the Neighborhood Council's possession, and the appropriate response that should be provided by the Neighborhood Council.

Although the following list is by no means exhaustive, it provides some examples of the types of public records that are protected from disclosure:

- Preliminary drafts, notes, or inter-agency or intra-agency memoranda which are not retained in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;
- Records pertaining to pending litigation
- Records of which the disclosure is exempt or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

In addition, the Neighborhood Councils may assert an objection under Government Code Section 6255 on the grounds that the public interest served by not making the record public clearly outweighs the public interest served by disclosure. Although it is difficult to anticipate the requests that might be made or the records that might be in the possession of the Neighborhood Council, it will be through your Project Coordinator that the Neighborhood Council will assure that its rights are protected.

### ***What can happen if a Neighborhood Council refuses to comply?***

A requestor can sue a Neighborhood Council and seek a court order that requires a Neighborhood Council to provide the requested records. If the requestor is successful, the court may require the City to pay the opposing side's costs and attorney's fees. The City may require that this payment be made from a Neighborhood Council's annual budget.

( #95936)

# California Public Records Act

GOVT. CODE §§ 6250 - 6276.48

## THE BASICS

The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as . . . provided, [and to receive] an exact copy" of an identifiable record unless impracticable. (§ 6253). Specific exceptions to disclosure are listed in sections 6253.2, 6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268, 6276.02-6276.48; to ensure maximum access, they are read narrowly. The agency always bears the burden of justifying nondisclosure, and "any reasonably segregable portion . . . shall be available for inspection...after deletion of the portions which are exempt." (§ 6253(a))

## WHO'S COVERED

- **All state and local agencies**, including: (1) any officer, bureau, or department.; (2) any "board, commission or agency" created by the agency (including advisory boards); and (3) nonprofit entities that are legislative bodies of a local agency. (§ 6252(a),(b)). Many state and regional agencies are required to have written public record policies. A list appears in § 6253.4.

## WHO'S NOT COVERED

- Courts (except itemized statements of total expenditures and disbursement). (§§ 6252(a), 6261)
- The Legislature. (§ 6252) See Legislative Open Records Act, Govt. Code §§ 9070-9080.
- Private non-profit corporations and entities.
- Federal agencies. See Federal Freedom Of Information Act, 5 U.S.C. § 552.

**Access Tip:** Look to access laws (e.g. Legislative Open Records Act, IRS rules, court cases) that permit inspection and copying of records of agencies not subject to the Public Records Act. Many local jurisdictions also have "Sunshine" laws that grant greater rights of access to records.

## WHAT'S COVERED

- "Records" include all communications related to public business "regardless of physical form or characteristics, including any writing, picture, sound, or symbol, whether paper, . . . , magnetic or other media." (§ 6252(e)) Electronic records are included, but software may be exempt. (§§ 6253.9(a),(g), 6254.9 (a),(d))

## WHAT MUST HAPPEN

- **Access is immediate** and allowed at all times during business hours. (§ 6253(a)) Staff need not disrupt operations to allow immediate access, but a decision whether to grant access must be prompt. An agency may not adopt rules that limit the hours records are open for viewing and inspection. (§§ 6253(d); 6253.4(b))
- **The agency must provide assistance** by helping to identify records and information relevant to the request and suggesting ways to overcome any practical basis for denying access. (§ 6253.1)
- **An agency has 10 days to decide if copies will be provided.** In "unusual" cases (request is "voluminous," seeks records held off-site, OR requires consultation with other agencies), the agency may, upon written notice to the requesters, give itself an additional 14 days to respond. (§ 6253(c)) These time periods may not be used solely to delay access to the records. (§ 6253(d))
- **The agency may never make records available only in electronic form.** (§ 6253.9(e))
- **Access is always free.** Fees for "inspection" or "processing" are prohibited. (§ 6253)
- **Copy costs are limited to "statutory fees"** set by the Legislature (not by local ordinance) or the "direct cost of duplication", usually 10 to 25 cents per page. Charges for search, review or deletion are not allowed. (§ 6253(b); North County Parents v. D.O.E., 23 Cal.App.4th 144 (1994)) If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copying costs may include the cost of the programming. (§ 6253.9(a),(b))
- **The agency must justify the withholding of any record** by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. (§ 6255)

**Access Tip:** Always ask for both copies and access. After inspection, you can reduce the copy request and associated costs to the materials you need.

## REQUESTING PUBLIC RECORDS

- Plan your request; know what exemptions may apply.
- Ask informally before invoking the law. If necessary, use this guide to state your rights under the Act.
- Don't ask the agency to create a record or list.
- A written request is not required, but may help if your request is complex, or you anticipate trouble.
- Put date limits on any search.
- If the agency claims the records don't exist, ask what files were searched; offer any search clues you can.
- Limit pre-authorized costs (or ask for a cost waiver), and pay only copying charges.
- Demand a written response within 10 days.

## IF YOUR REQUEST IS DENIED

- Keep a log of to whom you speak and the stated reason for the denial.
- Employ the following six-step DENIAL strategy:
  - D = Discretionary:** Exemptions are permissive, never mandatory. Ask the agency if it will waive the exemption and release the record.
  - E = Explanation:** Insist that the agency explain in a written denial why the exemption applies to the requested record.
  - N = Narrow Application:** The Act favors access. Exemptions must be narrowly construed.
  - I = Isolate:** Request the release of any non-exempt portions of the record.
  - A = Appeal:** State your rights, using this guide, and ask to speak to a higher agency official.
  - L = Lawsuit:** File suit to enforce your rights. If you win, the agency must pay your costs and legal fees. (§ 6259(d)). *Belth v. Garamendi*, 232 Cal.App.3d 696 (1991).
- Write a news story or letter to the Editor about the denial.
- Consult your supervisor or lawyer, or contact one of the groups listed on this brochure.

## WHAT'S NEW COVERED

- Employees' private papers, unless they "relat[e] to the conduct of the public's business [and are] prepared, owned, used, or retained by the agency." (§ 6252(e))
- Computer software "developed by a state or local agency ... includ[ing] computer mapping systems, computer programs, and computer graphic systems." (§§ 6254.9(a),(b))
- Records not yet in existence: The PRA covers only records that already exist, and an agency cannot be required to create a record, list, or compilation. "Rolling requests" for future-generated records are not permitted.

## RECORDS EXEMPT FROM DISCLOSURE

The Act exempts certain records from disclosure in whole or in part. This does not mean they are not public records or that disclosure is prohibited. An agency may withhold the records, but can allow greater access if it wishes. (§ 6253(e)). However, "selective" or "favored" access is prohibited; once it is disclosed to one requester, the record is public for all. (§ 6254.5) Many categories of records are exempt, some by the Act itself, (§§ 6254(a)-(z)) and some by other laws (§§ 6275-6276.48). These include:

- **Attorney-Client discussions** are confidential, even if the agency is the client, but the agency (not the lawyer) may waive secrecy. (§§ 6254(k), 6254.25, 6276.04)
- Appointment calendars and applications, phone records, and other records which impair the **deliberative process** by revealing the thought process of government decision-makers may be withheld only if "the public interest served by not making the record[s] public clearly outweighs the public interest served by disclosure of the record[s]." (§ 6255; *Times Mirror v. Superior Ct.*, 53 Cal.3d 1325 (1991); *CFAC v. Superior Ct.*, 67 Cal.App.4th 159 (1998); *Rogers v. Superior Ct.*, 19 Cal.App.4th 469 (1993)) If the interest in secrecy does not clearly outweigh the interest in disclosure, the records must be disclosed, "whatever the incidental impact on the deliberative process." (*Times Mirror v. Superior Ct.*) The agency must explain, not merely state, why the public interest does not favor disclosure.

- **Preliminary drafts, notes and memos** may be withheld only if: (1) they are "not retained...in the ordinary course of business" and (2) "the public interest in withholding clearly outweighs the public interest in disclosure." Drafts are not exempted if: (1) staff normally keep copies; or (2) the report or document is final even if a decision is not. (§ 6254(a)) Where a draft contains both facts and recommendations, only the latter may be withheld. The facts must be disclosed. (*CBE v. CDFA.*, 171 Cal.App.3d 704 (1985))
- **Home Addresses** in DMV, voter registration, gun license, public housing, local agency utility and public employee records are exempt, as are addresses of certain crime victims. (§§ 6254(f),(u), 6254.1, 6254.3, 6254.4, 6254.16, 6254.21)
- **Records concerning agency litigation** are exempt, but only until the claim is resolved or settled. The complaint, claim, or records filed in court, records that pre-date the suit (e.g., reports about projects that eventually end in litigation), and settlement records are public. (§§ 6254(b), 6254.25; *Register Div. of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal. App. 3d 893 (1984))
- **Personnel, medical and similar files** are exempt only if disclosure would reveal intimate, private details. (§ 6254(c)) Employment contracts are not exempt. (§ 6254.8)
- **Police incident reports, rap sheets and arrest records** are exempt (Penal Code §§ 11075, 11105, 11105.1), but information in the "police blotter" (time and circumstances of calls to police; name and details of arrests, warrants, charges, hearing dates, etc.) must be disclosed unless disclosure would endanger an investigation or the life of an investigator. Investigative files may be withheld, even after an investigation is over. (Gov. Code § 6254(f); *Williams v. Superior Ct.*, 5 Cal. 4th 337 (1993); *County of L.A. v. Superior Ct.*, 18 Cal. App. 4th 588 (1994). Identifying data in police personnel files and misconduct complaints are exempt, but disclosure may be obtained using special procedures under Evidence Code section 1043.
- **Financial data** submitted for licenses, certificates, or permits, or given in confidence to agencies that oversee insurance, securities, or banking firms; **tax, welfare, and family/adoption/birth** records are all exempt. (§§ 6254(d),(k),(l), 6276)

# A POCKET GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

A SERVICE OF:  
**THE FIRST AMENDMENT PROJECT  
SOCIETY OF PROFESSIONAL  
JOURNALISTS (Nor. Cal.)**

## HOW TO USE THIS GUIDE

This pocket guide is intended to be a quick reference and provide general information to journalists and citizens. It addresses some common public records problems, but does not substitute for research or consultation with a lawyer on detailed questions. This guide, current as of December 3, 2003.

## FOR MORE INFORMATION OR HELP:

FIRST AMENDMENT PROJECT.....510/208-7744  
[www.thefirstamendment.org](http://www.thefirstamendment.org)

Society of Professional Journalists,  
NORTHERN CALIFORNIA CHAPTER.....415/338-7434  
[www.spj.org/norcal](http://www.spj.org/norcal)

California First Amendment Coalition.....916/974-8888  
[www.cfac.org](http://www.cfac.org)

*Funding provided by the Sigma Delta Chi Foundation  
of the Society of Professional Journalists*



## **QUICK GUIDE to the CALIFORNIA PUBLIC RECORDS ACT**

*Under the California Constitution and the California Public Records Act (CPRA), most government records are open to the public. All Los Angeles City offices, departments, agencies, commissions, and neighborhood councils must follow the CPRA.*

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### **What is the CPRA?**

The California Public Records Act (CPRA) is the law that governs access to public records. The purpose of the CPRA is to permit the public to understand how government conducts the people's business.

### **Does the law apply to LA City government?**

Yes. The CPRA covers all California state and local government agencies. All City departments, offices, agencies, commissions and neighborhood councils must make their records available to the public.

### **Who can make a request?**

Any member of the public can make a CPRA request for public records.

Members of the public include:

- individuals
- businesses and
- organizations

### **What is a public record?**

A public record is any writing or communication created or held by a public official that can be reproduced.

Public records include:

- handwritten notes
- typed documents
- e-mails
- computer files
- faxes

- photographs
- diagrams
- video and audiotapes
- maps

### **Does the request have to be in writing?**

No. The request can be written or verbal. The member of the public does not have to put their request in writing.

### **What is the deadline for responding to a CPRA request?**

You must respond to the request in **10 calendar days**. You must release the requested records unless they are exempt (see below).

Even if part or all of the record is protected by an exemption, you still must respond to the requestor and explain why the record is exempt.

In unusual circumstances, you can ask the requestor for an additional 14 calendar days to respond.

### **What if my agency does not have the record?**

If your agency does not have the record, you do not have to go to other agencies to find it. However, **you must reply to the requestor** and explain that they should contact another City department or agency.

## **Do I have to assist a requestor?**

**Yes.** You must help requestors identify records and information your agency has which are relevant to the request. You must also suggest ways to overcome any practical basis for denying the request.

## **Are any records protected?**

**Yes.** Some specific types of records are exempt and do not have to be released.

Types of exempt records include:

- attorney-client communications
- personnel, medical or similar information, which if released would be an unwarranted invasion of privacy
- law enforcement investigations

*You can only withhold the exempt information.* If the request also asks for other information that is not protected, *you must release it.* If the exempt information is only part of the document, you have to redact (delete or black out) the protected information and release the rest of the document.

## **What fees apply to CPRA requests?**

You cannot charge a research fee or charge to inspect documents.

However, you can charge for copies. If you use a City-owned copy machine, the cost is \$1 per request and \$.10 per page for documents for up to 8.5 x 14. For larger documents or electronic records, the cost is the actual cost of producing a copy.

If you use an outside vendor, the cost is the actual cost that the vendor charged.

## **What happens if I don't respond to a request or wrongfully withhold a record?**

Requestors can sue a public agency to gain access to public records. If the requestor is successful, the City will probably have to pay their attorneys fees and costs.

## **Do I have to create new documents to respond to a CPRA request?**

**No.** The CPRA applies to existing public records and does not require that you assemble new reports or lists to satisfy the requestor's research purposes.

## **Can records be selectively disclosed?**

**No.** In most instances, if an agency makes a record available to one member of the public, then they must make it available to any member of the public who would like to see it.

## **Need Help?**

If you have questions about a CPRA request, contact your neighborhood council's advocate at DONE. The City Attorney's Office provides legal advice and can help determine if a particular record is exempt.

**Neighborhood Council Advice Division  
Office of the City Attorney  
200 North Main St., 7<sup>th</sup> Floor  
Los Angeles, CA 90012  
213- 978-8132 phone  
213-978-8222 fax**

## 4. How to Conduct a Public Meeting

## HOW TO CONDUCT A PUBLIC MEETING

As a neighborhood council which operates in a representative capacity and is subject to the open meeting laws of the state of California (The "Brown Act") it is important to conduct your meetings efficiently and in a manner that is fair and inclusive and leaves one with the impression that everyone was treated fairly and objectively. Since the bulk of your Neighborhood Council work is accomplished at regular, and sometimes, special meetings of your entire board, or committees, it is important to know how to effectively conduct a public meeting.

**Professionalism.** It is important that members of the public, your stakeholders and fellow board members respect the process. For them to do that, your meetings should be conducted in a professional manner to demonstrate that the board members are taking their roles as Neighborhood Council leaders seriously. Your Neighborhood Council President is the leader chosen to guide your Neighborhood Council and the tone of your Neighborhood Council will be delivered from the leadership of the person you elect or select as President. Your President, however, has no greater authority than granted by the board and your board rules and every board member has an equal vote on matters that come before them. If your President is new to conducting meetings, he or she should take advantage of the training programs that the Department of Neighborhood Empowerment ("DONE") offers through its Empowerment Academy throughout the year. Professional courtesy to one another and to members of the public and stakeholders is a must. The President or Chair must ensure that such courtesies during public meetings take place. While it is appropriate for your members to disagree and indeed, heartily debate issues, those debates should not devolve into a shouting match or worse, as the productiveness of your meetings will soon deteriorate.

At every Neighborhood Council meeting, individual board members should be prepared for the meeting, and the President should provide an opportunity for each board member to weigh in on the issue at hand. Members of the public and your stakeholders should be able to understand what is going on at the meeting and the decision making process. Having an agenda that clearly describes the items that will be discussed, one of the requirements of the Brown Act, will assist in guaranteeing that people understand what will be discussed at the meeting. While not required, if your Neighborhood Council has developed specific rules about how meetings are to be conducted, those should be explained in the beginning of the meeting after it has been called to order by the Chair or President. Those "ground rules" might include an explanation of the order of agenda items, if there are any speaker time limits, how time limits will operate, and in the case of a presentation of a matter, the order of the presenters, etc. This should be done at the beginning of every meeting to ensure that people know and understand these ground rules and as a reminder to others.

Routine items, such as the approval of Minutes may be handled by a “consent” motion (no formal vote need be taken) unless there are corrections to be made to the minutes.

**Knowledge.** It is important that all of your board members understand the rules under which your Neighborhood Council operates. Thus, all board members should be familiar with and have their own personal copies of your Neighborhood Council’s bylaws and any other standing or procedural rules.<sup>1</sup> A *basic* understanding of parliamentary rules is also helpful in conducting your meetings. but keep in mind that not all parliamentary rules of procedure will necessarily apply to your Neighborhood Council, because as a City entity, meetings are conducted differently than those in general assemblies.<sup>2</sup> DONE has informational pamphlets about parliamentary procedures that can assist your board members. Your public meeting will be governed by the Brown Act. Gov’t Code § 54950 et seq. All NC board members should review the materials that DONE and the City Attorney have provided, should attend the training classes offered and have a working knowledge of the Act to avoid inadvertent violations of the law. Your board should have a mechanism to educate new board members to their NC positions and ensure that they have been provided training materials.

**Conflicts of Interest.** Be alert to potential conflicts of interests on upcoming agendas that might affect your ability to participate in the discussion and action of a particular item. Not being able to vote on an item also may affect the quorum necessary for the board to act on the item. Should you be required to recuse (not participate or vote on an item) yourself from an item because of a conflict, you should notify your Board President or Secretary as soon as possible. At the meeting, if there is an item that you may not participate in due to a conflict of interest, you must make a brief public announcement identifying either the economic interest or the personal interest under the common law rules that require your recusal, and leave the room while the matter is pending. You may return to the meeting and fully participate in the meeting after the item has been dispensed with.

**Preparation.** Be familiar with the issues that are coming up at your meeting so you can make an informed decision and avoid “voting with the pack.” Your meetings will run more smoothly and your Neighborhood Council will be considered an effective advocate for your community by both the public and the City decisionmakers that you are advising, if your

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<sup>1</sup> If your Neighborhood Council has not yet adopted procedural rules of order, you may wish to consider doing so as these rules can help guide your board as you conduct your public meetings. Rules of Order generally set forth information, including but not limited to, election of officers, meeting days and time, who presides over the meeting in absence of the President, the usual order of business that will take place at meetings, how special meetings are called, how committees are created, how votes are taken, whether NC board members may “abstain” from voting, how public comment is taken, etc.

<sup>2</sup> For example, while Robert’s Rules of Order would allow a member of an assembly to make a motion from the floor, Neighborhood Councils are governed by a board which takes action on items, and thus make the motions that move an item forward.

board members understand the issues at hand and are able to engage and debate the issues at the meetings. If materials are disseminated before your meetings, it is essential that all Board members review them before the meeting so that you are ready to engage in discussion on the item.

**Meeting Space and Setup.** Be familiar with your meeting space needs so that you can comfortably accommodate all members of the public who wish to attend your meetings. If you need special equipment (video, audio, speakers, translation devices) make sure you contact DONE staff early enough so that they can accommodate your request. Make sure your meeting space complies with the Americans With Disabilities Act and is accessible to the disabled. If in doubt, contact the DONE who can seek assistance from the City's Department of Disability. For safety purposes, know where the emergency exits are at your meeting facilities and inform your local law enforcement agency of your meeting locations. If need be, if you anticipate problems at any particular meetings, you should request a member of the Los Angeles Police Department to be present, which may deter unruly conduct.

**Regular and Special Meetings.** Under the Brown Act, you can have regular or special meetings. Special meetings may be called and the agenda must be posted within 24 hours. Notice of the special meeting must be delivered to each NC board member and the notice must contain the description of the topics that will be discussed and acted upon at the meeting. Special meetings should be called for a specific purpose, and no other business other than that for which the special meeting was called, may be acted upon.<sup>3</sup> The Standard Meeting Procedures discussed below may apply to either a special or regular meeting.

**Standard Meeting Procedures.** Under the Plan and Ordinance governing the Citywide system of Neighborhood Councils, the governing body (the "NC Board") makes its decisions at regular and special meetings of the Neighborhood Council. Thus, the public perception of the effectiveness of your Neighborhood Council is based, in large part, on the Neighborhood Council's conduct at meetings. At a minimum, it is important to treat everyone fairly and objectively and each meeting should be run for the benefit of the person who has never before attended one of your meetings. The following is a standard meeting format, followed by many city commissions:

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<sup>3</sup> Special meetings are generally those meetings "held at a time different from that of any regular meeting, and convened only to consider one or more items of business specified in the call of the meeting." See, Robert's Rules of Order, 10th Ed. § 9, p. 89; See also, Gov't Code 54956.

## Opening the Meeting.

1. The President calls the meeting to order.<sup>4</sup>
2. The NC Secretary will call the roll and identify whether there is a quorum present
3. The President or Secretary reviews the Board's procedures at the beginning of each meeting (This may include use of speaker cards, time limits for public comment, how public comment will be taken, etc.)
4. The President announces any changes to the agenda (whether items will be taken out of order/continued etc.)

## Conducting the Meeting.

1. **Follow the Agenda.** Under the Brown Act, the NC board can only "*discuss, deliberate or take action*" on items that are listed on the agenda. Your President should ensure that discussion on each item by your Board does not stray too far afield from the topic that is listed on the agenda. The President should announce and describe each item that is being discussed and acted upon. For each item, the President should invite questions from the Board, open the item for public comment, close the public comment period, and then open the item for discussion by the board. All board members should be given the *opportunity* to weigh in on the issue. The President should govern the flow of discussion and invite the board members to comment.

2. **Public Hearings.** On occasion, your NC board may wish to hold a public hearing on a particular development project, or other matter in which there are proponents and opponents who wish to present their position on the matter for your NC board's consideration and/or formal recommendation to the City's decision makers. These may include hearings that may in the future be delegated to you by the City Council pursuant to City Charter § 908. Minimum rules of due process will apply to assure that individual rights to be heard are not implicated. Again, your neighborhood council may wish to adopt Rules of Order to determine how your public hearings will be conducted, how time limits (if any) are to be established, the order of testimony, etc. An example of a format where a developer ("applicant") is proposing a project includes the following steps:

- a. The President announces the matter and opens the public hearing and identifies the order in which "testimony" will occur and any applicable time limits.
- b. The "applicant" makes a presentation on the project.

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<sup>4</sup> Some Neighborhood Councils open with a Pledge of Allegiance or Invocation. These are optional. However, be aware that the use of Invocations may not be sectarian. See, *Rubin v. City of Burbank* (2002) 101 Cal. App. 4th 1194 (rev. den. 2002 Cal Lexis 8622). See also, attached Letter to DONE, dated December 3, 2002.

- c. NC Board members may ask questions of the "applicant."
- d. Identified "opponents" of the project may speak; if none, public comments may be taken on the project.
- e. "Applicant" is allowed to present a rebuttal, if any, to comments.
- f. The President closes the public hearing on the item.
- g. The President invites discussion from the Board and by motion and a second to that motion, a "vote" or "recommendation" regarding the project, if sought, is taken.
- h. After the vote or recommendation, the President announces the results. (ex: "The motion [carried/failed] The recommendation of the board will be to \_\_\_\_\_ the project.")

**3. Making Decisions.** Your actions should be done publicly at the meeting pursuant to the Brown Act. Oral or hand votes can be taken from all the NC board members and your Secretary or President should announce the results orally after the motion is acted upon. Your board Rules of Order should determine whether board members may abstain or not from voting on motions coming before it.

**Maximizing The Meeting Potential.** Holding an effective meeting will help your neighborhood council reach its potential and effectively utilize your volunteer board resources. In effective meetings, members of the body focus on the subject under consideration in an effort to reach a conclusion--either through consensus or by majority vote. The President must be able to keep fellow board members from focusing on personalities, or issues that have nothing to do with the item before it. The President should ensure that there is an open dialogue and opportunity to be heard by all the parties: applicants, opponents, stakeholders, members of the public and fellow NC board members. The following are guideposts<sup>5</sup> that will help any Chair or President run an effective meeting and maximize the potential of your Neighborhood Council:

- 1. Start the meeting on time.**
- 2. State the reasons for the meeting** (Opening statement of the NC meeting and that there are items for consideration/action) Inform the attendees of any time restraints

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<sup>5</sup> These ideas were presented in the League of California Cities, Planning Commissioner's Handbook, 2000.



### **3. Helpful Hints:**

- a. Ask for clarification and restraint when someone rambles or deviates from the discussion.
- b. Ask to hold off new topics while another is under discussion.
- c. Constructively evaluate an idea not yet accepted before totally dismissing it.
- d. Get back to people when you have asked them to wait.
- e. Keep the public informed of the place on the agenda and what stage it is at.
- f. Prevent people from talking at the same time.
- g. Protect fellow board members and the public from verbal attacks by others.
- h. Keep comments directed to the Chair, not between members, stakeholders or members of the public.
- i. Restate motions before they are voted upon.
- j. Keep an eye on the clock and signal, in advance, that the meeting deadline is about to end.
- k. Keep on the schedule, be tactful.
- l. Call for a break during long meetings and reconvene on time.

### **4. Facilitate discussion by:**

- a. Asking for suggestions from the group as a whole.
- b. Checking whether a suggestion is acceptable to those who expressed concerns.
- c. Encouraging incomplete or tentative ideas.
- d. Attempting to obtain consensus.
- e. Keeping the discussion focused.
- f. Intervening when members disagree.
- g. Not using powers of the chair unfairly.
- h. Remaining impartial during heated debate.
- i. Probing for the concern behind a question.

### **5. At the close of the meeting:**

- a. Summarize the results or decisions of the meeting.
- b. Indicate followup actions to be taken and by whom.
- c. Indicate when the next meeting will take place.
- d. Thank the members and the public for their attendance.

**Conclusion.** While there is no one way to conduct any particular meeting, we hope this guide will establish some basis parameters and suggestions to help you more effectively conduct your meeting.

(103177)





WRITER'S DIRECT DIAL: (213) 978-2236

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**OFFICE OF THE CITY ATTORNEY**  
ROCKARD J. DELGADILLO  
CITY ATTORNEY

December 3, 2002

Greg Nelson, General Manager  
**Department of Neighborhood Empowerment**  
305 East First Street  
Los Angeles, CA 90012

Re: Rubin v. City of Burbank and Moments of Inspiration

Dear Mr. Nelson:

This letter is to apprise you of a recent decision by the California Court of Appeal, *Rubin v. City of Burbank* (2002) 101 Cal. App. 4th 1194, which involved an invocation given at a Burbank City Council meeting. This office has already alerted the City Council to the issues raised in that case by Report No. R02-0373 dated September 20, 2002, which Report is attached hereto.

In the *Rubin* case, a challenge was made to the Burbank City Council beginning one of its meeting with an invocation that invoked the name of "Jesus Christ." The court held that the Burbank prayer was sectarian in nature and thus violated the Establishment Clause of the First Amendment of the United States Constitution. As noted in the office's Report to Council, the City of Burbank was permanently enjoined from "knowingly and intentionally allowing sectarian prayer at City Council meetings."

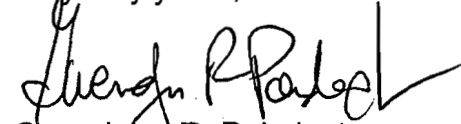
In accordance with the court of appeal decision, this office has advised the City Council that any invocation, prayer or "Moment of Inspiration" which is offered to begin its Council meetings, may not be sectarian. As City agencies, neighborhood councils will also have to abide by the parameters in that decision; accordingly, the advice in Report No. R02-0373 is equally applicable to the neighborhood councils in their conduct of public meetings. The Department should notify all neighborhood councils of this recent court decision and our Report to Council to ensure that neighborhood councils comport with this ruling. Neighborhood Council board members, should be advised that if they wish to begin their public meetings with any invocation, prayer, "Moment of Inspiration" or the like, that sectarian prayers are *not* permitted. Your department staff should also be made aware of this decision and the advice provide by our office in Report No. R02-0373.



Greg Nelson, General Manager  
**Department of Neighborhood Empowerment**  
Page 2

I have also attached a copy of the court of appeal decision for your information. My division will be happy to assist you in developing the language to communicate this issue to the neighborhood council board members. If you have any questions about this matter please feel free to contact me at (213) 978-2236.

Very truly yours,



Gwendolyn R. Poindexter  
Managing Assistant  
Neighborhood Council Advice Division

GRP:mg

Attachments

cc: Claudia Dunn  
Assistant General Manager

84383



REPORT NO. R02-0373  
September 20, 2002

**OFFICE OF THE CITY ATTORNEY**  
ROCKARD J. DELGADILLO  
CITY ATTORNEY

Honorable Alex Padilla  
President, Los Angeles City Council  
200 North Spring Street  
Room 465, City Hall  
Los Angeles, California 90012

Re: Moment of Inspiration

Honorable Council President Padilla:

Last week a case was decided by the California Court of Appeal which may affect the Los Angeles City Council. The case, *Irv Rubin v. City of Burbank*, 2002 DJDAR 10353, involves an invocation given at a Burbank City Council meeting.

The Burbank City Council begins each of its meetings with an invocation. The invocation is usually given by a member of a non-denominational organization of clergy or a representative of another organization, such as the YMCA. A list is provided to the City Clerk with names of volunteers. Neither the City Council nor the City Clerk has anything to do with who gives the invocation. On the occasion involved in this case, the invocation was given by a minister of the Church of Jesus Christ of the Latter Day Saints. At the end of his short invocation, the minister said: "We are grateful heavenly Father for all thou has poured out on us and we express our gratitude and our love in the name of Jesus Christ. Amen."

The City of Burbank was sued for allowing sectarian prayer in a City Council meeting. The trial court found that the prayer was sectarian and, as such, violated the Establishment Clause of the First Amendment of the United States Constitution. The City was permanently enjoined from "knowingly and intentionally allowing sectarian prayer at City Council meetings." The Court ordered Burbank to "advise anyone conducting a prayer as part of the City Council meeting that sectarian prayers are not permitted."

The City of Burbank appealed the case. However, the Court of Appeal in its decision last week upheld the trial court's determination. In its opinion, the Court of Appeal found that "the interest in protecting and safeguarding the fundamental right to maintain a separation between church and state and to demand neutrality when the interests of religion and government intersect is increasingly more important as our nation becomes more pluralistic."

Honorable Alex Padilla  
September 20, 2002  
Page 2

Each week, the Los Angeles City Council begins its Tuesday Council meeting with a "Moment of Inspiration." Since it is often a member of the clergy who gives this "Moment of Inspiration," the Burbank case will have an impact.

The City of Burbank is still deciding whether it will appeal this case. However, at this time, the Burbank case is the current state of the law in California. Therefore, it is the advice of this office that the City Council notify all persons who are to give the "Moment of Inspiration" that any prayer or invocation not be sectarian.

For your convenience, we are attaching a copy of the Daily Journal report on the Burbank case. This office will keep you apprised of any changes which may occur if Burbank decides to appeal. Please contact Gail Weingart at (213) 485-5478 if you any questions.

Sincerely,



Rockard J. Delgadillo  
City Attorney

RJD:GCW:lee  
Enclosure

cc: City Clerk  
Chief Legislative Analyst

#82055

LEXSEE 2002 Cal. App. LEXIS 4619

**IRV RUBIN et al., Plaintiffs and Respondents, v. CITY OF BURBANK, Defendant  
and Appellant.**

**B148288**

**COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT,  
DIVISION TWO**

*101 Cal. App. 4th 1194; 124 Cal. Rptr. 2d 867; 2002 Cal. App. LEXIS 4619; 2002  
Cal. Daily Op. Service 8272; 2002 Daily Journal DAR 10353*

**September 9, 2002, Filed**

**NOTICE:**

[\*\*\*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

**SUBSEQUENT HISTORY:**

Order Modifying Opinion and Denying Rehearing No Change in Judgment September 9, 2002.

**PRIOR HISTORY:**

APPEAL from a judgment of the Superior Court of Los Angeles County. Los Angeles County Super. Ct. No. BC 221942. Alexander H. Williams III, Judge.

**DISPOSITION:**

Affirmed.

**COUNSEL:**

Dennis A. Barlow, City Attorney and Juli C. Scott, Chief Assistant City Attorney for Defendant and Appellant.

John L. Gordon, Stuart J. Roth, David A. Cortman, Gregory N. Bryl and American Center for Law and Justice for Mayor Margaret Clark, Zane Han, Gary Clark, Joe Velasquez and Ricardo Quevedo as Amici Curiae on behalf of Defendant and Appellant.

Richards, Watson & Gershon, T. Peter Pierce, Amy Greyson and Carrie H. Ahn for Thirty-Four California Cities as Amici Curiae on behalf of Defendant and Appellant.

Roger Jon Diamond for Plaintiffs and Respondents.

Edward Tabash for Council for Secular Humanism as Amicus Curiae on behalf of Plaintiffs and Respondents.

**JUDGES:**

DOI TODD, J. We concur: NOTT, Acting P.J., ASHMANN-GERST, J.

**OPINIONBY:**

DOI TODD

**OPINION:**

[\*\*868] [\*1197] Objecting to an invocation given at a Burbank City Council meeting which ended with an expression of gratitude and love "in the name of Jesus Christ," plaintiffs [\*\*\*2] sought and were granted injunctive and declaratory relief against the City. The trial court ruled that the inclusion of "sectarian prayer" in city council meetings violated the Establishment Clause of the United States Constitution, and it enjoined the City from allowing sectarian prayer at city council meetings. The trial court also ordered the City to "advise anyone conducting a prayer as part of the City Council meeting that sectarian prayers are not permitted." The City has appealed and contends the judgment is "contrary to a firmly established body of constitutional jurisprudence that holds that the practice of legislative invocations which do not proselytize, promote or disparage any single religion" do not violate the Establishment Clause of the First Amendment. The City further contends that the court order amounts to unconstitutional censorship and viewpoint discrimination.

Because we conclude the invocation violated the Establishment Clause of the First Amendment of the United States Constitution under *Marsh v. Chambers*

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n2 Amici in support of the City express concern about the effect the trial court's decision will have on their own cities' practice of prayers at council meetings, and that they too will be forced to end the practice of allowing "sectarian" prayers at their council meetings.

n3 The Council for Secular Humanism takes the position that no branch of government should favor religion over non-belief.

[\*\*\*7]

## DISCUSSION

### Standard of Appellate Review

[HN1] We are presented with constitutional issues, which we review de novo. (*Berry v. City of Santa Barbara* (1995) 40 Cal. App. 4th 1075, 1082, 47 Cal. Rptr. 2d 661.) We must decide whether the orders of the trial court violate the First Amendment to the United States Constitution, independent of the trial court's ruling or reasoning. (*Redevelopment Agency v. County of Los Angeles* (1999) 75 Cal. App. 4th 68, 74, 89 Cal. Rptr. 2d 10.)

### *Legislative invocations do not violate per se the Establishment Clause.*

Both sides agree that this case is governed by *Marsh v. Chambers*, *supra*, 463 U.S. 783, the only United States Supreme Court case that has decided the issue of legislative prayer. City urges that the judgment of the trial court is an unconstitutional extension of *Marsh*. Respondents argue that the trial court correctly found the invocation unconstitutional. n4

n4 Respondents, while otherwise taking the position that *Marsh* should be overruled, concede that for the purposes of this case *Marsh* is controlling.

[\*\*\*8]

The issue presented in *Marsh*, as stated by Chief Justice Burger writing on behalf of the majority, was "whether the Nebraska Legislature's practice of [\*1200] opening each legislative day with a prayer by a chaplain paid by the State violates the Establishment Clause of the First Amendment." (*Marsh*, *supra*, 463 U.S. at p. 784.) In *Marsh*, a member of the Nebraska Legislature sought to enjoin this practice claiming that it violated the Establishment Clause. The District Court "held that the Establishment Clause was not breached by the prayers,

but was violated by paying the chaplain from public funds." (*Id.* at p. 785.) On appeal, the Eighth Circuit applied the three-part test established by the court in *Lemon v. Kurtzman* (1971) 403 U.S. 602, 29 L. Ed. 2d 745, 91 S. Ct. 2105. The *Lemon* test set forth a standard for evaluating statutory violations of the Establishment Clause finding no violation if the following were proven: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government [\*\*\*9] entanglement with religion.'" (*Id.* at pp. 612-613, citations omitted.) n5 The Eighth Circuit [\*\*\*871] held that the Nebraska policy violated all three elements of the test, and prohibited the state from continuing its established practice. Certiorari was granted by the Supreme Court.

n5 For application of this standard, see, e.g., *Committee for Public Education v. Regan* (1980) 444 U.S. 646, 653, 63 L. Ed. 2d 94, 100 S. Ct. 840; *Committee for Public Education v. Nyquist* (1973) 413 U.S. 756, 772-773, 37 L. Ed. 2d 948, 93 S. Ct. 2955; *Hunt v. McNair* (1973) 413 U.S. 734, 741, 37 L. Ed. 2d 923, 93 S. Ct. 2868.

After a review of the historical precedent of prayer in the public legislative context, the Supreme Court found that such prayer was "deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment [\*\*\*10] and religious freedom." (*Marsh*, *supra*, 463 U.S. at p. 786.) The court noted, "On September 25, 1789, three days after congress authorized the appointment of paid chaplains, final agreement was reached on the language of the Bill of Rights .... Clearly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress." (*Marsh*, 463 U.S. at p. 788.)

The majority in *Marsh* did not evaluate Nebraska's prayer tradition under the *Lemon* test. Instead, as Justice Brennan noted in dissent, the court "carved out an exception to the Establishment Clause rather than reshaping Establishment Clause doctrine to accommodate legislative prayer." (*Marsh*, *supra*, 463 U.S. at p. 796 (dis. opn. of [\*1201] Brennan, J.)) The majority concluded that [HN2] the unique history of legislative prayer, which had been established by the



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members of the First Congress and practiced over two centuries, evidenced the lack of threat to the Establishment Clause from legislative prayer: "We conclude [\*\*\*11] that legislative prayer presents no more potential for establishment than the provision of school transportation [citation], beneficial grants for higher education [citation], or tax exemptions for religious organizations [citation]." (*Marsh, supra*, 463 U.S. at pp. 790-791.)

In reviewing the specific prayer in question, the court in *Marsh* found that its characteristics, that a Presbyterian clergyman had been selected to give the invocation for 16 years, that the chaplain was paid at public expense, and that the prayers were in the Judeo-Christian tradition, did not invalidate the practice. (*Marsh, supra*, 463 U.S. at p. 793.) But the court specifically noted in the margin that "although some of [the] earlier prayers were often explicitly Christian, [the minister] removed all references to Christ after a 1980 complaint from a Jewish legislator." (*Marsh*, 463 U.S. at p. 793), fn. 14.

Finally, the court set forth what has since been characterized as the *Marsh* test: [HN3] "The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage [\*\*\*12] any other, faith or belief. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer." (*Marsh, supra*, 463 U.S. at pp. 794-795.)

*The trial court's review was not an unconstitutional extension of Marsh.*

The City, in defending its practice of opening the city council meetings with prayer, contends the trial court misapplied the *Marsh* test and created its own legal standard "which has no precedential base" and is "contrary to established law." The [\*\*872] City asserts the invocations did not serve the purpose of proselytizing, advancing or disparaging any one religion and therefore did not violate the Establishment Clause. Based on that view, the City argues the trial court violated the explicit holding in *Marsh* when it evaluated and parsed the content of the prayer given as the council's invocation on November 23, 1999, improperly focusing on the content of the very last sentence of the prayer that referred to "Jesus Christ" and basing its determination that the prayer was sectarian on that reference alone.

The City and amici in support of the City's position contend that under *Marsh* the appropriate [\*\*\*13] test involves an examination of the proselytizing or disparaging content of the prayer, rather than a determination of the [\*1202] "sectarian" nature of an

individual prayer. They argue that the *Marsh* court's mention in footnote 14 of the removal of all references to Christ in the Nebraska prayer is merely dicta in an anecdotal footnote, and this factor is never substantively addressed in the opinion. Thus, the City argues that the trial court's apparent reliance on footnote 14 was misplaced and that the trial court "created its own legal standard which has no precedential support and is in fact contrary to the law."

Respondents contend that the prayer in *Marsh* survived constitutional scrutiny because any reference to Jesus Christ had been removed and that *Marsh* supports the decision of the trial court here.

Amici Margaret Clark et al. argue that as long as the invocation was not used to advance the Christian faith or disparage other faiths, the prayer passed constitutional muster under *Marsh*.

It cannot reasonably be argued that the prayer here, with a specific reference to Jesus Christ, is on the same constitutional footing as the prayer before the court in *Marsh*, [\*\*\*14] from which all reference to a specific religion had been excised. It was therefore incumbent upon the trial court to determine whether "the prayer opportunity had been exploited to proselytize or advance any one, or to disparage any other, faith or belief." (*Marsh, supra*, 463 U.S. at pp. 794-795.)

In *Allegheny County v. Greater Pittsburgh ACLU* (1989) 492 U.S. 573, 106 L. Ed. 2d 472, 109 S. Ct. 3086, the court considered whether a December holiday display of a creche in a county courthouse and a menorah outside a city and county building violated the Establishment Clause. In deciding that question the majority stated that [HN4] "whatever else the Establishment Clause may mean ..., it certainly means at the very least that government may not demonstrate a preference for one particular sect or creed (including a preference for Christianity over other religions). 'The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.' [Citation.]" (*Id.* at p. 605.) Nor can government appear "to take a position on questions of religious belief or from 'making adherence to a religion relevant [\*\*\*15] in any way to a person's standing in the political community.'" (*Id.* at p. 594, quoting from *Lynch v. Donnelly* (1984) 465 U.S. 668, 687, 79 L. Ed. 2d 604, 104 S. Ct. 1355.)

In response to Justice Kennedy's concern about the court's "latent hostility" or "callous indifference" towards religion, Justice Blackmun writing for the majority stated: "On the contrary, [HN5] the Constitution mandates that the [\*1203] government remain secular, rather than affiliate itself with religious beliefs or institutions, precisely in order to avoid discrimination

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among citizens on the basis of their religious faiths. [P] A secular state, it must be remembered, is not the same as an atheistic or [\*\*873] antireligious state. A secular state establishes neither atheism nor religion as its official creed." (*Allegheny, supra*, 492 U.S. at p. 610, 109 S. Ct. at p. 3110.)

The court in *Allegheny*, differentiating between the secular and religious aspects of the celebration of Christmas, stated: "Celebrating Christmas as a religious, as opposed to a secular, holiday, necessarily entails professing, proclaiming, or believing that Jesus of Nazareth, born in a manger in Bethlehem, is the Christ, the [\*\*\*16] Messiah. If the government celebrates Christmas as a religious holiday (for example, by issuing an official proclamation saying: 'We rejoice in the glory of Christ's birth!'), it means that the government really is declaring Jesus to be the Messiah, a specifically Christian belief. In contrast, confining the government's own celebration of Christmas to the holiday's secular aspects does *not* favor the religious beliefs of non-Christians over those of Christians. Rather, it simply permits the government to acknowledge the holiday without expressing an allegiance to Christian beliefs, an allegiance that would truly favor Christians over non-Christians." (*Allegheny, supra*, 492 U.S. at pp. 611-612.)

The court's discussion of *Marsh* in *Allegheny* reflects that it considered the removal of references to Christ to have been essential to the *Marsh* ruling: "Indeed, in *Marsh* itself, the Court recognized that not even the 'unique' history of legislative prayer can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief. The legislative prayers involved in *Marsh* did not violate this [\*\*\*17] principle because the particular chaplain had 'removed all references to Christ.'" (*Allegheny, supra*, 492 U.S. at p. 603.)

It is clear that the factual predicate upon which the Supreme Court ruled in *Marsh* was a legislative invocation from which all references to a particular religion have been purposely excised. We therefore agree with respondents that the trial court's decision was correct under *Marsh*.

#### The reference to "Jesus Christ" in the invocation violated the Establishment Clause.

We review the invocation at issue in light of the foregoing considerations. The expression of gratitude and love "in the name of Jesus Christ" was an [1204] explicit invocation of a particular religious belief. By directing the prayer to "Our Father in Heaven ... in the name of Jesus Christ" the invocation conveyed the message that the Burbank City Council was a Christian

body, and from this it could be inferred that the council was advancing a religious belief.

The City argues that because only about 20 percent of the volunteers providing the legislative prayer mentioned Jesus Christ in the invocation, it is clear that the prayer opportunity was not being exploited to advance [\*\*\*18] or disparage any one faith or belief. This argument promotes a test that unless a certain incidence of unconstitutional prayer is proven, it cannot be established that one religious belief or faith is being proselytized or advanced over another. We disagree. Rather, we interpret *Marsh* to mean that [HN6] *any* legislative prayer that proselytizes or advances one religious belief or faith, or disparages any other, violates the Establishment Clause.

We therefore conclude that, [HN7] in accordance with the holding in *Marsh*, the invocation offered to Jesus Christ violated the Establishment Clause because it conveyed the message that Christianity was being advanced over other religions. The trial court was correct in its finding.

#### [\*\*874] The prohibition against "sectarian prayer" is within the mandate of *Marsh*.

City contends that imposing a standard prohibiting "sectarian prayer" is beyond the mandate of *Marsh*, and, indeed, that sectarian prayer in the context of a legislative invocation is constitutionally permitted. City argues that the trial court's review exceeded the only criteria imposed by *Marsh* to assess whether the "prayer opportunity has been exploited" for the [\*\*\*19] purposes of proselytizing, advancing, or disparaging any one belief or faith. (*Marsh, supra*, 463 U.S. at p. 795.) We disagree.

As we have discussed, in light of the specific references to the Christian faith in the invocation, as distinguished from the invocation in *Marsh* from which any such reference had been excluded by design, the trial court properly considered whether the prayer opportunity had been exploited for the purpose of proselytizing, advancing or disparaging any one belief or faith. In deciding that it had, the court found the reference to Jesus Christ rendered the prayer "sectarian."

[1205] [HN8] "Sectarian" is defined as relating to or characteristic of a sect. n6 A "sect" is defined as an organized ecclesiastical body, or a religious denomination. n7 The trial court's characterization of the invocation as "sectarian" was merely a definitional determination that the invocation unconstitutionally communicated a preference for one religious faith (or sect) over another. Returning again to the *Marsh* test, in concluding that the prayer was sectarian, the trial court determined that the prayer opportunity had been

exploited to advance one faith, Christianity, [\*\*\*20]  
over another. n8

n6 Webster's 10th Collegiate Dictionary  
(2001) page 1053.

n7 Webster's 10th Collegiate Dictionary,  
*supra*, page 1053.

n8 We interpret "exploit" here to mean to  
make productive use of for one's own advantage.  
(Webster's 10th Collegiate Dict., *supra*, p. 409.)

Requiring the council to advise prayer participants  
that sectarian prayers are not permitted does not amount  
to unconstitutional censorship or viewpoint  
discrimination.

City contends that by ordering the City to advise  
those who volunteer to give the council invocation that  
sectarian prayers are not permitted, the City is placed in  
the position of censoring the speech of those who seek to  
address the city council. City further contends that by  
"restricting those whose prayer traditions and beliefs  
require them to pray in the name of Jesus Christ, while  
allowing others to pray in a manner consistent with their  
beliefs" the trial court engaged in discrimination based  
on viewpoint or ideology, in violation of the speaker's  
[\*\*\*21] right to freedom of speech under the First  
Amendment. City relies on *Perry Ed. Assn. v. Perry  
Local Educators' Assn.* (1983) 460 U.S. 37, n9, 74 L. Ed.  
2d 794, 103 S. Ct. 948 *Cornelius v. NAACP Legal  
Defense & Ed. Fund* (1985) 473 U.S. 788, 87 L. Ed. 2d  
567, 105 S. Ct. 3439, and *Rosenberger v. Rector and  
Visitors of VA.* (1995) [\*\*875] 515 U.S. 819 n10, 132 L.  
Ed. 2d 700, 115 S. Ct. 2510 to support its contention.

n9 In *Perry*, a divided Supreme Court held  
that permitting access to teachers' mailboxes and  
interschool mail to an incumbent teachers' union  
and denying access to a rival union did not  
amount to viewpoint discrimination, because  
government can impose reasonable regulations on  
speech, as long as the limitations are necessary to  
serve a compelling state interest, are narrowly  
drawn to achieve that end, and are not an effort to  
suppress expression merely because public  
officials oppose the speaker's view. ( *Perry*,  
*supra*, 460 U.S. at pp. 45-46.)

n10 In *Rosenberger*, a divided Supreme  
Court held that denial of funding to a student  
newspaper with a Christian viewpoint from a  
university fund created to pay printing costs of

student publications was unconstitutional  
viewpoint discrimination, in that any benefit to  
religion would be incidental to the government's  
provision of services on a religion-neutral basis,  
and denial of funding would be based on the  
message being communicated. (*Rosenberger*,  
*supra*, 515 U.S. at pp. 829, 843-844.)

[\*\*\*22]

City correctly points out that "the government must  
abstain from regulating speech when the specific  
motivating ideology or the opinion or [\*\*1206]  
perspective of the speaker is the rationale for the  
restriction." (*Rosenberger*, *supra*, 515 U.S. at p. 829.)  
But this does not create carte blanche for the speaker.

[HN9] Whether the trial court's order amounted to  
unconstitutional censorship or viewpoint discrimination  
depends on the nature of the speech involved and the  
manner of restriction imposed. The question of whether  
prayer in the context of student-led, student-initiated  
invocations before football games at a public school was  
"private speech" protected by the Free Speech and Free  
Exercise Clauses of the First Amendment was answered  
by the Supreme Court in *Santa Fe Independent School  
Dist. v. Doe* (2000) 530 U.S. 290, 147 L. Ed. 2d 295, 120  
S. Ct. 2266. In concluding that such speech was not  
"private speech," the court noted that "these invocations  
are authorized by a government policy and take place on  
government property at government-sponsored school-  
related events." ( *Id.* at p. 302.) "We recognize the  
important role that public worship plays in many [\*\*\*23]  
communities, as well as the sincere desire to include  
public prayer as a part of various occasions so as to mark  
those occasions' significance. But such religious activity  
in public schools, as elsewhere, must comport with the  
First Amendment." ( *Santa Fe Independent School*, 530  
U.S. at p. 307.)

As to whether such speech would be perceived as  
public or private speech, the *Santa Fe* court said: "In  
cases involving state participation in a religious activity,  
one of the relevant questions is 'whether an objective  
observer, acquainted with the text, legislative history,  
and implementation of the statute, would perceive it as a  
state endorsement of prayer in public schools.' [Citation.]  
Regardless of the listener's support for, or objection to,  
the message, an objective [participant] will  
unquestionably perceive the inevitable pregame prayer as  
stamped with her school's seal of approval." (*Santa Fe*,  
*supra*, 530 U.S. at p. 308.) The court held that the  
invocation delivered over the school's public address  
system, supervised by school faculty, and in accordance  
with the school policy that explicitly encourages public  
prayer was not "private speech." ( *Id.* at p. 310.)

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The Ninth [\*\*\*24] Circuit in *Cole v. Oroville Union High School Dist.* (9th Cir. 2000) 228 F.3d 1092, followed *Santa Fe* and concluded that a public school district's refusal to allow students to deliver sectarian and proselytizing valedictory speeches as part of a graduation ceremony was necessary to avoid violating the Establishment clause, and therefore did not violate the speaker's free speech rights. ( *Cole*, 228 F.3d at p. 1102.) "The invocation would not have been private speech, because the District authorized an invocation as part of the graduation ceremony held on District property. ..." ( *Ibid.*)

[\*1207] In light of the fact that the legislative invocation given at the Burbank City Council meeting took place on government property, was authorized by the long [\*\*876] standing policy of the city council, was part of the official agenda of the council meeting, and was for the purpose of calling for spiritual assistance in the work of the legislative body, we are satisfied that it was not "private speech." As in *Santa Fe* and *Cole*, an objective observer familiar with the City's policy and implementation would likely perceive that the invocation carried the City's seal of approval. As [\*\*\*25] such [HN10] those who provide legislative invocations at the Burbank City Council meetings are subject to the requirement that the prayers should comport with the First Amendment.

[HN11] "For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end." ( *Perry*, *supra*, 460 U.S. at p. 45.) "In addition to time, place, and manner regulations, the State may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." ( *Id.* at p. 46.)

We can think of no more compelling interest than safeguarding the Establishment Clause of the First Amendment to support the restriction ordered here. As stated in *Lynch v. Donnelly* (1984) 465 U.S. 668, 79 L. Ed. 2d 604, 104 S. Ct. 1355, [HN12] "The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person's standing in the political community. Government can run afoul of that prohibition in two principal ways. One is [\*\*\*26] excessive entanglement with religious institutions, which may interfere with the independence of the institutions, give the institutions access to government or governmental powers not fully shared by non adherents

of the religion, and foster the creation of political constituencies defined along religious lines. ... The second and more direct infringement is government endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message." ( *Id.* at pp. 668, 687-688 (conc. opn. of O'Connor, J.).)

The interest in protecting and safeguarding the fundamental constitutional right to maintain a separation between church and state and to demand neutrality when the interests of religion and government intersect is increasingly more important as our nation becomes more pluralistic. In [\*1208] ordering that the City not permit sectarian prayer at city council meetings and requiring the City to advise those who participate in conducting prayer at city council [\*\*\*27] meetings of this limitation, the trial court drew the regulation as narrowly as possible. The only restriction being imposed on the prayer is that it not be sectarian, that is, that the invocation not be used to advance one faith or belief over another. n11

n11 Amicus Thirty-Four California Cities presents an argument in their brief that the terms of the trial court's injunction are ambiguous and therefore unenforceable. This issue was not raised by the appellant in its opening brief. While we recognize that this court may consider new issues raised by an amicus on appeal (see *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644, 709-713, 209 Cal. Rptr. 682, 693 P.2d 261), we decline to do so here.

#### [\*\*877] DISPOSITION

The judgment of the trial court fully comports with *Marsh v. Chambers*, *supra*, 463 U.S. 783, and is affirmed. Respondents are awarded costs of appeal.

DOI TODD, J. [\*\*\*28]

We concur:

NOTT, Acting P.J.

ASHMANN-GERST, J.

## 5. Liability Concerns

## LIABILITY CONCERNS FOR NEIGHBORHOOD COUNCILS

Neighborhood Council board members, unfortunately, have to be concerned about liability issues arising from their roles as City advisory bodies. The risk and exposure of being sued can arise in a variety of contexts and this paper addresses what to do in the unfortunate circumstances when a process server serves your board or board member with a lawsuit, the various contexts in which lawsuits can arise and how to avoid and reduce the risk of a lawsuit.

**What To Do If You Are Sued.** A lawsuit against individual board members will usually begin with a process server serving you with papers called a summons and complaint.<sup>1</sup> The complaint is the first document the plaintiff files with the court to commence litigation. The complaint contains the plaintiff's allegations for injury and rights violations and sets forth what plaintiff is seeking from the court (the prayer for relief.) The summons calls upon the named defendants to respond to the complaint by filing a response to the complaint with the court within 30 days. In essence, somebody wants to hold you - probably along with the City and possibly other city employees - legally responsible for your alleged activities that caused plaintiff's injury, or for activities that the plaintiff contends are a violation of the law. A plaintiff might seek damages, injunctive or declaratory relief or both remedies.

In the vast majority of cases the City will provide you with legal representation, almost always by the City Attorney's Office and pay (indemnify) any judgment for compensatory damages against you.<sup>2</sup> Assuming that the City will be defending you, the defense begins by your request to this office for representation in the case. In many instances, your testimony might be sought during pre-trial discovery proceedings (by way of deposition) and perhaps at trial. Where the facts and law allow, this office will seek to have the case against you dismissed on motion before trial. Should you remain in the case and if the case does not settle, the matter will proceed to resolution at the trial court level either by way of summary judgment (a resolution effected by motion where material facts are not in dispute) or by trial. If a judgment were awarded against you at the trial court level, appellate remedies would be given consideration. If, after all proceedings at the trial and appellate levels, a final judgment stands against you, the City will (again, with rare exceptions as noted below) pay any judgment for damages on your behalf.

*Requesting Representation-* If you are sued, you must *promptly* write to the City

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<sup>1</sup> A lawsuit against the *board* begins with service of a summons and complaint filed with the City Clerk since the City Clerk is authorized to accept service by the City, its employees, boards, and entities.

<sup>2</sup> However, as will be explained further below, there are exceptions to these assurances.

Attorney's Office requesting representation and indemnification along with a copy of the summons and complaint.<sup>3</sup> If the City Attorney has an obligation to defend you, usually this means that the City will pay on your behalf any judgment awarded against you (indemnification) or any settlement.

*Who Will Defend You.* An attorney from the City Attorney's Office will normally be assigned to the case. However, there is normally a lag time between the service and filing of the lawsuit, and determination of who in the office will be assigned to the case, so do not be alarmed if you are not immediately contacted by a member of the office. Assuming that you have made a request for representation and that the City Attorney will provide you a defense, rest assured that a timely response will be filed to the lawsuit to protect yours and the City's interests. In most instances, the City, or an entity of the City, such as the Neighborhood Council itself, as well as other City employees or public officials, will also be named as a defendant. In the vast majority of these case, the City Attorney will be able to serve as defense counsel for all of the defendants in the case without a conflict of interest. On occasion, where a conflict exists, one or more additional attorneys will be retained by the City to perform the necessary representation.

*Settlement of the litigation will not be your decision.* Settlement authority is rarely held by the official being sued. Unless you wish to pay a settlement with your own funds, a settlement of the lawsuit will be decided by those City officials who have settlement authority under the City Charter and the Administrative Code. Currently, the Mayor possesses the authority to settle claims up to \$50,000 and has delegated this authority to the City Attorney. Settlements of \$50,000 and \$100,000 are referred to the City Claims Board comprised of representatives of the Mayor, Council President and City Attorney. Settlements over \$100,000 must be acted upon by the City Council after recommendation from the Claims Board.

**Scope and Indemnification.** When a City employee or City officer is sued, normally the City Attorney will provide a defense to that employee or officer. Although Neighborhood Council board members are neither "employees" or "officers," for liability purposes, the board members will be treated as if they were City employees. This means that should a board member be sued, the City Attorney will evaluate whether it will defend that board member in the lawsuit and pay any damages that might be assessed in a court judgment.

The obligation to provide a legal defense and indemnify largely turns on whether your conduct in the matter was (a) what the law terms "the scope of employment," (b) not wilful misconduct (what the law terms "actual, fraud, corruption, or actual malice") and whether (c) you cooperated in the City's defense of the lawsuit. If the matter is deemed to be beyond the scope of employment or if you engaged in wilful misconduct, you will not receive a defense or indemnification from the City and will need to retain private counsel.

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<sup>3</sup> Your failure to make this request in a timely manner could result in the loss of your rights to representation and indemnification. See Attachment "A" for an sample letter requesting representation.

If the City is uncertain about whether the activity is within the scope of employment or whether wilful misconduct was involved, the City may offer you a defense under a reservation of rights - an arrangement under which you would be represented by private, outside counsel at City expense with the question of whether you would be indemnified turning on the results of the litigation.

Applied to Neighborhood Councils, the "scope of employment" will extend to activities and performance related to the role of being a Neighborhood Council board member as it relates to the Citywide System of Neighborhood Councils. Activities that fall beyond that scope could result in personal liability and the City is not required to provide a legal defense. Official activities of Neighborhood Councils acting as a board (conducting public hearings, making recommendations to the City's decision makers, monitoring City services, etc) would in most instances be attributable to the City and a defense provided if the board was sued.

In establishing these requirements, the law strikes a bargain of sorts that provides officials with a substantial measure of legal security in return for their cooperation with the governmental entity that is being called upon to foot the bill for both the defense and any required indemnification. The law defining representation and indemnification is a product of both state statutory authority, the City Charter and local ordinance provisions. However, you should also be aware that a personal judgment against you, even if it is paid by the City, is picked up by credit reporting agencies and goes on your credit history.

*Activities outside the scope.* Where the lawsuit would involve a board member's personal life or political activities, the City is not legally concerned and should bear no financial responsibility for the conduct. Other activities that will clearly fall outside the scope of a Neighborhood Council's duties include fraudulent, corrupt, or malicious conduct, including allegations of assault and battery, and intentionally or negligently causing harm to other persons. Activities constituting wilful misconduct expose a board member to personal liability. In these situations the city may (a) deny the board member a legal defense (b) deny indemnification and, (c) seek indemnification from the board member for any monies it was required to pay to the plaintiff.

*Punitive damages.* Importantly, conduct giving rise to *punitive damages*, such as intentional torts (infliction of emotional distress, defamation, harassment) can lead to personal liability since the City is not legally obligated to pay punitive damages assessed against an individual defendant. Punitive damages are intended to punish a defendant for outrageous behavior and thereby deter others from engaging in that conduct. Under California law, punitive damages are available for conduct constituting what state statute terms "oppression, fraud, or malice." The City may elect to pay punitive damages assessed against an official but only if its governing body in its discretion finds (a) the conduct was within the scope of employment, (b) the official acted or failed to act in good faith, without actual malice and in the apparent best interests of the City, and (c) payment would be in the best interests of the City.



*Cooperation in the defense-* For the City Attorney to provide a defense to the board member, the board member must cooperate in the City's defense. The City Attorney is the City's lawyer and it controls the litigation. Thus, settlement of any litigation is not the decision of the individual board member but will be decided by those City officials who have settlement authority under the City Charter and the City's Administrative Code.

*No criminal defense.* Certain activities can result in criminal and civil penalties such as violations of the Brown Act (opening meeting laws), the Political Reform Act (conflict of interest laws), and misuse of public funds. The City Attorney is the legal advisor of the City and while it may provide a defense to an individual in a civil manner, accusations of this nature will require the board member to hire their own attorney with their own funds for defense.

**Types of Potential Violations.** This section will briefly explore, but is not an exhaustive list, of the type of problems that can create exposure to liability. This is meant to educate, not to deter you from public service. If you review the previous sections of this Manual about your role as a board member, attend training offered by the Department of Neighborhood Empowerment and the City Attorney's Office, and generally comply with the rules in the Plan and Regulations, the likelihood of being subjected to a lawsuit is greatly reduced.

*Brown Act violations-* Most Brown Act violations can be cured as a body by setting aside a decision and acting on the matter again. Should a Neighborhood Council board be sued in a civil action challenging a decision because it violated the Brown Act, the City Attorney would provide a defense to the board. Occasionally, an individual board member can be charged with a violation of the Brown Act, which is a misdemeanor and is prosecuted by the district attorney. The City Attorney would *not* provide a legal defense to a board member. Review of the Brown Act training materials can avoid this.

*Conflict of Interest-* Violations of the Political Reform Act can carry administrative, civil and criminal penalties assessed by the Fair Political Practices Commission or the District Attorney's Office, depending upon the violation. Violations of Government Code § 1090 are felonies and can be prosecuted by the district attorney. In the event that a board member is prosecuted, the City Attorney would *not* provide a legal defense. Private counsel would have to be retained from personal funds.

*Defamation-* Slander (spoken)/ Libel (written)- These are considered torts and depending upon the context in which the conduct occurred, the City Attorney would evaluate whether a defense will be provided to the defendant. Thus, you should carefully consider the words you use when acting in your capacity as a board member, and craft your e-mail communications with care, to avoid these charges. Your Neighborhood Council websites should be periodically reviewed for characterizations that can result in allegations of libel.

*Assault/Battery-* Unfortunately, there have been instances when board members have been involved in physical altercations as a form of dispute resolution. This is absolutely unacceptable behavior and must be avoided at all costs. The City Attorney will not provide a legal defense for any criminal or civil charges filed against a board member for this behavior. If at any meeting, security concerns are present, the board should contact the Los Angeles Police Department and the Department of Neighborhood Empowerment to request security.

*Misuse/Misappropriation of public funds-* Stealing money from the City is a crime for which an individual can be both civilly and criminally liable. In addition, improperly spending City monies on matters that do not relate to the Neighborhood Council system can be deemed a misuse of public funds. No City Attorney defense will be provided in this instance.

*Public Records Act-* Neighborhood Councils are subject to the Public Records Act. Liability could result should a requestor sue the Neighborhood Council for noncompliance with the Act. Should a lawsuit be filed, the City Attorney would defend the board. If the defense was unsuccessful, the board would be ordered to comply with the Act or face contempt of court charges. Contempt of court against individual board members for wilful violations will likely not be defended by the City Attorney's office. Payment of any attorneys fees arising from the lawsuit may be assessed against the Neighborhood Councils yearly allocation of funds.

*Americans With Disabilities Act-* Violations of the ADA can give rise to liability against the City, through the actions of the Neighborhood Councils. Holding meetings in nonaccessible facilities, or failure to provide the required language on notices and agendas can result in a lawsuit seeking compliance with these rules. The City Attorney would defend the board in these instances. However, a successful lawsuit can result in the payment of attorney fees, which can be assessed against the Neighborhood Council's annual fund. Careful adherence to the ADA requirements and consultation with either the Department of Neighborhood Empowerment or the Department of Disability is recommended if there is any doubt about your board's compliance with these rules.

*Discrimination-* Allegations can stem from racial, gender, religious, color, ancestry, disability or sexual orientation discrimination, to name a few. Harassment based on these protected classifications is a form of discrimination that can result in a lawsuit being filed against your board. Violations can result in a civil complaint alleging statutory and constitutional violations. Allegations against the Neighborhood Council would likely be defended by the City Attorney. Those involving individually named defendants would have to be analyzed to determine if the conduct was within the scope of duties. Careful compliance with the Plan For A Citywide System Of Neighborhood Councils Statement of Discrimination should eliminate any risk of liability. See, Plan, Article II, Section 2.

**Conclusion.** Hopefully, your service on a Neighborhood Council board will be a rewarding a fulfilling experience which will be litigation-free. Consulting your Project Coordinator and the City Attorney's Office will help you to avoid legal land mines.

[116588]



{Board Member's address}  
{Date}

Rockard J. Delgadillo, City Attorney  
Office of the City Attorney  
800 City Hall East  
200 N. Main Street  
Los Angeles, CA 90012

Re: [Case Name]  
{Case No. }

Dear Mr. Delgadillo:

On {insert date} at {insert time} I was served with a copy of the enclosed documents in the above-entitled lawsuit. I am a board member {committee member} on the \_\_\_\_\_ Neighborhood Council. Please consider this my formal request for representation and indemnification by the City of Los Angeles. If you have any questions regarding this matter I may be reached at (###) \_\_\_\_-\_\_\_\_.

Very truly yours,

{Board Member's Name}

Encls.  
Mydocu.RequestIndem.doc

## **6. Americans with Disabilities Act**

# **THE AMERICANS WITH DISABILITIES ACT**

## **What is the Americans With Disabilities Act (“ADA”)?**

The ADA is federal law designed to protect the rights of individuals with disabilities. Title II of the Act, 42 U.S.C. § 12131, prohibits discrimination on the basis of disability by public entities. All services, programs, and activities of a public agency must be made readily available to and usable by disabled individuals. The law imposes an affirmative obligation upon public entities to ensure accessibility to individuals with disabilities to all of its programs and activities. The terms “services,” “programs,” and “activities” are interpreted broadly to mean all aspects of operation.

## **Does the Act apply to Neighborhood Councils?**

Yes. The activities, services and programs of Neighborhood Councils are subject to the Act. Neighborhood Council board and committee meetings must comply with the provisions of the Act, as further discussed below.

## **What is a “reasonable accommodation?”**

The Act provides that “no qualified individual” with a disability shall be excluded from participation or be denied the benefits of the services, programs or activities of a public entity (or local agency thereof). 42 U.S.C. § 12132. The Act provides that persons with disabilities must be provided with modifications to “rules, policies or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services” to receive the services or participate in the program offered by the public entity to allow them to fully participate in these services, programs or activities. Thus, a “reasonable accommodation” generally means “efforts made to remove barriers, which prevent or limit participation by persons with disabilities in a program, service or activity.” See, Guide to Accessible Event Planning, p. 3, published by the City of Los Angeles, Department of Disability.<sup>1</sup>

## **What are some examples of a “reasonable accommodation?”**

The Guide to Accessible Event Planning identifies some common examples of reasonable accommodations such as: providing written materials in large print or in Braille, for the visually impaired, and providing oral interpreters, sign language interpreters or having real time captioning for the hearing impaired. The meeting venue must be “barrier free” having accessible entrances/exits, disabled parking, appropriate corridor width as well as

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<sup>1</sup> See, <http://www.lacity.org/dod/indexpage/dodindexpage169>, for a copy of the Guide.

appropriate signage, and restroom and water fountain facilities, if those are available to the general public.

**Does the ADA require the Neighborhood Council to provide a personal assistant to assist the disabled person to enter a facility as a “reasonable accommodation”?**

No. The ADA only requires that the meeting venue you choose be accessible. In other words, there are no physical restraints that would otherwise prevent a disabled person from entering the building. If an individual needs assistance to traverse a ramp or to lift a wheelchair out of the car, the ADA does not mandate a public entity to provide that type of assistance.

**How can Neighborhood Councils comply with the ADA?**

Neighborhood Councils need to make sure that their meeting sites are accessible and their communications can be accessed through assistive devices, when requests are made. DONE and the Department of Disability can provide assistance to you when processing these requests.

Meeting sites should meet the requirements of the Act. This means more than just providing ramps for wheelchair bound individuals and parking that has handicapped spaces. The regulations are often detailed, and you should seek verification from the DONE and the Department of Disability to ensure that your meeting site complies with the Act. Venues for Neighborhood Council events designed to outreach to your stakeholders, such as community fairs or picnics, should also comply with the ADA, since those events will likely be deemed “activities” of a public entity. You should consult the Guide to Accessible Event Planning, published by the Department of Disability to provide you with guidance as you plan your event.

Your written materials, particularly your meeting agendas<sup>2</sup>, should provide information as to how an individual may request assistive devices (such as hearing aids, braille materials, large printed materials, etc.) at the meeting.<sup>3</sup> That standard language should read substantially as follows and must appear on every meeting agenda, including those of your committees that are open to the public:<sup>4</sup>

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<sup>2</sup> Other relevant documents may include brochures, public reports, flyers, and other public notices.

<sup>3</sup> Do not confuse this with language translation. The ADA only provides equal access for the disabled, and does not cover individuals who need materials translated in a language other than English.

<sup>4</sup> We also have provided a sample agenda that includes this language at the back of this handbook.



The XXX Neighborhood Council complies with Title II of the Americans With Disabilities Act and does not discriminate on the basis of any disability. Upon request, the XXX Neighborhood Council will provide reasonable accommodations to ensure equal access to its programs, services and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or services may be provided upon request. To ensure the availability of services, please make your request at least 3 business days (72 hours) prior to the meeting you wish to attend by contacting the Neighborhood Council Secretary at (XXX) XXX-XXXX, or please send an e-mail that states the accommodations that you are requesting to XXX.

**Do Neighborhood Councils' offices have to be in compliance with the ADA?**

Yes. Many Neighborhood Councils are leasing office space from private landlords through the City's Leasing Program, designed specifically for Neighborhood Councils. The building that you lease office space from must be accessible to the public. An agreement with a landlord for office space that does not meet this requirement will not be allowed.

**What other activities of the Neighborhood Council have to be in compliance with the Act?**

A variety of services and activities that your Neighborhood Council engages in must be accessible. This includes voting at Neighborhood Council elections. The election venue must be accessible or a reasonable accommodation provided if the voter cannot reach your polling location (allow for mail-in ballots, pick up system, *etc.*) Community events (socials, festivals) should not be planned at venues where the disabled cannot attend. Thus, the use of private homes is highly discouraged since it is unlikely that the home will be fully accessible.

## 7. Election Issues

# **NEIGHBORHOOD COUNCIL ELECTION PROCEDURES**

**Approved by the Los Angeles City Council on January 25, 2005**

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## **I. DEFINITIONS**

- “Absent Voter” means any voter casting a ballot in any way other than at the polling place.
- “All Vote-By-Mail Election” means an election conducted in which the only voting option is using a ballot that is voted and placed in a sealed envelope, which is then delivered to the election official via the U.S. mail, private courier or hand delivery.
- “Board of Neighborhood Commissioners (BONC)” means the seven (7) member appointed commission responsible for policy setting and policy oversight, including the approval of contracts and leases and the promulgation of rules and regulations, but not the day to day management of the Department of Neighborhood Empowerment or the neighborhood councils.
- “Campaigning” means a series of actions conducted by a candidate(s) or person(s) on behalf of a candidate(s) intended to influence voters to vote a certain way. Such actions may include, but are not limited to, the distribution of printed or electronic material, making of telephone calls, giving of speeches in a public setting, discussions with individuals or small groups of voters, placement of signs, etc. (see Electioneering below.)
- “Challenge” means a written complaint filed by a stakeholder that the election was improperly conducted including, but not limited to, alleged incidences of voting fraud or improper candidate activity, and that the results of the election should be set aside or overturned.
- “Department of Neighborhood Empowerment (DONE)” means the City department responsible to implement and oversee the ordinances and regulations creating the system of neighborhood councils enacted pursuant to City Charter Section 905 including: preparing a plan for the creation of a system of neighborhood councils, assisting neighborhood councils in the certification process and in the election/selection of their governing board members, arranging Congress of Neighborhoods meetings as requested by neighborhood councils, arranging for the provision of training to neighborhood councils, assisting neighborhood councils in operational and logistical areas, and other duties as provided by ordinance.
- “Electioneering” means to solicit a vote or speak to a voter on the subject of marking his or her ballot; to place a sign(s) relating to any candidate or other matter to be voted on; to distribute material relating to any candidate or other matter to be voted on; or to place a sign(s), distribute material, or

converse with a voter on the subject of the voter's qualifications to vote. Electioneering is an aspect of campaigning that is generally understood to mean the activities targeted at voters when they are engaged in arriving to the polling place or in the actual act of voting.

- "Election Procedures" mean the written procedures and methods adopted by a Neighborhood Council, consistent with their bylaws and approved by the Department of Neighborhood Empowerment, that are used to conduct the Neighborhood Council's governing board member elections.
- "Final Decision Maker" means the person(s) or organization selected to review and issue final findings relative to a Challenge filed against the election. This person(s) or organization shall not be the Independent Election Administrator and should be independent from the outcome of the election and shall have no vested interest in the outcome of the election. The primary Final Decision Maker will be composed of Neighborhood Council representatives. The selected stakeholders do not need to be governing board members of the Neighborhood Council. The settling of election challenges is an administrative process. Public meetings and/or hearings, although allowed, are not required.
- "Independent Election Administrator" means the person(s) or organization responsible for conducting the actual election. The Independent Election Administrator should be independent from the outcome of the election and shall have no vested interest in the outcome of the election. Duties include, but are not limited to, setting up and managing the polling location(s), checking in voters, distributing and receiving ballots, tabulating the votes, announcing the election results, and securing the election materials.
- "Neighborhood Council" taken in the singular and capitalized, refers to that one Neighborhood Council involved in the activity being described. The term "neighborhood councils", plural not capitalized, is used when the activities being described are general to all neighborhood councils.
- "Person" means an individual human being.
- "Prepared Ballot Election" means an election in which the candidates file prior to the election and are included on a printed ballot that is distributed to the voters at the polling location(s) on election day.
- "Prepared Ballot Election with the Vote-By-Mail Component" means an election in which the candidates file prior to the election and are included on a printed ballot that is distributed to and voted by the voters either at: 1) the polling location(s) on election day or 2) or via the U.S. mail or alternative delivery service.

- “Provisional Ballot” means a ballot cast by a voter whose eligibility to vote in the election cannot be determined at the time the vote is cast. The voter’s eligibility will be verified at a later date pursuant to methods specified in the Election Procedures and the ballot will be processed subject to the outcome of the verification process.
- “Proxy” voting means the written or verbal authorizing of one person to act (vote) for another as an agent or substitute, (e.g.” I hereby authorize \_\_\_\_\_ to cast a vote for \_\_\_\_\_ in my place.”)
- “Recount” means counting the votes cast again for a particular contest or for the entire election to determine if the original vote tally is accurate.
- “Same-Day Election Format” means an election in which the candidates are nominated and the voting takes place on the same day and at the same general location.
- “Stakeholder” means a person who, pursuant to the Neighborhood Council’s bylaws, is eligible to be a candidate and/or vote in the Neighborhood Council’s governing board election. At a minimum, a stakeholder is anyone who lives, works or owns property within the Neighborhood Council boundaries.
- “Vote-By-Mail Ballot” means a ballot that is voted and placed in a sealed envelope, which is then delivered to the election official via the U.S. mail, private courier or hand delivery.
- “Write-In Candidate” means a candidate who is not included on the prepared printed ballot but for whom voters may cast a vote by writing in the candidate’s name in the appropriate space provided on the ballot.

## **II. GENERAL PROVISIONS**

- a. Election Procedures must be consistent with the requirements outlined in this document, and the applicable Neighborhood Council bylaws and all other applicable laws governing the operation of neighborhood councils.
- b. All elections must be conducted consistent with the Neighborhood Council bylaws and the Department of Neighborhood Empowerment (DONE) approved Neighborhood Council Election Procedures.
- c. All persons or other entities that meet the criteria for the definition of stakeholder as outlined in the Neighborhood Council bylaws shall be eligible to vote in the election.

- d. Stakeholders cannot be denied the opportunity to vote for a candidate for member of the governing board for whom they are eligible to vote.
- e. Stakeholders cannot be denied the opportunity to run for a board seat for which they hold stakeholder status.
- f. Election Procedures, including qualification requirements for voting and/or candidacy, cannot be designed to restrict participation in the election process by specific groups of persons/stakeholders in the Neighborhood Council (e.g. homeless, volunteer workers, monolingual non-English speaking, public transit dependent, home based workers, etc.).
- g. The election must be held in such a way as to allow for the greatest stakeholder participation (e.g. poll location(s), length of time available for voting, number of days, hours, voting options, candidate process, etc.).
- h. In conducting governing board member elections, neighborhood councils must comply with all applicable Americans with Disabilities Act requirements.

### **III. NON-COMPLIANCE WITH THESE ELECTION PROCEDURES**

- a. In the event that the Neighborhood Council chooses to proceed to conduct an election without complying with these Neighborhood Council Election Procedures, the following actions shall be initiated:
  - i. If finalized election procedures are not approved 90 days prior to the election, DONE shall immediately notify the Neighborhood Council that they are being placed on Timely Elections Watch List and scheduled for formal public hearings before the BONC until such time as a valid election has been held.
- b. If the Neighborhood Council has indicated their intent to hold an election in less than 90 days, or to hold an election that is not in compliance with these Election Procedures, DONE will;
  - i. Notify the Neighborhood Council that their election will not be recognized, and the ability to participate fully as a Neighborhood Council in the City will be suspended.
  - ii. Advise the Neighborhood Council that the City will not provide financial support for the conduct of that election.



- iii. Advise the Neighborhood Council that it will not have access to City funding (including the Neighborhood Council Funding Program) and other support services for the conduct of the election.
- c. If the Neighborhood Council holds an election without complying with these procedures and without DONE approval, DONE will take the following actions:
  - i. The outcome of that election will not be recognized as valid.
  - ii. The Neighborhood Council will not have access to City funding (including the Neighborhood Council Funding Program) and other support services for the conduct of any Neighborhood Council business.
  - iii. DONE will set a new election date within six (6) months for the Neighborhood Council following the provisions contained in these Neighborhood Council Election Procedures.
  - iv. DONE will provide assistance to the Neighborhood Council in establishing election procedures and conducting the new election in accordance with the provisions contained in these Neighborhood Council Election Procedures.
  - v. If a Neighborhood Council has not held a valid election within six (6) months of the notification issued by DONE, or refuses to initiate the activities necessary to conduct the election, DONE shall report to the BONC for consideration of revoking the Neighborhood Council's Certification or decertifying the Neighborhood Council, whichever process is applicable.

#### **IV. ELECTION PROCEDURES PLANNING TEMPLATE**

- a. DONE will furnish each Neighborhood Council with an Election Procedures Template, included here as Exhibit I, which may be utilized to assist in the development of the Election Procedures to be used in the Neighborhood Council's governing board member election.

#### **V. ELECTION PROCEDURE CONTENT**

- a. Consistent with the Neighborhood Council bylaws, the Election Procedures shall specify:
  - i. The date(s), hours and location(s) of the election.
  - ii. The voting methods to be utilized (e.g. at polls voting, vote by mail, same day format, etc).

- iii. Whether board officers are to be elected directly by the stakeholders or subsequently elected or appointed by the elected board members.
- iv. Whether board members shall be elected at large and/or by district.
- v. The number and type of board member seats available and any qualifications required to be a candidate **for any particular seat**.
- vi. Whether any board seats will be filled by appointment and the process for making such appointments.
- vii. How staggered terms will be distributed amongst the elected candidates.
- viii. The seats for which stakeholders of various categories are eligible to vote.
- ix. No proxy voting shall be allowed in Neighborhood Council elections.
- x. The exact boundaries of the Neighborhood Council as approved in its certification, or as adjusted by the BONC, and the boundaries of any voting districts, as applicable, within the Neighborhood Council.

## **VI. TIMEFRAME & APPROVAL OF YOUR ELECTION PROCEDURES**

- a. The Election Procedures must specify that the first election will be held within six (6) months or 180 days of certification, and all subsequent elections must be held in accordance with the Neighborhood Council bylaws.
- b. If circumstances arise such that the first election cannot be held within six (6) months of certification, or that subsequent elections cannot be held within the time frame specified in the bylaws, then DONE shall report to BONC within 30 days, in accordance with BONC procedures, on the issues preventing conduct of the election and, with the input of the Neighborhood Council, seek to establish an alternative time table for conduct of the election.
- c. The Neighborhood Council Election Procedures must be drafted by stakeholders of the Neighborhood Council with assistance provided by DONE. The Neighborhood Council may also seek additional assistance in drafting the Election Procedures from other knowledgeable sources.
- d. The interim board or the existing elected board of the Neighborhood Council shall designate, consistent with the Neighborhood Council bylaws, an Elections Procedures Committee, or equivalent, to draft and/or revise the election procedures. The designation of the

Elections Procedures Committee, or equivalent, shall be made in accordance with the Neighborhood Council bylaws or at a noticed public meeting.

- e. The Neighborhood Council must submit draft election procedures, approved by the Interim or existing elected board in a publicly noticed meeting, to DONE for review and written approval no later than 140 days prior to the projected election day. Prior to the finalization of the election procedures, the Independent Election Administrator that will be responsible for conducting the election must be designated. DONE shall provide the draft election procedures to the designated Independent Election Administrator for review and comment as part of the DONE review and approval process.
- f. The following schedule will be used to facilitate the review and approval of the Election Procedures:
  - i. DONE shall complete the initial review and return the draft Election Procedures with comments to the Neighborhood Council within 20 calendar days of receipt.
  - ii. Upon receipt, the Neighborhood Council shall modify the draft Election Procedures, as necessary, and return them to DONE within 20 calendar days.
  - iii. DONE will complete its final review of the draft Election Procedures within ten (10) calendar days of receipt of the revised Election Procedures.
  - iv. The finalized Election Procedures must be approved by DONE no later than 90 days prior to the designated election day(s).
  - v. The finalized Election Procedures must also be adopted by the interim or elected Neighborhood Council governing board, in a publicly noticed meeting, no later than 60 days before the scheduled election.

## **VII. THE INDEPENDENT ELECTION ADMINISTRATOR**

- a. The Election Procedures must identify an Independent Election Administrator selected by the Neighborhood Council to conduct the election. To serve as the Independent Election Administrator, the person(s) or organization selected must have attended training program conducted by DONE and assisted in conducting at least one (1) prior neighborhood council governing board member election.
- b. The election must be conducted by the Independent Election Administrator named in the Election Procedures. However, if the

designated Independent Election Administrator cannot fulfill their responsibilities, the Neighborhood Council must immediately notify DONE so that a mutually agreed upon replacement Independent Election Administrator can be secured.

- c.** The Independent Election Administrator may utilize the staff, material, equipment and facility resources of the Neighborhood Council or DONE to assist them in carrying out the election administration duties, provided, however, that the following conditions are met:

  - i.** That none of the candidates for the governing board participate in any way in the handling/counting of ballots, voter/candidate registration/verification, and/or assisting voters engaged in the act of voting in translating the voting material or explaining the voting process.
  - ii.** Written procedures must be developed that specify the roles and responsibilities of all parties participating in the administration of the election.
  - iii.** The Independent Election Administrator must maintain the ultimate authority and responsibility for the administration of the election.
- d.** DONE shall not act as the Independent Election Administrator.
- e.** The Independent Election Administrator shall be responsible for the following duties:

  - i.** Reviewing and providing input on the Neighborhood Council's draft Election Procedures.
  - ii.** Processing of candidates including verification of eligibility and conducting or supervising the candidate forum(s).
  - iii.** Processing of voters including pre-registration and verification of eligibility as applicable.
  - iv.** Overseeing and approving the preparation of the ballot to be used in the election.
  - v.** Distributing and receiving ballots from the voters.
  - vi.** Verifying any provisional ballots.
  - vii.** Counting and recounting the ballots.
  - viii.** Issuing the election results.

- ix. Securing and submitting all election materials for records retention in accordance with the bylaws and Election Procedures.

## **VIII. POSTPONEMENT OF AN ELECTION**

- a. If the Independent Election Administrator determines that circumstances have arisen that seriously jeopardize his or her ability to conduct an election in conformance with the approved Neighborhood Council Election Procedures, then the Independent Election Administrator, has the authority to postpone the election until corrective action can be taken. In such a case, the following actions shall be taken:
  - i. The Independent Election Administrator shall immediately notify the Neighborhood Council and DONE of his or her decision to postpone the election, and shall provide the basis for that decision including the actions that must be taken in order to reschedule and conduct the election.
  - ii. The Neighborhood Council, DONE and the Independent Election Administrator will jointly develop and take actions to inform the stakeholders of the postponement of the election.
  - iii. As soon as possible, DONE will schedule a meeting before the BONC at which time the Independent Election Administrator shall report on the postponement, the basis for the postponement decision, and the establishment of a new election date.

## **IX. CANVASS OF VOTES, ISSUANCE OF RESULTS AND RATIFICATION OF THE ELECTION**

- a. The Election Procedures shall specify the process for verifying and counting all ballots. At a minimum, the Election Procedures must:
  - i. Require that the Independent Election Administrator will be responsible for tabulating the ballots and announcing the unofficial results on election day, or as soon thereafter as possible.
  - ii. Require that the Independent Election Administrator verify all Provisional and Vote-By-Mail ballots for inclusion in the Final Official Certified Canvass of the votes.
  - iii. Specify that the deadline for completion of the Final Official Certified Canvass including At-Polls ballots and any Provisional and Vote-By-Mail ballots shall be seven (7) days after the election. The Final Official Certified Canvass of ballots may occur on election day if there are no outstanding ballots to be counted.

- iv. Identify the location, date(s), and time that the election day and Final Official Certified Canvass of ballots will occur.
- v. Require that the election day and Final Official Certified Canvass activities be open to the public for observation, provided that the observers must not interfere with or attempt to influence the vote tabulation in any way.
- vi. Specify the process for resolving tie-votes. An acceptable option will be the drawing of straws or equivalent process to determine which candidate will be seated.
- vii. Require the Independent Election Administrator to submit a Final Election Reconciliation Report and Official Certified Canvass, on forms provided by DONE, to the Neighborhood Council and DONE immediately upon completion.
- viii. Require that the final election results be announced by the Neighborhood Council and DONE immediately upon receipt of the final election results from the Independent Election Administrator.
- ix. Identify the process for ensuring that all candidates are notified of the election results.

## X. TYPES OF ELECTIONS

- a. These Neighborhood Council Election Procedures identify and discuss the requirements of four (4) basic categories of elections. These categories are the most common types of elections conducted but are not exhaustive of all possible types of elections. Neighborhood Council's and others may seek to amend these Neighborhood Council Election Procedures through the process outlined on Page 30.
  - i. **Prepared Ballot Elections** are elections in which the candidates file prior to the election and are then included on a printed ballot that is distributed to the voters at the polling location(s) on election day(s). This type of election may or may not allow for the inclusion of write-in candidates.
  - ii. **Prepared Ballot Election with the Vote-By-Mail Component Elections** are elections in which the candidates file prior to the election and are included on a printed ballot that is distributed to and voted by the voters either at: 1) the polling location(s) on election day(s) or 2) via the U.S. mail or alternative delivery service. This type of election may or may not allow for the inclusion of write-in candidates.
  - iii. **All Vote-By-Mail Elections** are elections conducted in which the only voting option is using a ballot that is voted and placed in a sealed

envelope, which is then delivered to the election official via the U.S. mail, private courier or hand delivery. This type of election may or may not allow for the inclusion of write-in candidates.

- iv. **Same-Day Election Format** elections are elections in which the candidates are nominated and the voting takes place on the same day and at the same general location.

- b. **Same-Day Election Format.** A Neighborhood Council may choose to conduct their governing board member elections utilizing a Same-Day Election Format in which the nomination of candidates and voting occur on the same day in the same general location. In addition to all other applicable requirements outlined in this document, the Election Procedures for a Same-Day format election must:

- i. Include enhanced outreach and notification methods.
- ii. Specify the candidate nomination format including:
  - 1. The timeframe that candidate nominations will be accepted.
  - 2. The candidate filing requirements.
  - 3. The candidate verification process, including any provisions for the submission of supplemental information.
  - 4. Allowable campaigning activities and the timeframe and location for such activities.
- iii. Specify the type of ballot that will be utilized and how the ballot will be produced after the close of candidate nominations.
- iv. The activities, timeframe and roles and responsibilities for transitioning from the candidate nomination process to the actual voting process

## **XI. AT POLLS VOTING**

- a. Except when utilizing an All Vote-By-Mail Election format, the Election Procedures must provide for voting to be conducted at one or more polling sites. At a minimum, the At Polls Voting section of the Election Procedures must:
  - i. Designate the date(s), time the polls will be open and place(s) where the voting will occur.

- ii. Specify the voter check-in process, including any identification requirements and acceptable means for satisfying the identification requirements.
- iii. Include the process by which voters will be informed of their right, and offered the opportunity, to vote a Provisional Ballot if the voter's eligibility cannot be resolved in the voter's favor on election day (see Page 10 below).
- iv. Specify the type and format of the ballot to be issued.
- v. Identify the process to allow a voter to obtain a replacement ballot if the original ballot is spoiled or miss-marked.
- vi. Identify any procedures that will be implemented to facilitate the participation of seniors, the disabled or other special needs groups in the election.

## **XII. VOTE-BY-MAIL**

- a. Allowing voters the ability to cast their ballots via the Vote-By-Mail method is an option that a Neighborhood Council may choose to utilize. Accordingly, the Election Procedures must state whether Vote-By-Mail will or will not be allowed. If the Vote-By-Mail option is selected, then the Election Procedures must:
  - i. Provide that all stakeholders are eligible to Vote-By-Mail.
  - ii. Identify the process for obtaining and submitting a Vote-By-Mail application, including when the application will be available, where to obtain the application, the information required on the application, the deadline for submission of the application, the address where the application is to be mailed/delivered.
  - iii. Provide that any voter eligibility documentation requirements requested of Vote-By-Mail voters must be equal to those requested of At Polls voters.
  - iv. Designate the Independent Election Administrator as the entity that will process the Vote-By-Mail applications and ballots. By mutual agreement with the Neighborhood Council and DONE, the Independent Election Administrator may utilize the DONE offices as the designated mailing or delivery address for Vote-By-Mail applications and ballots.
  - v. Provide that the Independent Election Administrator will oversee and approve the preparation and distribution of a Vote-By-Mail application which contains spaces for the following information:



1. The name and residence address, or business or organization affiliation address of the stakeholder.
  2. The name and address to which the ballot is to be mailed, if different than the residence or business or organization affiliation address.
  3. The stakeholder/voter's signature.
  4. The stakeholder status of the voter.
  5. The name and date of the election for which the application is being submitted (to be pre-printed on the application).
  6. The date on or before which the application must be received (to be pre-printed on the application).
  7. The address where the application is to be mailed or delivered (to be pre-printed on the application).
- vi.** Provide, at a minimum, that the Vote-By-Mail application must be available not less than 21 days before the election and must be received from the voter not less than seven (7) days before the election.
- vii.** Provide that voters who miss the 7-day Vote-By-Mail application deadline may personally come to a designated location up to the day before the election and obtain and vote a Vote-By-Mail ballot at that location.
- viii.** Provide that a stakeholder/voter's application for a Vote-By-Mail not submitted on the prepared form will still be processed if it contains the information in Number 5, a-e above and is received by the application submission deadline.
- ix.** Provide that candidates may distribute Vote-By-Mail applications but shall not handle the return applications or the Vote-By-Mail ballots.
- x.** Provide that the Independent Election Administrator, upon receipt of a completed Vote-By-Mail ballot application on or before the submission deadline will issue a Vote-By-Mail Ballot Package containing the following items/information:
1. The official ballot.
  2. Voting instructions on how to complete the ballot and return the voted ballot including the submission deadline and the place(s) to mail or deliver the completed ballot.

3. Instructions relative to any stakeholder/voter eligibility verification documents that must be completed and submitted with the Vote-By-Mail ballot. Such instructions will state that the voter may cross out any information on the documentation they are submitting that is not required to establish stakeholder status (e.g. on a utility bill the voter could cross out all information, such as account number and account balance, except their name and residence address).
  4. A pre-printed return envelope containing the return address and an affidavit to be signed by the stakeholder/voter stating "I hereby declare under penalty of perjury that I am a stakeholder in the [insert name of Neighborhood Council] and I herein enclose my ballot in compliance with the Neighborhood Council Election Procedures."
- xi.** Provide that once the ballot is verified for counting, the Independent Election Administrator shall destroy the stakeholder verification documentation. However, the Independent Election Administrator will retain self-affirmation stakeholder statements if the Independent Election Administrator for the At Polls Voters retains such statements.
  - xii.** Provide that the voted ballot must be received by the close of the poll(s) on election day (either at the designated submission mailing address or at the polling location(s)).
  - xiii.** Provide that lists of all persons issued a Vote-By-Mail ballot and all those returning a Vote-By-Mail ballot must be prepared and provided to the person(s) managing the polling site(s) for use in the voter sign-in process.
  - xiv.** State whether or not on election day at the polling site, a voter will be allowed to retrieve and destroy a previously submitted Vote-By-Mail ballot and then be issued and vote a regular election day ballot.

### **XIII. PROVISIONAL VOTING**

- a.** The Election Procedures must include a process whereby voters can cast a Provisional Ballot if the voter's eligibility to vote in the election cannot be determined in favor of the voter at the time the voter attempts to cast his or her ballot. This process must include the following provisions:
  - i.** The only acceptable basis for challenging a voter's right to vote at the polling site will be that the person is not a stakeholder as defined by the Neighborhood Council bylaws or that the person was issued a Vote-By-Mail ballot.

- ii. If a voter is challenged on the basis that they were issued a Vote-By-Mail ballot, the voter may surrender the un-used ballot at the polling site at which time the voter will be issued a regular ballot.
- iii. If a voter is challenged on the basis that they are not a stakeholder eligible to vote in the election, the voter may produce any of the documentation outlined in the Election Procedures at which time the voter will be issued a regular ballot.
- iv. If a voter cannot produce the required documentation or they cannot surrender the un-used Vote-By-Mail ballot, then the voter will be offered the opportunity to vote a Provisional Ballot. The Provisional Ballot will be the same as regular ballot, except that prior to placement in the ballot box the Provisional Ballot will be placed inside a Provisional Envelope. On the outside of the envelope the voter will provide:
  - 1. The voter's name.
  - 2. The voter's address.
  - 3. The voter's stakeholder status.
  - 4. The voter's contact number(s).
- b. When a voter casts a Provisional Ballot, the voter will be issued instructions that explain what steps the voter must take to qualify the Provisional Ballot including documentation required to be submitted, where the documentation is to be submitted, and a contact number to request assistance or seek additional information. The deadline for submission of acceptable documentation shall be three (3) days after the election.
- c. The Independent Election Administrator will be responsible for the verification of the Provisional Ballots.

#### **XIV. SHOW OF HANDS, VOICE VOTE AND WRITE IN VOTE**

- a. **Show Of Hands or Voice Vote.** Unless prohibited in their bylaws, a Neighborhood Council may choose to use a Show of Hands or Voice Vote type method instead of a printed ballot. In addition to all other applicable requirements outlined in this document, the Election Procedures for a Show of Hands or Voice Vote method election must:
  - i. Provide that the candidates for each office will be announced in a random order based on drawing names from a hat or similar process.
  - ii. Specify the duration of the voting period.

- iii. Specify who will record the votes and by what method the votes will be recorded.
- iv. Specify the process for resolving tie votes.
- b. **Write-in Vote.** In addition to voting for candidates whose names appear on the prepared ballot, the Election Procedures may also allow voters to cast a vote for a certified write-in candidate by writing in the candidate's name in the space provided. A certified write-in candidate is a candidate who has complied with the Election Procedures process for becoming a certified write-in candidate.

## **XV. STAKEHOLDER VERIFICATION**

- a. All voters must be stakeholders as defined by the Neighborhood Council's bylaws and all stakeholders must be given the opportunity to vote. Consistent with the Neighborhood Council bylaws, the Election Procedures shall specify voter eligibility requirements and the voter eligibility verification process.
- b. **Self-affirmation Type Verification Process.** Unless prohibited by their bylaws, any Neighborhood Council may choose to allow voters to verify their stakeholder status through either verbal or written self-affirmation. When utilizing this method, the Election Procedures shall specify the wording and/or format of the verbal or written self-affirmation to be used by the voter to verify stakeholder status.
- c. **Identification Type Verification Process.** Unless prohibited by their bylaws, any Neighborhood Council may choose to require that voters provide documentation of their stakeholder status in order to vote in the Neighborhood Council's governing board member election. When utilizing this method, the Election Procedures:
  - i. Must specify the documentation required to establish stakeholder status.
  - ii. Must specify reasonable alternative documentation, such as a California Driver's License/Identification Card, U.S. Passport, credit card containing the person's photograph, utility bills, business cards, imprinted checks, post marked mail, etc., that may be used as acceptable proof of stakeholder status.
  - iii. Cannot specify that picture identification (such as a California Driver's License/Identification Card, U.S. Passport or credit card containing the person's photograph) is the only acceptable means of establishing stakeholder status.

- iv. Cannot require greater documentation from any particular individual stakeholder or any particular group of stakeholders.
- d. The Election Procedures must identify any board seats where voter eligibility is determined by specific stakeholder status.
- e. The Election Procedures must identify the process for voter registration including any pre-election day(s) registration process. The Election Procedures must allow for registration on election day(s).
- f. Unless a minimum voting age has already been established in the bylaws, Neighborhood Councils should consider identifying a minimum age for youth voting, and amend its bylaws accordingly before proceeding with its elections.
- g. If any person's voter registration is rejected during a pre-election registration process, that voter may request a review of that decision by the Final Decision Makers by filing a challenge under the provisions of the Election Challenge section. Subsequent to their review, the Final Decision Makers will issue a final determination as to whether the voter will be allowed to vote in the election. Challenges to stakeholder status made during the actual election will be handled pursuant to the Provisional Voting provisions specified in Page 10 above.

## **XVI. BALLOT DESIGN**

- a. The Independent Election Administrator will be responsible for overseeing and approving the design of the ballot(s) to be used in a Neighborhood Council governing board member election.
- b. Relative to ballot design, the Election Procedures must:
  - i. Specify the size, shape and color of the ballots to be used.
  - ii. State any restrictions on the use of candidate titles to be used on the ballot (e.g. number of words).
  - iii. Provide that the ballots will use the same size, font and color of type for all candidate names.
  - iv. Provide that the ballots will use the same size, font and color of type for all candidate titles.

- v. Provide that any transliteration of candidate names or translation of candidate titles shown on the ballot shall be provided uniformly for all candidates.
- c. The ballots may be colored or numbered in such a manner as to facilitate control and guard against fraud.
- d. Ballots may be numbered in such a way that a specific ballot can be tracked to a specific voter through the registration or sign-in forms. This ballot identification process is to be used solely by the Independent Election Administrator or the Final Decision Maker to facilitate resolution to election challenges. If such a ballot numbering or other tracking system is used, the voters must be so informed, either on the ballot or within the instructions or sign-in forms, that the Independent Election Administrator or the Final Decision Maker will be the only ones permitted to review both documents and to do so solely for the purpose of resolving formal challenges to the election.
- e. The candidates for each office will be placed on the ballot in random order based on drawing names from a hat or similar process.
- f. Voter instructions will be included on the ballot or accompanying material to assist the voter in completing the ballot correctly

## **XVII. CAMPAIGNING**

- a. The Election Procedures shall specify any restrictions and/or prohibitions relating to campaigning. Such restrictions and/or prohibitions should not be designed to unfairly assist or harm specific candidates.
- b. A copy of the Election Procedures including any restrictions and/or prohibitions relating to campaigning shall be provided to the candidate at the time of filing and subsequently upon request.
- c. The use of the City Seal, DONE logo, or any DONE created official Neighborhood Council designation on candidate materials is prohibited.
- d. The governing board of a Neighborhood Council, acting in their official capacity as the governing board, is prohibited from endorsing or campaigning for any candidate or group of candidates running for the governing board of a Neighborhood Council. This provision does not restrict the right of individual governing board members, acting as individual stakeholders, or any other stakeholders, from endorsing or campaigning for any candidate or group of candidates.

- e. No City facilities, equipment, supplies or other City resources shall be used for campaigning activities except as provided below. City facilities may be used (1) to hold a candidate forum sponsored by a Neighborhood Council; (2) to hold a Neighborhood Council election; or (3) if the individual has obtained approval from an authorized representative of a City Department or Commission (if managing a Department) for use of the facility.
- f. City resources may be used by a Neighborhood Council for communicating with voters through the printing and mailing of a voter information pamphlet which includes candidate statements and/or the posting of candidate statements on its website. To the extent that the Neighborhood Council provides candidate statements to the voters or neighborhood council mailing lists to candidates, candidates shall be given access in a timely and uniform manner.

## **XVIII. POLLING PLACE OPERATIONS**

- a. For Neighborhood Councils using an election format that utilizes one or more polling sites, the Election Procedures must:
  - i. Require that the selection process for the polling site(s) will include the following considerations:
    - 1. The site(s) selected must be of sufficient size to accommodate the voter sign-in process, actual voting, and any allowable candidate/campaign activities.
    - 2. The site(s) selected should have sufficient parking.
    - 3. The site(s) selected should be convenient for those utilizing public transportation.
    - 4. The site(s) selected must be accessible for the disabled or procedures must be in place to accommodate disabled voters (see below).
  - b. Require that procedures be established to accommodate disabled voters if the polling site is not accessible (e.g. having ballot delivered to the voter outside of the polling site by an authorized polling place worker).
  - c. Require that the certified or post certification amended bylaws and approved Election Procedures be posted at the polling site for stakeholder review.

- d. Require that a list of any certified write-in candidates be posted conspicuously in the polling site(s).
- e. Specify what campaigning type activities, if any, will be allowed at the polling site and the location and duration of such activities. Examples include: candidate speeches, nomination sessions, posting of candidate statements, etc.
- f. Specify where electioneering activities are allowed in relation to the polling place. The Neighborhood Council should consider walls, fences or other barriers in establishing the distance for allowable electioneering.
- g. Require the posting of signage that marks the boundary where electioneering activities are prohibited.
- h. Require that the polling site(s) remain open for a minimum of four (4) hours.
- i. Require that the Independent Election Administrator announce in a loud voice in front of the polling site(s) at the appointed time that the polls are open.
- j. Require that the Independent Election Administrator announce in a loud voice in front of the polling site(s) 10 minutes before the close of polls that the polls will close in ten (10) minutes.
- k. Require that any persons in line outside of the poll at the time of the closing of the polls will be allowed to vote.
- l. Require that observers will be allowed inside the polling site throughout the election, provided that the observers do not, in any way, attempt to interfere with or influence the activities of the polling place workers or the voters.
- m. Require that only the Independent Election Administrator or his or her assistants be allowed to issue, receive or process ballots from the voter.
- n. Require that interpreters be available to assist voters who require assistance in a language other than English if a substantial segment of the Neighborhood Council stakeholders are monolingual non-English speakers.



- o. Allow a voter to designate another person to assist them in the voting process. The person providing the assistance cannot be a candidate in the election.**

## XIX. CANDIDATE FILING PROCESS

- a. At the time of filing to run in the election, a candidate must be a stakeholder eligible to run for, and hold, the specific office for which the candidate is filing. The Election Procedures for all categories of elections must specify the process for declaring candidacy; including at a minimum the provisions listed below. Same-day format elections must also comply with the provisions in Page 6, Number 2 above.
- b. The location(s), filing period and deadlines for filing for candidacy to have the candidate's name printed on the ballot. Except for Same-day format elections, the deadline for filing for candidacy to have a candidate's name printed on the ballot must be at least 30 days before the election.
- c. The process and deadlines for verifying the candidates' eligibility and issuing certification for inclusion in the election, including:
  - i. The required elements of the candidate filing application package.
  - ii. The specific documentation required to establish stakeholder status.
  - iii. A Neighborhood Council's Election Procedures cannot specify that picture identification (such as a California Driver's License/Identification Card, U.S. Passport or credit card containing the person's photograph) be the only acceptable means of establishing stakeholder status.
  - iv. The person(s) responsible for verifying a candidate's eligibility and certifying that a candidate has been accepted for inclusion in the election.
  - v. The timeframe for completing the candidate verification and certification process.
  - vi. The type of receipt that will be issued to the candidates that their filing application has been accepted for processing and the type of documentation that will be issued to the candidates certifying or rejecting them for inclusion in the election.
  - vii. The disposition of the candidate filing documents.
- d. Unless prohibited by its bylaws, any Neighborhood Council may choose to allow for write-in candidates. If write-in candidates are permitted, the Election Procedures must specify the process for

becoming a write-in candidate. The write-in candidate process must include at a minimum:

- i. The time frame for filing to become a certified write-in candidate. The write-in candidate filing period may begin as early as the end of the regular candidate filing period but must not terminate any later than the opening of the polls on election day.
  - ii. The required elements of the write-in candidate filing application package.
  - iii. The specific documentation required to establish stakeholder status.
  - iv. A Neighborhood Council's Election Procedures cannot specify that picture identification (such as a California Driver's License/Identification Card, U.S. Passport or credit card containing the person's photograph) be the only acceptable means of establishing stakeholder status.
  - v. The documentation required of write-in candidates must be equal to that of the regular candidates.
  - vi. The person(s) responsible for verifying a candidate's eligibility and certifying that a candidate has been accepted for inclusion in the election as a write-in candidate.
  - vii. The timeframe for completing the write-in candidate verification and certification process.
  - viii. The type of receipt that will be issued to the candidates that their filing application has been accepted for processing and the type of documentation that will be issued to the candidates certifying or rejecting them for inclusion in the election as a write-in candidate.
  - ix. The provision that the candidate verification process for write-in candidates may occur after the election if the write-in candidate filing time frame does not allow for the verification to be completed before the election. Provided, however, that a write-in candidate that is elected cannot be seated until the verification process is completed.
  - x. The disposition of the write-in candidate filing documents.
- e. If the Independent Election Administrator rejects a candidate's filing application, that candidate may request that the Final Decision Makers review their candidate filing application by filing a challenge under the provisions of the Election Challenge section. Subsequent to their review, the Final Decision Makers will issue a final determination as to whether the candidate will be allowed to run for office.

- f. The Neighborhood Council shall publicize the opportunity to be a candidate for the governing body of the Neighborhood Council for a period that is not less than 30 days, and shall hold open the candidate-filing period for a minimum of 30 days (these two periods may run concurrently). However, if the Election Procedures do not allow for write-in candidates, then the following additional candidate filing outreach requirements must be met:
  - i. The candidate filing period must remain open a minimum of 45 days.
  - ii. The Neighborhood Council must hold at least two (2) candidate information meetings within that 45-day period.
- g. The process by which the updated list of certified candidates is to be publicized throughout the filing period. At a minimum the updated list of certified candidates must be posted at the official Neighborhood Council posting locations within three (3) days of any candidate being certified and final list of certified candidates must be issued and posted within three (3) days of the close of candidate filing.

## XX. TRANSLATION & INTERPRETATION SERVICES

- a. A Neighborhood Council, in which a substantial segment of the population is monolingual non-English speaking, is required to give notice, provide election material, and arrange for interpretation services at meetings where election information is provided and at the election itself, in the appropriate language(s).

## XXI. PUBLIC OUTREACH AND NOTICE OF ELECTION

- a. The Election Procedures shall identify the process for outreaching to and notifying stakeholders about election related activities and events. DONE approval of the outreach component of the Election Procedures will be dependent on inclusion of methods appropriate for the type of election to be held and appropriate to reach all segments of stakeholders in the Neighborhood Council.
- b. Upon approval of the Election Procedures, the Neighborhood Council must begin informing stakeholders about the election process by complying with the following minimum outreach requirements pursuant to the type of election being conducted.
- c. **60 Day Outreach and Notification Requirements (applicable to all categories of elections)**. Not less than 60 days prior to the election, the Neighborhood Council shall:

- i. Hold one (1) noticed public meeting to provide information about the Neighborhood Council and to discuss and distribute the election procedures, voter registration forms and other pertinent election information.
  - ii. Provide at least one (1) mass distribution of a general information flyer containing at a minimum the following information:
    - 1. The name and general purpose of the Neighborhood Council and announcement of the upcoming Board Member elections.
    - 2. Definition of a stakeholder as defined by the Neighborhood Council bylaws.
    - 3. The date(s), hours and location(s) of the election.
    - 4. The opportunity and process for becoming a candidate.
    - 5. Voter eligibility requirements.
    - 6. Vote-By-Mail process (including application and ballot submission procedures) – Note: only required if utilizing the Vote-By-Mail voting option.
    - 7. Upcoming election related meetings.
    - 8. Sources to obtain additional information.
    - 9. Post the election information contained in the general information flyer along with a contact telephone number at the Neighborhood Council's currently authorized posting locations.
  - iii. Between the period of 60 and 30 days before the election, post candidate filing and other related election information and deadline dates along with an information contact telephone number at the Neighborhood Council's currently authorized posting locations.
- d. **30 Day Outreach and Notification Requirements (applicable to all categories of elections).** Not less than 30 days prior to the election, the Neighborhood Council shall:
- i. Hold one (1) publicly noticed candidate informational meeting to explain the establishment of, function of and opportunity to serve on the governing body. At the meeting, the Neighborhood Council shall distribute copies of, and provide training related to:

1. The bylaws
2. Election Procedures
3. Candidate and voter registration forms (if applicable)
4. Candidate filing and verification of eligibility requirements for placement on the ballot
5. Write in candidate procedures
6. Campaigning procedures and any campaigning restrictions
7. Requirements upon winning office, and
8. Any other information the Neighborhood Council determines would be useful.

**e. 21 Day Outreach and Notification Requirements (applicable only for elections utilizing the Vote-By-Mail voting option).** Not less than 21 days prior to the election the Neighborhood Council shall:

- i. Provide at least one (1) mass distribution of an election information reminder flyer containing at a minimum:
  1. The date(s), time, place(s) of the election
  2. The candidates that will appear on the ballot
  3. Vote-By-Mail application and ballot submission process
  4. Write-in candidate procedures
  5. Contact numbers for obtaining additional information

**f. 7 Day Outreach and Notification Requirements (applicable for all categories of elections except those utilizing the vote-by-mail component).** Not less than 7 days prior to the election the Neighborhood Council shall:

- i. Provide at least one (1) mass distribution of an election information reminder flyer containing at a minimum:
  1. The date(s), time, place(s) of the election
  2. The candidates that will appear on the ballot

3. Write-in candidate procedures
4. The Same-Day nomination process (if applicable), and
5. Contact numbers for obtaining additional information.

## **XXII. RESOLUTION OF CHALLENGES**

The Election Procedures will include a process for handling election disputes or challenges and must include the following provisions:

### **a. Recount of Votes Cast**

- i. Provide that any stakeholder may request a recount of a specific contest or the entire election results within five (5) days of the completion of the Final Official Certified Canvass by the Independent Election Administrator by filing a written request with DONE. For a recount to be accepted for action, (a) the number of votes separating the candidates must be 10% or less of the total votes cast in that specific contest, and (b) the stakeholder filing the request must provide the same stakeholder status verification required of voters in the election.
- ii. Require that the Independent Election Administrator conduct the recount within five (5) days of receipt from a stakeholder by DONE of the written request for a recount.
- iii. Require that public notice of the location, date and time of the recount be posted at the Neighborhood Council's required notice sites a minimum of 24 hours before the recount is to take place and that the person(s) requesting the recount be provided individual notice within the same time frame.
- iv. Require that the recount be open to public observation, provided that observers must not interfere with or in any way attempt to influence the persons conducting the recount.
- v. Require that the Independent Election Administrator certify the recount results to the Neighborhood Council and DONE immediately upon completing the recount.
- vi. Require that the certified recount results be announced by the Neighborhood Council and DONE immediately upon receipt of the certified recount results from the Independent Election Administrator.

### **b. Election Challenges**

- i. Provide that any stakeholder, who submits the same stakeholder documentation required of the voters in the election, may file a challenge to the conduct of the election no later than five (5) days of the completion of the Final Official Certified Canvass by the Independent Election Administrator by filing a written request with DONE. The written request must:
  1. Identify the basis for the challenge to the election.
  2. Identify the person(s) issuing the challenge.
  3. Provide contact information for the person(s) issuing the challenge.
- ii. Provide that from a pool of Final Decision Makers which is composed of stakeholder representatives from the Neighborhood Councils, DONE shall, on a rotational basis, select a minimum of three (3) of the members from the arbitration pool to act as the Final Decision Makers and conduct the specific election challenge review and issue final findings. The members selected cannot have participated in the conduct of the election in any way nor have any vested interest in the outcome of the election challenge. It will be the responsibility of each Neighborhood Council to select one or more of its stakeholder members to be submitted to the pool of Final Decision Makers. The selected stakeholders do not need to be governing board members of the Neighborhood Council.
- iii. Upon DONE's selection, DONE will immediately submit the election challenge to the Final Decision Makers which will conduct the review and issue final findings with respect to an election challenge.
- iv. Provide that DONE will maintain and update, as necessary, a file of the members of the Final Decision Makers' pool. Both the file of the pool members and the assignment of election challenges to the Final Decision Makers will be a matter of public record.
- v. Provide that DONE may, with the concurrence of the Neighborhood Council, engage the services of another person(s) or organization to act as the Final Decision Maker if a Final Decision Makers cannot be obtained from the pool of Neighborhood Council stakeholder representatives. The back-up Final Decision Makers selected cannot have participated in the conduct of the election in any way nor have any vested interest in the outcome of the election challenge. A list of the persons or organizations pre-qualified to act as a back-up Final Decision Makers will be published by DONE on its web site and/or through other appropriate methods.

- vi. Require that to serve as the Final Decision Makers, the person(s) or organization selected must have attended a training program conducted by DONE.
  - vii. Require that public notice of the receipt of an election challenge be posted at the Neighborhood Council's required notice sites at the time the election challenge is submitted to the Final Decision Makers and that the person(s) submitting the election challenge be provided individual notice within the same time frame.
  - viii. Require that the Final Decision Makers complete the review and issue the final findings to DONE within 30 days of receipt of the election challenge from DONE. If circumstances arise such that the review and issuance of findings cannot be completed in 30 days, the Final Decision Makers may utilize up to a maximum of two additional 15-day review periods. The Final Decision Makers will submit a notice to DONE identifying the reasons for the delay prior to initiating each review period extension.
  - ix. Require that the findings of the Final Decision Makers will be final and binding on the Neighborhood Council.
  - x. Immediately upon receipt of the findings of the Final Decision Makers, DONE will work with the Neighborhood Council to begin implementing the findings, as necessary, of the Final Decision Makers.
- c. Seating of Elected Board Members
- i. Provide that newly elected governing board members will not be seated pending the final results of a recount or an election challenge. The incumbent Board members will continue in their duly elected/appointed positions until the election challenge is resolved.
- d. Governing Board Member Seats Not Filled Through The Election
- i. Any governing board member seat(s) that is not filled through the election process will be deemed vacant when the new governing board takes office. The vacant seat(s) will be filled according to the bylaws of the Neighborhood Council.
- e. Elected Board Member Contact Information
- i. Within seven (7) business days of the announcement of final election results, the Election Committee must submit the names, candidate/board member stakeholder affiliation, board seat, public contact information, and private contact information (if available) for each newly elected board member. All information must be submitted on the form prescribed by DONE.



### XXIII. DISPOSITION OF ELECTION RECORDS

- a. The Independent Election Administrator shall retain all election materials including ballots, voter rosters, candidate filing documents, voter registration forms, etc. until the period for requesting a recount or filing a challenge has passed, or if a recount request or an election challenge is filed, until those processes are concluded.
- b. In the case of an election challenge, the Independent Election Administrator shall make the election materials available to the Final Decision Maker upon request.
- c. At the conclusion of the recount and election challenge resolution period, the Independent Election Administrator shall turn all election materials over to the Neighborhood Council. The Neighborhood Council shall then retain the election materials for a period of six (6) months, after which they shall be destroyed.
- d. If the ballot design and the voter registration allows for a ballot to be tracked to an individual voter, then the Independent Election Administrator will permanently redact the tracking information from the actual ballots prior to handing over the election materials to the Neighborhood Council.

### XXIV. PROCESS TO SEEK AMENDMENT TO THESE ELECTION PROCEDURES

- a. **Amendment Requests Initiated by a Neighborhood Council, a group of Neighborhood Councils, or Stakeholders.** If a Neighborhood Council, a group of Neighborhood Councils, or one or more Neighborhood Council stakeholders wishes to propose amendments to these Neighborhood Council Election Procedures by modifying or deleting existing procedures or by adding new provisions, the following process will be used:
  - i. A written request will be submitted to DONE. The written request shall:
    - 1. Identify the specific modification, deletion or addition that the proponent(s) is seeking.
    - 2. Provide justification for the proposed change.
    - 3. Provide any documentation that supports the proposed change (e.g., evidence from an election where the existing provisions of the Neighborhood Council Election Procedures hindered the conduct of a fair and inclusive election, where existing provisions

did not adequately address particular circumstances that arose during the conduct of an election, etc.).

- ii. Within 30 days of receipt of the request, DONE will forward the proposed amendment to BONC and may draft a Staff report. This report may include, the proposed amendment, a recommendation to either support (in whole or in part) or reject the proposed amendment, any alternative recommendation(s), justification for the DONE recommendation(s), and any documentation supporting the DONE recommendation(s).
- iii. Any report issued by DONE will be widely disseminated to all Neighborhood Councils and also be made available to the general public.
- iv. As soon as practical, BONC will schedule one or more public hearings on the proposed amendment. At the conclusion of the public hearing(s), and after gathering any additional information it deems necessary, BONC will issue a decision on the proposed amendment.

**b. Amendment Requests Initiated by DONE**

- i. Proposed amendments to the Neighborhood Council Election Procedures initiated by DONE shall follow the process outlined on this page, Number 1, b) through d) above.

**c. Amendment Requests Initiated by Another City Agency**

- i. Proposed amendments to the Neighborhood Council Election Procedures initiated by a City Agency other than DONE shall follow the process outlined on this page, Number 1 above.

**d. Amendments Initiated by BONC**

- i. The BONC, or any of its members, may also initiate an amendment(s) to the Election Procedures. Prior to making a decision to amend the Election Procedures, BONC shall hold at least one noticed public hearing on the proposed amendment. At the conclusion of the public hearing(s), and after gathering any additional information it deems necessary, BONC will issue a decision on the proposed amendment.



## **Neighborhood Council Guidelines for Hosting City Candidates**

Questions have arisen about the conditions under which candidates may appear at Neighborhood Council meetings. Neighborhood councils may wish to provide a forum for candidates to provide information to voters. However, there are various laws including the First and Fourteenth Amendments of the Constitution, California Penal Code §§ 424, 524 and court decisions that limit or otherwise restrict the use of public resources in relation to election matters. The California Supreme Court in *Stanson v. Mott* (1976) 17 Cal.3d 206 at 217 provided the general guiding principle prohibiting the use of public funds and resources in election matters: "A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office [citations]; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process." The court also stated that "judicial reluctance to sanction the use of public funds for election campaigns rests on an implicit recognition that such expenditures raise potentially serious constitutional questions." *Id.* at 216.

Because of the risks associated with hosting candidates in City sponsored forums or other venues, the City has generally left this activity to private sponsors. We note that Channel 35 will be providing election information, including some candidate information, during the City election cycle. However, if a neighborhood council has already hosted a candidate or wishes to consider hosting candidates at its meetings notwithstanding the resulting legal risks associated with doing so, both to the City and neighborhood council boardmembers personally, we offer the following general guidance.

The overriding principles that must be adhered to in providing a venue for prospective candidates during the election are that public resources may not be used for "campaign activity" and may only be used to provide neutral, balanced information, and that all candidates must be provided with an equal and fair opportunity. Individuals with concerns or complaints about how a neighborhood council has handled City candidate(s) should consult with their own private counsel.

### **Limitations on Neighborhood Councils as Candidate Forums**

A candidate may speak to a neighborhood council in the following circumstances:

- 1) During the public comment portion of a publicly noticed neighborhood council meeting. All such candidates wishing to speak must be provided the same opportunity to do so.
- 2) On a specific policy matter appearing on the neighborhood council agenda. All such candidates wishing to speak must be provided the same opportunity to do so.
- 3) At a candidate forum where all candidates for a particular race are present at the same time hosted by the neighborhood council following the guidelines set forth below.
- 4) At a series of neighborhood council meetings where all candidates are not present at the same time provided that the neighborhood council invites all candidates for that race (i.e.

Mayor) and treats all candidates fairly and equally as set forth below. This would be included on the agenda as a Discussion with Candidate (name).

- 4) The candidates may not seek any contributions at a neighborhood council meeting.

### ***Fair and Equal Access & Format***

- 1) With any format, *all* candidates for that race must be invited with sufficient notice. Please note that the City Clerk has a list of all candidates that will appear on the ballot.

- 2) The format of your candidate forum will play a significant role in ensuring that it remains non-partisan and that candidates are treated fairly and equally. Nothing that you do can show preference for one candidate over another. Several points are important to remember.

- a) Invite candidates to your forum/meeting with sufficient advance time and provide the invitations at the same time.

- b) Give each speaker the same amount of time to speak and/or answer questions. Be clear about time limits with the candidates before the event starts, and stick strictly to the limits so no one gets shortchanged.

- c) Provide candidates with the same or similar seating options in terms of type and location.

- d) Do not intervene, directly or indirectly, on behalf of a particular candidate.

- e) Use an unbiased means to determine speaking or appearance order (e.g., drawing straws, alphabetical order).

- f) Choose a moderator who will ask the questions and make sure that person uses the same wording for each candidate. Your moderator must be unbiased. If you want to take questions from the audience, give people index cards to write them on. The candidates should be given the same number of questions.

- 3) In order to encourage an informed electorate, it is necessary that persons who have limited English proficiency be offered an opportunity to obtain information regarding the candidates and election procedures. Neighborhood councils should distribute a copy of the candidate contact information in all languages (attached) at their meetings where the candidates will be participating.

- 4) Neighborhood councils should not depart from these guidelines, should not co-sponsor any private candidate forums, and should not permit any fundraising activities at neighborhood council meetings. In addition, if using public funds, a neighborhood council may not mail, including email, more than 200 invitations or flyers referencing any candidate. However, you may mail a Neighborhood Council agenda to those on your mailing list.

## 8. Summary of Legal Advice

**SUMMARY OF CITY ATTORNEY ADVICE REGARDING  
NEIGHBORHOOD COUNCILS**

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## **1. STATUTORY LAWS PERTAINING TO NEIGHBORHOOD COUNCILS**

### **a. NEIGHBORHOOD COUNCILS AND THE BROWN ACT**

The Brown Act, which seeks to ensure that actions by local government are taken openly, applies to all "legislative bodies" of local agencies. Government Code § 54950, et seq. These legislative bodies include advisory bodies "created by charter." Government Code § 54952(b). Since Neighborhood Councils are given power by the Los Angeles City Charter (Charter § 906), and were intended to be advisory (Charter § 900), the councils fit within the purview of the Brown Act.

(See City Atty. letter to Rosalind Stewart dated November 16, 2000, pp. 1-2; City Atty. Opinion to The Honorable Education and Neighborhoods Committee, Opinion 2004:8, pp. 2-12.)

### **COMMITTEES UNDER THE BROWN ACT**

Standing committees, whether comprised of a majority of the members of the governing board of neighborhood councils or not, are subject to the Brown Act. Gov't Code § 54952(b). This includes regular meetings of an executive committee that meets to create the agenda for the Neighborhood Council's regular meetings. Because of the regularity and frequency of these meetings, and the fact that the committee is not an *ad hoc* committee, the meetings require Brown Act compliance.

By comparison, advisory/*ad hoc* committees are exempt from the Brown Act if they: (1) are comprised solely of members of the governing body, (2) comprised of less than a quorum of the governing body, (3) are not comprised of individuals other than the members of the governing body, and (4) have a fixed schedule and defined purpose so that the advisory committee does not look like a standing committee.

Committees formed by individual members of the public, i.e., committees that are *not* ratified or formed by the governing body, or advisory committees formed by an individual officer that report separately to the officer, and again, were not formed by the governing body, nor reports to the governing body are exempt from the Brown Act.

(See Memorandum entitled "Brown Act Advice and Neighborhood Council committees" dated Oct. 1, 2001; Memorandum entitled "Brown Act and Agenda Requirement" dated Sept. 4, 2003)

### **RETREATS**

The Brown Act also applies to Neighborhood Council "retreats" since these are also meetings. See *The Brown Act: Open Meetings for Local Legislative Bodies*, 2003 booklet published by the California Attorney General's Office. A meeting is defined under the act as "any congregation of a majority of the members of a



legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains." Gov't Code § 54952.2(a). Since retreats are considered meetings under the Act, such retreats must conform with the Act's location requirements, and must "be held within the boundaries of the territory over which the local agency exercises jurisdiction." Gov't Code Section 54954.

(See Memorandum entitled "Retreats and Neighborhood Councils" dated March 11, 2004)

### **General BROWN ACT REQUIREMENTS.**

Since the Brown Act applies to the Neighborhood Councils, Council 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 legislative body (§ 54954.3); no secret ballots or deliberations are permitted (§ 54953); and agendas of public meetings and any other distributed writings are disclosable public records and shall be made available upon request without delay (§ 54957.5).

(See City Atty. letter to Rosalind Stewart dated November 16, 2000, pp. 4-5; City Attorney Opinion No. 2004:8.)

### **OPTIONS FOR REMOVING NEIGHBORHOOD COUNCILS FROM THE PURVIEW OF THE BROWN ACT**

There are two alternatives that would allow a Neighborhood Council to be exempted from all or portions of the Brown Act. First, the Charter and City ordinances could be amended to eliminate the current legal framework for Neighborhood Councils. The Neighborhood Councils could then reconstitute as private, non-profit corporations under Section 501(c) of the Internal Revenue Code, in order to fall within the existing Brown Act exemption. Government Code § 54952(c).

Secondly, the City may pursue an amendment to the Act itself, or other legislation that would exempt Neighborhood Councils from the Brown Act. In the past, school advisory councils and committees have been given legislative exemption from the Brown Act. See Cal.Educ.Code § 35417.

(See City Atty. Opinion to The Honorable Education and Neighborhoods Committee, Opinion 2004:8, pp. 12-17.)

### **b. NEIGHBORHOOD COUNCILS AND THE POLITICAL REFORM ACT**

The Political Reform Act prohibits a "public official" from making, participating in making or attempting to use his or her official position to influence any government decision if it is reasonably foreseeable that the decision will have a material effect on the official's economic interests. Government Code §§ 87100 and 87103. The Act applies to "local government agenc[ies]" including city boards, commissions, etc. Gov't Code § 82041. Because Neighborhood Councils are formed by the City Charter, are substantially funded by the City, provides services and undertake obligations that public agencies are legally authorized to perform, and are officially certified and recognized by the City, the councils are likely local government agencies, and the Act applies to them.

(See City Atty. letter to Rosalind Stewart dated November 30, 2000, pp. 1-6; City Attorney Opinion 2004:7.)

#### **NEIGHBORHOOD COUNCILS AND GOVERNMENT CONTRACTS UNDER GOV'T CODE SECTION 1090.**

The "officers or employees" of state and local government agencies are prohibited from being "financially interested in any contract made by them in their official capacity." Government Code § 1090. Section 1090 has been held to apply to "members of advisory bodies if they participate in the making of a contract through their advisory function." *Conflicts of Interest*, California Attorney General's Office (1998), pp. 46-47. In addition, § 1090 extends not only to a formal decision to enter into a contract, but also to the overall process of negotiating and considering a contract. *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237. Thus, members of neighborhood councils will be subject to § 1090 requirements if and when they contract for goods and services, and/or they advise a City agency concerning whether or not that agency should enter a contract or regarding specific contract provisions.

(See City Atty. letter to Rosalind Stewart dated November 30, 2000, pp. 8-9; Memorandum entitled "Conflict of Interest and Neighborhood Councils" dated September 28, 2001)

#### **c. NEIGHBORHOOD COUNCILS AND THE ADA ACT**

Title II of the Americans With Disabilities Act prohibits discrimination on the basis of disability by public entities. 42 U.S.C. § 12131 *et seq.* All services, programs and activities of a public agency must be made readily accessible and usable by disabled individuals. Title II extends to services, programs and activities by local governments or any of their instrumentalities. Since neighborhood councils can be considered instrumentalities of local government, the neighborhood councils must ensure that their meeting sites are accessible and that their communications can be accessed through assistive devices.

(See City Atty. Letter to Rosalind Stewart dated April 5, 2001, pp. 1-2.)

#### **d. NEIGHBORHOOD COUNCILS' DATABASES AND THE PUBLIC RECORDS ACT**

The California Public Records Act (the "Act") requires the disclosure of public records. Gov't Code § 6250 et seq. The Act broadly defines a "public records" to include information "relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." Gov't Code § 6252(e). Public records may exist in either written or electronic form. Gov't Code § 6252(f).

Several neighborhood councils use databases to facilitate their operations, such as communicating with and conducting outreach to stakeholders. These databases contain names and addresses of stakeholders, compiled through a variety of means, including sign-up sheets, or by stakeholder or voter registration materials.

Some neighborhood councils have received requests under the Act from third parties for their databases. Although it is possible that a Neighborhood Council database constitutes a public record, it is likely that the database falls into two exemptions under the Act, and therefore, does not need to be disclosed.

First, the databases could fall into the "Personnel, Medical or Similar Files" exemption under the Act. Gov't Code § 6254(c). Courts have applied the "similar files" exemption to protect databases comprised of personal information from disclosure. See *United States Dep't of Defense v. FLRA* (1994) 510 U.S. 487, 502. In addition, it is likely that the disclosure of the databases would "constitute an unwarranted invasion of personal privacy," as required by the Act. Gov't Code § 6254(c). Courts have balanced the interests in favor of withholding lists of names and contact information. *National Ass'n of Retired Fed. Employees v. Horner* (1989) 879 F.2d 873, 879.

Second, the Act also allows for exemption if the record in question meets a balancing test, or "catchall" exemption. Gov't Code § 6255. Under this test, privacy interests may be balanced against the interest in disclosure, an analysis similar to Section 6254(c). Courts have upheld the government's decision to withhold public records containing personal contact information when the public interest in nondisclosure clearly outweighed the public interest in disclosure. See *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008.

(See City Atty. letter to Greg Nelson dated Dec. 6, 2004, pp. 1-11).

#### **PUBLIC RECORDS ACT AND INTERIM NEIGHBORHOOD COUNCIL BOARDS**

Under the Act, the focus is on establishment of the agency. While the point in time that the legislative body and the agency are established may be the same, that point in time may also vary depending upon the facts of the case. Under the Act, the test of whether the Act applies is NOT based on the functional ability of the certified Neighborhood Council to act or be up and running with an elected

board, but is based on whether the Neighborhood Council is a "local agency." The term "local agency" is defined broadly under the Act and includes any board, commission, or agent of a chartered city. After certification, the Neighborhood Council is subject to the Act because it is now officially related to the City of Los Angeles. Thus, regardless of whether the Neighborhood Council has conducted its initial election or not, does not undermine the applicability of the Act.

(See Memorandum entitled "Application of Public Records Act upon Certification of NC" dated Jan. 16, 2003)

## **PUBLIC RECORDS AND ELECTION MATERIALS**

Marked ballots from Neighborhood Council elections are exempt from disclosure. However, voter registration forms used in Neighborhood Council elections are subject to limited disclosure: the voter's name and information on voter registration forms *other than* the voter's telephone number and home address may be disclosed.

(See Memorandum to the Neighborhood Council Election Procedures Working Group, dated March 30, 2004.)

## **2. PARTICIPATION ON NEIGHBORHOOD COUNCILS**

### **a. NEIGHBORHOOD COUNCILS' ABILITY TO FURTHER DEFINE CHARTER TERMS TO IDENTIFY ITS STAKEHOLDERS**

The Charter defines a stakeholder as "everyone who lives, works or owns property in the area." Charter § 906(a)(2). The Plan for a Citywide System of Neighborhood Councils ("Plan") expands upon the Charter's vision by allowing community stakeholders to include a variety of organizations and institutions. Plan, Art. II.

A neighborhood council may not define the Charter terms in order to further define its stakeholders. The Charter provisions dealing with a system for neighborhood councils were specifically designed to allow the greatest degree of participation. Any effort to further define or refine the terms set forth in the Charter must be reasonably consistent with those terms, their use in the Charter and the interest manifested by the context in which they are found.

It is the role of the legislative body to further clarify and refine legislation. *Carson Mobilehome Park Owners' Assn. v. City of Carson* (1983) 35 Cal. 3d 184, 190. While the Charter delegates some functions to the neighborhood councils, under certain limited circumstances, performing legislative functions is not one of them. Charter § 908. Thus, any refinements to the language of the Charter should be accomplished by amending the Plan and the Ordinance, or by the Commission (the Board of Neighborhood Commissioners) establishing rules and policies.

(See City Atty. Opinion to Greg Nelson, opinion 2002:7, pp. 1-4.)

#### **b. VOTING RIGHTS/PARTICIPATION OF STAKEHOLDERS**

Since the Charter defines a stakeholder as “everyone who lives, works and owns property”, Neighborhood Councils may not require stakeholders to be United States citizens, nor restrict convicted felons or undocumented (illegal) aliens from participating in their Neighborhood Council, either by running for a board seat or voting for board members.

However, because minors are statutorily incompetent to engage in certain activities, Neighborhood Councils may restrict eligibility to run for a board seat or vote in Neighborhood Council elections to adults, *i.e.* persons who are 18 years or older. Since Neighborhood Councils may engage in decisions to hire staff, spend public funds, and enter into contracts for goods and services, a youth member of a board would be required to have the degree of maturity and responsibility to exercise the right to vote and to exercise the responsibilities that this position carries. Thus, limiting eligibility to those whom are 18 years or older is a reasonable requirement.

However, in the spirit of inclusiveness that the Plan envisions, a neighborhood council could provide non-voting status on the governing board for youth constituencies or otherwise provide for youth participation.

(See City Atty. letter to Greg Nelson dated Jan. 24, 2004, pp. 1-5; Memorandum entitled “By-Law Exclusions” dated Dec. 11, 2001.

#### **c. THE ABILITY OF THE CITY TO RESTRICT LOBBYISTS FROM SERVING ON NC BOARDS**

Registered lobbyists who are stakeholders of a Neighborhood Council may not be prohibited from serving on a Neighborhood Council. In particular, the Charter clearly envisioned a process that is inclusive. “Neighborhood councils shall include representatives of the many diverse interests in communities”; [n]eighborhood council membership will be open to everyone who lives, works or owns property in the area [stakeholders].” Charter §§ 900, 906.

Note, however, that a lobbyist may be disqualified from participating on matters for which they have been paid to advocate a position. The Political Reform Act prohibits a public official from “in any way attempting to use his or her official position to influence a governmental decision” when the official has a financial interest. Gov’t Code § 87100. If the amount of income, *i.e.* payment to a lobbyist to advocate a position, received within 12 months prior to the decision in question totals \$500 or more, the lobbyist would be disqualified from participation in the decision if the decision would have a material financial effect on the source of income. 2 Cal. Code of Regulations § 18703.3.

(See City Atty. letter to The Honorable Education and Neighborhoods Committee dated April 18, 2005, pp. 1-3)

#### **d. INCOMPATIBLE OFFICES**

The legal incompatibility doctrine prevents a holder of a public office from holding another office that is incompatible with the first. *People ex rel Bagshaw v. Thompson* (1942) 55 Cal.App.2d 147, 150. However, since Neighborhood Council board seats are not "offices" within the meaning of the incompatibility doctrine, the doctrine does not prevent a person from concurrently holding seats as a Neighborhood Council board member or City Commissioner (including an Ethics Commission position). However, conflicts of interests may occur in serving in both capacities, in which case a person serving in concurrent capacities may need to recuse him or herself from participating at either the Neighborhood Council board level or the Commission level.

(See City Atty. letter to Greg Nelson dated July 30, 2003, pp. 1-3).

#### **e. EXCLUSION OF ELECTED CITY OFFICIALS FROM NEIGHBORHOOD COUNCIL BOARDS**

The Charter's purpose of creating a Neighborhood Council system was to promote more *citizen* participation, *i.e.* private community members. It is consistent with the Charter's intent to limit participation of elected City officials in order to maximize the opportunities for community stakeholders to participate on the board. The Plan furthers this vision, stating that, *inter alia*, the Neighborhood Councils should "promote public participation." Plan, Article 1. Thus, for the following reasons, a neighborhood council may adopt bylaws that exclude elected City officials from serving on its governing body.

First, if elected City officials also served on the board, there is the potential for "practical" incompatibility. A key purpose of the Neighborhood Council system is to advise City officials. If a City official served in this dual capacity, the official could conceivably make a recommendation at the local neighborhood council level on a matter that would ultimately be presented to him or her for decision.

Second, establishing reasonable eligibility requirements for a governing board of a neighborhood council does not violate an individual's freedom of association. U.S. Const. Amend. 1; Cal. Const. Art. 1, § 3. Generally, cases protecting this right do not necessarily guarantee access to leadership positions in those organizations. *Boy Scouts of America v. Dale* (2000) 530 U.S. 640.

Third, under the Equal Protection Clause, if a fundamental right is not being burdened and where the classification does not involve suspect classes, the government must merely show the City has a "rational basis" to justify an exclusion. *Heller v. Doe* (1993) 509 U.S. 312. Based on the Charter and the Plan, there is a significant public policy interest in ensuring the community nature

of neighborhood councils. Thus, it is reasonable and lawful for neighborhood councils to exclude elected City officials from serving on a governing body.

Note that this exclusion may not extend to City council staff or other City staff. While City officials can be excluded from serving, by virtue of their being the ultimate decision makers, the same result is not warranted in the case of City employees.

(See City Atty. letter to Greg Nelson dated March 11, 2002, pp. 1-7.)

#### **f. NEIGHBORHOOD COUNCILS AND FAITH BASED ORGANIZATIONS**

The presence of faith based organizations on a Neighborhood Council does not prevent the City from funding that Neighborhood Council. The Neighborhood Council was created and intended to function for a secular purpose, the City did not intend to either advance or inhibit religion, and does not foster state excessive entanglement with religion. Therefore, the funding of Neighborhood Councils which include faith based organizations does not violate the Establishment Clause of the California Constitution. See Cal. Const. Article 1 § 4; *Lemon v. Kurtzman* (1971) 403 U.S. 602.

(See City Atty. letter to Rosalind Stewart dated April 5, 2001, pp. 1-5.)

### **3. THE RESPONSIBILITIES AND PROCEDURES OF NEIGHBORHOOD COUNCILS**

#### **a. NEIGHBORHOOD COUNCILS AND LEGAL IMMUNITIES / LIABILITIES**

Neighborhood Councils are subject to the same immunities and liabilities as other advisory bodies of the City so long as they are acting within the scope of their responsibilities under the City Charter and the implementing ordinance (Ordinance No. 174006). When a Neighborhood Council is engaged in responsibilities found in the Charter, the Plan, Regulations or subsequent ordinances, the City would be obligated to defend the Neighborhood Council.

(See City Atty. letter to Rosalind Stewart dated April 5, 2001, pp. 1-3.)

Because neighborhood councils are expressly authorized by the City Charter, they are City bodies. See Charter §§ 900-914. As such, the official activities of the neighborhood councils could create City liability where they were within the scope of the Council's Charter and ordinance created duties.

Although members of governing bodies of neighborhood councils are not officers of the city or City employees, for liability purposes, these members would be treated as if they were City employees.

In general, if a member's conduct was within the "scope of employment" and the member cooperates in good faith in the defense of the lawsuit, the City would be

obligated to indemnify the member for any judgment against the member.  
Charter § 272.

However, if the member's conduct is beyond the scope of employment, fraudulent, corrupt, or malicious, or where the member willfully fails or refuses to cooperate in the defense, the City may not be required to provide a legal defense. As such, it is possible that a member of the governing board could be held personally liable for conduct related to the member's activities connected with the council. In addition, a defense need not be provided in certain conflict of interest situations, and where unlawful expenditures are made without due care.

(See City Atty. letter to Office of the City Clerk / Governmental Efficiency Committee dated April 25, 2001, pp. 1-2.)

#### **b. ELECTION SYSTEMS OF NEIGHBORHOOD COUNCILS**

The election of the governing board of a Neighborhood Council should be as democratic and inclusive as possible. Thus, a system of election must provide all stakeholders in the neighborhood council with the opportunity to elect one or more members of the governing body. The election system must ensure that all stakeholders have an opportunity to vote for a board member who would represent their interest, or provide for an "at-large interest."

Specifically, all stakeholders must be assured the same voting rights. Further, a neighborhood council may divide its council into geographic regions and allow only those persons who have stakeholder status in that geographic region to vote for the governing board member.

A neighborhood council can designate board members by "community interests" and only allow the voters of that interest group to vote for those designated governing members, provided that stakeholders can vote for at least one governing board member. Under this scenario, it is recommended that "at-large" positions on the board be reserved to accommodate those stakeholders who otherwise may not be able to vote for a governing board member.

Lastly, a neighborhood council can create a voting system whereby certain stakeholder groups must vote in an at-large category for seats, instead of geographically based seats. As long as all stakeholders have an opportunity to vote for at least one or more board members, this type of neighborhood council voting system is valid.

(See City Atty. Opinion to Mr. Greg Nelson, opinion 2002:5, pp. 1-7; City Atty. Opinion to the Board of Neighborhood Commissioners, Opinion, 2004:3, p3.)



### **c. SUPPORTING POLITICAL CANDIDATES**

A Neighborhood Council may not endorse candidates for public office or spend money under its control to support or oppose candidates for office. This rule applies to private money donated to a Neighborhood Council, since monetary gifts received by a Neighborhood Council would have the status of public funds, and any "expenditure of public funds ... must be confined to public purposes." *Albright v. City of South San Francisco* (1975) 44 Cal.App.3d 866, 869. Neighborhood councils, however, may take a public position in support of or opposition to a ballot measure, but again, may not use public funds for that purpose.

Note that individual members of the governing board of a neighborhood council are allowed to make *personal* endorsements for candidates for public office and contribute their own *personal funds* to political campaigns.

(See City Atty. letter to Rosalind Stewart dated December 15, 2000, pp. 1-3.)

Finally, neighborhood councils may not take official positions on state or federal legislation. The Mayor and City Council have exclusive power over the City's intergovernmental relationships. Charter § 231 (h).

### **d. MOTION FOR RECONSIDERATION**

A motion for reconsideration is designed to allow the majority to correct "hasty, ill-advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote." Robert's Rules of Order Newly Revised § 36. In order for a commission to reconsider its previous decision, a motion for reconsideration must be made by a member of the prevailing side of the original motion, but any member of the neighborhood council may vote on the initial motion, whether they were present at the original meeting or not. Such a motion rests solely in the discretion of neighborhood council board.

(See City Atty. letter to Lisa Franklin dated July 1, 2002, pp. 1-2.)

### **e. APPEALS**

In regards to an appeal of the Board of Neighborhood Commissioners' certification decision, the Plan for a Citywide System of Neighborhood Councils ("Plan") and the ordinance which implements the Plan, Ordinance No. 174006, allow for an appeal to the City Council only if an application for certification was denied. Disagreements with any aspect of a Commission determination that ultimately results in an approval of a certification application are not appealable.

(See City Atty. letter to Lisa Franklin dated July 1, 2002, p. 2)

Because Neighborhood Councils are city agencies and part of the City family, neighborhood councils – as an entity – may not appeal the decisions of other City bodies, such as appeals of Zoning Administrator decisions or Area Planning Commission decisions. However, since Neighborhood Councils' specific roles are to be advisors to the City, they may provide their recommendations to these bodies on the subject at hand.

A non-exhaustive list of activities available to a Neighborhood Council regarding the City's administrative process includes: (1) The Neighborhood Council could pass a resolution/take an official position regarding the subject matter of the administrative proceeding, (2) The Neighborhood Council could advocate or express its official position to City Staff, the City Departments, the City Council, or the Mayor; or (3) The Neighborhood Council could appear at any of the City's administrative hearings and express its official position to the City's hearing officers, Board of Commissioners, Committee hearings, or City Council hearings. Note that a Neighborhood Council is able to testify during the City's administrative processes.

(See City Atty. letter to Greg Nelson dated Nov. 5, 2002 ("Report Re: Brentwood Community Council"), p. 2.)

#### **f. INVOCATIONS, PRAYERS, OR "MOMENTS OF INSPIRATION"**

Any invocation, prayer, or "Moment of Inspiration" which is offered to begin a council meeting, may not be sectarian (pertaining to a religions denomination) since this would violate the Establishment Clause of the First Amendment of the United States Constitution. *Rubin v. City of Burbank* (2002) 101 Cal.App.4th 1194.

(See City Atty. letter to Greg Nelson dated Dec. 3, 2002, p. 1).

#### **g. QUORUMS**

The Plan for a Citywide System of Neighborhood Councils recognizes that the Governing Body of a Neighborhood Council officially acts when it has a quorum. Plan, Art. III, § 2(c)(iii)(4). Thus, in general, no *action* may be taken when a quorum has been lost, or never achieved.

If a neighborhood council knows it will not have a quorum in time for a meeting, and before noticing the meeting, an official meeting of the Neighborhood Council board should be re-scheduled. If a neighborhood council knows that it will not have a quorum, and the meeting has been posted, the meeting should be canceled and a notice POSTED in all of the neighborhood council's normal posting locations.

In general, Neighborhood Council board meetings should not begin until enough members of the board have arrived. However, if the board is confident that

members are simply running late, non-action items can be discussed, and public comment taken while awaiting the arrival of the members. If it later becomes evident that a quorum will not be obtained, the better practice is to adjourn, absent any neighborhood council rule to the contrary. However, if the neighborhood council chooses to entertain discussion on the agenda items, the Chair should make clear that there is no quorum and therefore there is no "official" meeting.

If the neighborhood council had a quorum at the beginning of the meeting, but then that quorum is lost during the meeting, there are several options for the Neighborhood Council: (1) adjourn the meeting and/or continue it to another date (2) take limited public comment or testimony and adjourn the meeting and/or continue it to another date, or (3) adopt standing rules to decide if it wishes to cancel the meeting or entertain comments and discussion on the agenda items. Again, if the neighborhood council chooses to entertain discussion on the agenda items, the Chair should make clear that there is no quorum and therefore there is no "official" meeting.

(See Memorandum entitled "Quorums and Neighborhood Councils" dated Dec. 3, 2004)

#### **h. NEIGHBORHOOD COUNCIL ADVERTISING**

A Neighborhood Council cannot sell advertisements in its newsletters. As a general rule, City entities are prohibited from engaging in "commercial or industrial enterprise." See Charter, Art. I, section 104(f), Municipal Newspaper; Charter, Art. 1, section 104(g), Business Enterprises.

(See Memorandum entitled "Neighborhood Council Advertising" dated Jan. 24, 2005)

#### **i. USE OF THE CITY SEAL**

A Neighborhood Council may use the City Seal on agendas or letterheads, if authorized by the General Manager of DONE.

(See Memorandum entitled "Neighborhood Council Use of the City Seal" dated April 29, 2002)

#### **j. NONPROFIT CORPORATIONS**

Nonprofit corporations may be formed to support neighborhood councils. The likely method of nonprofit formation would be under Section 501 (c) of the Internal Revenue Code. However, care must be taken in the formation to ensure that the nonprofit maintains a separate corporate identity from the City entity. The nonprofit could take the form of a "friends of a neighborhood council" or some type of organization created to accept, maintain and administer funds obtained from private donations to support neighborhood councils.

However, to set up a support group, the nonprofit corporation should: 1) maintain a separate board of directors from the neighborhood councils 2) be created at the impetus from private individuals or stakeholders (not from the neighborhood council board) and 3) not use neighborhood council public funds to pay for the incorporation fees or any other fees necessary to set up the support nonprofit corporation.

(See Letter to Greg Nelson, dated December 6, 2005)

## 9. Resources

## **RESOURCES**

Article IX, City Charter

Plan For A Citywide System Of Neighborhood Councils

Ordinances Implementing the Plan

Meeting Agenda

Opening Meeting Script

Economic Disclosure Form

Bylaws Checklist



## ARTICLE IX

### DEPARTMENT OF NEIGHBORHOOD EMPOWERMENT

#### Section

- 900 Purpose.
- 901 Department of Neighborhood Empowerment.
- 902 Board of Neighborhood Commissioners.
- 903 General Manager.
- 904 Development of the Neighborhood Council Plan.
- 905 Implementation of the Plan.
- 906 Certification of Neighborhood Councils.
- 907 Early Warning System.
- 908 Powers of Neighborhood Councils.
- 909 Annual City Budget Priorities.
- 910 Monitoring of City Services.
- 911 Appropriation.
- 912 Review.
- 913 Transfer of Powers.
- 914 Effect of Ordinances.

#### Sec. 900. Purpose.

To promote more citizen participation in government and make government more responsive to local needs, a citywide system of neighborhood councils, and a Department of Neighborhood Empowerment is created. Neighborhood councils shall include representatives of the many diverse interests in communities and shall have an advisory role on issues of concern to the neighborhood.

#### Sec. 901. Department of Neighborhood Empowerment.

The Department of Neighborhood Empowerment shall have the duties and responsibilities set forth in this Article and elsewhere in the Charter to implement and oversee the ordinances and regulations creating the system of neighborhood councils enacted pursuant to Section 905. Duties and responsibilities shall include:

- (a) prepare a plan for the creation of a system of neighborhood councils to ensure that every part of the City is within the boundary of a neighborhood

council, and has an opportunity to form a neighborhood council (Plan);

- (b) assist neighborhoods in preparing petitions for recognition or certification, identifying boundaries that do not divide communities, and organizing themselves, in accordance with the Plan;

- (c) arrange Congress of Neighborhood meetings if requested to do so by recognized neighborhood councils;

- (d) assist neighborhood councils with the election or selection of their officers;

- (e) arrange training for neighborhood councils' officers and staff;

- (f) assist neighborhood councils to share resources, including offices, equipment, and other forms of support for them to communicate with constituents, other neighborhood councils and with government officials; and

- (g) perform other duties as provided by ordinance.

#### Sec. 902. Board of Neighborhood Commissioners.

- (a) There shall be a board of seven commissioners to be known as the Board of Neighborhood Commissioners (board). Commissioners shall be appointed by the Mayor, and shall be from diverse geographic areas, as further specified by ordinance. Appointment and removal of commissioners shall otherwise be in accordance with Section 502.

- (b) The board shall be responsible for policy setting and policy oversight, including the approval of contracts and leases and the promulgation of rules and regulations, but shall not be responsible for day-to-day management.



(c) The board shall operate in accordance with Sections 503 through 508 and 510 of the Charter.

#### **Sec. 903. General Manager.**

(a) There shall be a general manager of the Department of Neighborhood Empowerment who shall be appointed by the Mayor, subject to confirmation by the Council, and may be removed as provided in Section 508.

(b) The general manager shall have those powers and duties set forth in Section 510.

(c) The general manager shall appoint, discharge and prescribe the duties of staff, consistent with the civil service provisions of the Charter.

#### **Sec. 904. Development of the Neighborhood Council Plan.**

The Department of Neighborhood Empowerment shall develop a Plan for a citywide system of neighborhood councils, in conformance with the following:

(a) The Department of Neighborhood Empowerment shall seek public input in the formulation of the Plan.

(b) The Plan shall contain a statement of goals, policies and objectives of the Neighborhood Council system, and shall contain specific regulations, in draft ordinance format (Regulations) which, if adopted by ordinance, would be sufficient to implement the Plan.

(c) The Regulations shall establish the method by which boundaries of neighborhood councils will be determined. The system for determining boundaries shall maintain neighborhood boundaries to the maximum extent feasible, and may consider community planning district boundaries where appropriate.

(d) The Regulations must ensure that all areas of the City are given an equal opportunity to form neighborhood councils.

(e) The Regulations shall establish the procedure and criteria for recognition or certification of neighborhood councils.

(f) The Regulations shall not restrict the method by which the members of a neighborhood council are chosen, if the process otherwise satisfies the requirements of this Article.

(g) The Regulations shall require that neighborhood councils adopt fair and open procedures for the conduct of their business.

(h) The Mayor and Council shall provide for the creation of the Department of Neighborhood Empowerment and appointment of the general manager within 120 days of the effective date of this Article.

#### **Sec. 905. Implementation of the Plan.**

The Department of Neighborhood Empowerment shall complete development of the Plan and present the Plan and all necessary Regulations for a system of neighborhood councils to the Council and Mayor within one year of the establishment of the department and commission. The Council shall consider the Regulations, and within six months after presentation of the Plan to Council may adopt ordinances to implement the Regulations as proposed, or as modified by the Council consistent with the requirements of the Plan set forth in Section 904. If implementing ordinances are not adopted within this time period, the Regulations shall become effective, and to the extent not inconsistent with law shall be binding upon all City departments and offices.

#### **Sec. 906. Certification of Neighborhood Councils.**

(a) By-laws. Each neighborhood council seeking official certification or recognition from the City shall submit an organization plan and by-laws to the Department of Neighborhood Empowerment showing, at a minimum:

(1) the method by which their officers are chosen;

(2) neighborhood council membership will be open to everyone who lives, works or owns property in the area (stakeholders);

(3) assurances that the members of the neighborhood council will reflect the diverse interests within their area;

(4) a system through which the neighborhood council will communicate with stakeholders on a regular basis;

(5) a system for financial accountability of its funds; and

(6) guarantees that all meetings will be open and public, and permit, to the extent feasible, every stakeholder to participate in the conduct of business, deliberation and decision-making.

(b) **Petitioning for Certification and Approval.** Neighborhood councils may petition for certification or recognition in accordance with rules and procedures set forth in the Plan.

#### **Sec. 907. Early Warning System.**

The Regulations shall establish procedures for receiving input from neighborhood councils prior to decisions by the City Council, City Council Committees and boards and commissions. The procedures shall include, but need not be limited to, notice to neighborhood councils as soon as practical, and a reasonable opportunity to provide input before decisions are made. Notices to be provided include matters to be considered by the City Council, City Council Committees, and City boards or commissions.

#### **Sec. 908. Powers of Neighborhood Councils.**

Subject to applicable law, the City Council may delegate its authority to neighborhood councils to hold public hearings prior to the City Council making a decision on a matter of local concern.

#### **Sec. 909. Annual City Budget Priorities.**

Each neighborhood council may present to the Mayor and Council an annual list of priorities for the City budget. The Mayor shall inform certified neighborhood councils of the deadline for submission so that the input may be considered in a timely fashion.

#### **Sec. 910. Monitoring of City Services.**

Neighborhood councils shall monitor the delivery of City services in their respective areas and have periodic meetings with responsible officials of City departments, subject to their reasonable availability.

#### **Sec. 911. Appropriation.**

The Mayor and Council shall appropriate funds for the Department of Neighborhood Empowerment and for the startup and functioning of neighborhood councils for the first two years after the effective date of this Article. Funds shall be appropriated into a special fund to be established by ordinance. The Mayor and Council shall thereafter appropriate funds for the department and neighborhood councils at least one year in advance of each subsequent fiscal year.

#### **Sec. 912. Review.**

The Mayor and Council shall appoint a commission as prescribed by ordinance to evaluate the provisions of this Article, the Regulations adopted pursuant to this Article, and the efficacy of the system of neighborhood councils no later than seven years after the adoption of the Charter. The commission shall make recommendations to the Council regarding changes to the Charter or the Regulations, as it deems appropriate.

#### **Sec. 913. Transfer of Powers.**

Notwithstanding any other provision of the Charter, the Mayor and Council shall not transfer powers, duties or functions of the Department of Neighborhood Empowerment to any other department, office or agency pursuant to Section 514 during the first five years after implementation of the Plan pursuant to Section 905.

#### **Sec. 914. Effect of Ordinances.**

The Council may adopt ordinances concerning neighborhood councils consistent with requirements for the Plan set forth in Section 904 at any time, which ordinances shall supersede any inconsistent Regulations that have become effective pursuant to Section 905.



# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

**APPROVED  
MAY 30, 2001**

***AMENDED***

***November 8, 2002; May 20, 2005; October 25, 2006***



# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article I**

### **Goals and Objectives of the Neighborhood Council System**

The goals and objectives of the Plan are to:

1. Promote public participation in City governance and decision making processes so that government is more responsive to local needs and requests and so that more opportunities are created to build partnerships with government to address local needs and requests.
2. Promote and facilitate communication, interaction, and opportunities for collaboration among all Certified Neighborhood Councils regarding their common and disparate concerns.
3. Facilitate the delivery of City services and City government responses to Certified Neighborhood Councils' problems and requests for assistance by helping Certified Neighborhood Councils to both identify and prioritize their needs and to effectively communicate those needs.
4. Ensure equal opportunity to form Certified Neighborhood Councils and participate in the governmental decision making and problem solving processes.
5. Create an environment in which all people can organize and propose their own Certified Neighborhood Councils so that they develop from the grassroots of the community.
6. Foster a sense of community for all people to express ideas and opinions about their neighborhoods and their government.

# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article II**

### **Desired Characteristics of Neighborhood Councils**

#### **1. Inclusive Membership**

Certified Neighborhood Councils shall be diverse, inclusive, and open to all Community Stakeholders. A Community Stakeholder is defined as any individual who lives, works or owns property in a Neighborhood Council area. In addition, Community Stakeholder status may be identified by participation in, among other things, educational institutions, religious institutions, community organizations or other non-profit organizations, block clubs, neighborhood associations, homeowners associations, apartment associations, condominium associations, resident associations, school/parent groups, faith based groups and organizations, senior groups and organizations, youth groups and organizations, chambers of commerce, business improvement districts, service organizations, park advisory boards, boys and girls clubs, cultural groups, environmental groups, codewatch, neighborhood watch, police advisory board groups, and/or redevelopment action boards.

#### **2. Statement of Non-Discrimination**

Certified Neighborhood Councils must encourage all Community Stakeholders to participate in all of their activities, and may not discriminate in any of their policies, recommendations or actions against any individual or group on the basis of race, religion, color, creed, national origin, ancestry, sex, sexual orientation, age, disability, marital status, income, or political affiliation.

#### **3. Transparent Operations**

Certified Neighborhood Councils shall adopt fair and open procedures for the conduct of their business.

#### **4. Independent Entities**

Certified Neighborhood Councils shall be as independent, self-governing, and self-directed as possible. The Department of Neighborhood Empowerment (DONE) shall assist Certified Neighborhood Councils to pursue options, including, but not limited to, tax-exempt status and/or non-profit incorporation, to strengthen their independence. Tax-exempt status and/or non-profit incorporation will have no effect on a Certified Neighborhood Council's eligibility for assistance, monetary or otherwise, from DONE.

# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article III**

### **Certification of Neighborhood Councils**

1. DONE responsibilities. On July 1, 2001, after the adoption of the Neighborhood Council Plan, DONE shall:
  - (a) Announce and inform the public of the Neighborhood Council certification process Citywide, but DONE shall not accept completed certification applications until October 1, 2001.
  - (b) Actively promote the formation of Certified Neighborhood Councils Citywide, giving emphasis to those areas and Community Stakeholder groups with traditionally low rates of civic participation in government.
  - (c) Facilitate and encourage collaboration and discussion among neighboring and overlapping applicant groups and provide technical assistance on how to proceed with a unified certification application, and provide dispute resolution services to applicants where more than one application is submitted for a Neighborhood Council boundary area to gain consensus on a unified certification application.
2. Components of a Certification Application. A certification application shall, at a minimum, include the components listed in this section.

### **Boundaries**

- (a) A detailed description of proposed boundaries shall be provided, including a rationale for drawing the proposed boundaries. Neighborhood Council applicants within a proposed Neighborhood Council boundary shall, to the extent feasible, work together in setting boundaries.
  - In identifying proposed Neighborhood Council boundaries, applicants are encouraged to reference other types of existing boundaries, including, but not limited to, the following:
    - (i) Census tracts as a means of complying with the minimum population size of 20,000 Neighborhood Council Community Stakeholders.
    - (ii) City service and planning areas, such as police and fire districts or Community Planning Area boundaries.
  - A proposed set of boundaries should, to the maximum extent feasible, follow historic and contemporary community and neighborhood borders, and shall utilize natural boundaries or street lines and be geographically compact and contiguous.
  - The boundaries of two or more Certified Neighborhood Councils may not overlap with one another, unless the area for proposed inclusion into each.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- Certified Neighborhood Council is designed for a public use, such as a park, school, library, police or fire station, major thoroughfare, or contains a landmark or facility with historical significance.
- The inaugural boundaries of all Certified Neighborhood Councils shall be the limits of the City of Los Angeles (City). The boundaries of a Certified Neighborhood Council are encouraged to remain within the City limits because the City can only guarantee delivery of its services to City residents.
- Neighborhood Council boundaries should be comprised of no less than 20,000 Neighborhood Council Community Stakeholders. Areas that have fewer than 20,000 Neighborhood Council Community Stakeholders may be certified provided they meet the following criteria:
  - (i) The proposed area is separated from adjacent communities by significant geographic features; or,
  - (ii) The proposed area is identified by name within any of the 36 adopted Community Plan Areas of the City Planning Department; or,
  - (iii) The proposed area represents a historic, identifiable neighborhood or community that is serviced by City service providers, such as a public library, park, recreation center, fire or police station, or a public school.
- A Neighborhood Council that comprises fewer than 20,000 Neighborhood Council Community Stakeholders must satisfy all requirements of this Plan.

### **Outreach**

- (b) The outreach process used to identify Community Stakeholders within the proposed Neighborhood Council boundary must be described in detail. In order to demonstrate a good faith effort towards achieving a diversity of Community Stakeholder representation, an applicant(s) shall collect no less than 200 and no more than 500 signatures from Community Stakeholders that have an interest within the proposed Neighborhood Council boundaries. Signatures shall, to the maximum extent feasible, reflect the broadest array of Community Stakeholders who will actively participate in the proposed Neighborhood Council.

### **Bylaws**

- (c) Bylaws shall be established, including the following information.
  - (i) Neighborhood Council name
  - (ii) Community Stakeholder Membership and the Governing Body
    - (1) The bylaws shall state that the Neighborhood Council membership is open to all Community Stakeholders.



## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- (2) The bylaws shall include a list of offices of the Governing Body and a method for regularly electing or selecting officers who shall serve as the Governing Body. For the purposes of this Plan, the term Governing Body refers to Community Stakeholders of a Certified Neighborhood Council who are empowered to make decisions on behalf of that Certified Neighborhood Council.
  - (a) A Certified Neighborhood Council's Governing Body must, to the extent possible, reflect the diversity of the Neighborhood Council's Community Stakeholders. Accordingly, no single Community Stakeholder group shall comprise a majority of a Certified Neighborhood Council's governing body, unless extenuating circumstances are warranted and approved by DONE.
  - (b) In order to encourage diversity and innovation in leadership on the governing body, no person may serve more than eight consecutive years in any office of a Certified Neighborhood Council's Governing Body.
- (iii) Meeting procedures. Each Certified Neighborhood Council shall:
  - (1) Meet at least once per calendar quarter.
  - (2) Obey any or all sections of the State of California's open meeting procedures that apply to Neighborhood Councils (Ralph M. Brown Act), which includes posting meeting notices in generally accepted public places or through electronic media, such as e-mail or posting notice on DONE's Web page.
  - (3) Establish procedures for communicating with all Neighborhood Council Community Stakeholders on a regular basis in a manner ensuring that information is disseminated evenly and in a timely manner.
  - (4) A process for running meetings, including:
    - (a) The number of Governing Body members that constitute a majority and a quorum;
    - (b) The number of votes by a Governing Body for a Certified Neighborhood Council to take an official action, such as adoption of an item or position; and,
    - (c) The way in which a vote by the Governing Body or action by a Certified Neighborhood Council can be reconsidered, if applicable.
- (iv) A grievance procedure shall be established by which an individual Community Stakeholder or group of Community Stakeholders of a Certified Neighborhood Council shall be able to express concerns to their Governing Body about its decisions and actions.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

### **Financial Accountability**

(d) A system of financial accountability shall be established that governs a Certified Neighborhood Council's use of its funds. 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.

- (ii) Discuss its finances at a regularly scheduled or special meeting, prior to submitting an account statement to DONE (as prescribed below), in order to gather input from Neighborhood Council Community Stakeholders.
  - (iii) Ensure that each Certified Neighborhood Council's book of accounts shall be open to all Community Stakeholders of any Certified Neighborhood Council.
  - (iv) Establish a process by which each Certified Neighborhood Council member can review the Certified Neighborhood Council's book of accounts.
- Each Certified Neighborhood Council's Governing Body shall include an officer named the Treasurer, whose duties shall include maintaining the Neighborhood Council's book of accounts, as prescribed by DONE, and submitting account statements to DONE no less than once and no more than twice during each fiscal year, the date(s) of which shall be prescribed by DONE. Refusal to submit accounting information as required by DONE shall be grounds for consideration of de-certification (as defined in Article VI, Section 5 of this Plan).

### **Ethics**

- (e) Each Certified Neighborhood Council shall be subject to any or all applicable sections of the City of Los Angeles Governmental Ethics Ordinance (Los Angeles Municipal Code Section 49.5.1). All applicable laws of local, state, and federal government shall be the minimum ethical standard for a Certified Neighborhood Council, its Governing Body, and Community Stakeholders.

### **Contacts**

- (f) Every application shall include contact information for no less than three and no more than five people who shall act as official contacts between the applicants and DONE until the proposed Neighborhood Council is certified.

# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article IV**

### **Certification Process**

1. DONE staff shall evaluate a certification application to determine whether the application meets all of the criteria set out in Article III, Section 2, "Components of a Certification Application."
2. Once a certification application is submitted to DONE, the application shall be held by DONE for a period of 20 business days. During said period, DONE shall begin its evaluation of the application to ensure that it is complete.
  - (a) At the end of said 20 business-day period, if only one application is submitted that describes a specific set of boundaries for a proposed Neighborhood Council and if the application is complete according to DONE's evaluation, DONE shall:
    - (i) Forward the application, any accompanying information, and its recommendation to the Board of Neighborhood Commissioners (Commission) for consideration; and,
    - (ii) Notify the Neighborhood Council contacts (named in Article II, Section 2(f)), in writing, that the application has been forwarded to the Commission for its consideration.
    - (iii) If DONE fails to evaluate or forward the application (and any accompanying information, including its recommendation) to the Commission within said time period, DONE shall automatically forward the application without a recommendation to the Commission for consideration.
  - (b) If DONE receives two or more certification applications within said 20 business-day period that identify the same, similar, or overlapping proposed Neighborhood Council boundaries, DONE shall immediately notify, in writing, all contacts for all affected applicant groups in an effort to work with affected parties to produce a unified application. Applicants of the proposed Neighborhood Councils shall have 20 business days from the date notification is given by DONE to develop a unified application.
    - (i) If consensus is reached at any time within said 20 business-day period or at any time during an extended time period pursuant to Article IV, Section 2(b)(ii), said period shall be terminated and all applications shall be deemed received by DONE for evaluation. In the event that all affected applicant groups agree in writing to terminate, for any reason, the process of developing a unified application within the 20 business-day period, all applications, as originally submitted, shall be deemed received by DONE for evaluation. If no consensus is reached within or at the end of the 20 business-day period, the applications, as originally submitted, shall be deemed received by DONE for evaluation.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- (ii) The 20 business-day period described in (i) above may be extended by DONE if all certification applicants make such a request in writing within the time period in (i) above. If no consensus is reached within or at the end of the 20 business-day period, the applications, as originally submitted, shall be deemed received by DONE for evaluation.
  - (iii) Once an application has been deemed received by DONE for evaluation through the processes described in (i) or (ii) above, DONE shall have ten business days to evaluate all applications as submitted. At the end of its ten business-day evaluation period, if DONE determines that all or some of the applications are complete according to DONE's evaluation, DONE shall forward the application, any accompanying information, and its recommendation to the Commission for consideration. If DONE fails to evaluate or forward the application (and any accompanying information, including its recommendation) to the Commission within said time period, DONE shall automatically forward the application without a recommendation to the Commission for consideration.
  - (c) If, at any time during the processes described in this section, DONE determines that an application is incomplete, it shall return the application to the applicants along with a detailed list in writing of the missing components required in a certification application and suggestions on how to incorporate missing components. Applicants whose certification application was determined to be incomplete and returned by DONE may at any time re-submit the application after amending it to meet all the necessary criteria.
3. DONE shall have ten business days, from the date that it forwards an application to the Commission for consideration, to prepare, translate (if necessary), and post public notices that a group has applied for certification according to the following:
- (a) A copy of the notice shall be posted in at least five public, easily accessible places within the boundaries of the proposed Neighborhood Council. Examples of appropriate posting locations include, but are not limited to, libraries, police or fire stations, or DONE's Web site.
  - (b) Copies of the notice shall be posted for 15 business days.
  - (c) The notice shall be translated into all languages other than English that the City Clerk Election Division uses to produce sample ballot information if the proposed Neighborhood Council boundaries include communities where such languages are spoken. At the present time, a sample ballot is published in Chinese, English, Japanese, Korean, Spanish, Tagalog, and Vietnamese. This list of languages may change from time to time, and DONE shall be responsible for keeping current with said changes. DONE shall be responsible for translating the notice into any other language upon request.
4. Within the same ten business-day time period referenced in Article IV, Section 3, DONE shall provide written notice to the applicant group of the date that the Commission will conduct its public hearing during which the applicant's certification application will be considered.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

5. Within ten business days after the expiration of the 15 business-day public notice period described in Article IV, Section 3(b), the Commission shall conduct a public hearing to take testimony from members of the public regarding the submitted certification application. The following shall apply:
  - (a) The public hearing shall be conducted as part of the Commission's next regularly scheduled meeting or as part of a special meeting if no regularly scheduled meeting falls within said ten business-day period.
  - (b) The Commission meeting shall be conducted within the boundaries of the proposed Neighborhood Council.
6. During the meeting where the Commission conducts a public hearing for the purpose of considering a certification application, and at the close of the public comment period and after the Commission's deliberations, the Commission shall either approve or reject the certification application. With concurrence from the applicant, the Commission may defer its decision on a certification application until its next regularly scheduled meeting in order to receive additional information on a matter brought to its attention during its public hearing or to allow for more time to consider the application.
7. In a case where two or more certification applications have identified the same, similar, or overlapping Neighborhood Council boundaries, the Commission shall, based on all available information, make a final determination on how the final boundaries of each Neighborhood Council shall be drawn.
8. If the Commission approves the application, the applicants shall be deemed certified and recognized as a Neighborhood Council in the City of Los Angeles.
9. If the Commission rejects the application, the applicants may, within five meeting days of the City Council during which the Council has convened in regular session, file an appeal with the City Council. The appeal will automatically be placed on the Council's next regular agenda for consideration. The Council may, by ten votes, sustain, reverse, or modify the Commission's decision.

# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article V**

### **Neighborhood Council Election Procedures\***

#### **1. Compliance**

Neighborhood Councils which choose to elect their Governing Body must comply with the Neighborhood Council Election Procedures adopted by the City Council by Motion dated January 25, 2005, and as may be further amended by the Commission.

#### **2. Violations**

A violation of the Neighborhood Council Election Procedures shall constitute a violation of this Plan and may subject a Neighborhood Council to the decertification procedures set forth in Article VI of this Plan, either upon submission of a complaint as outlined in Article VI, Section 4 of this Plan, or by the DONE filing a report with the Commission asking it to consider decertification, after having first taken steps in an effort to achieve compliance with the Neighborhood Council Election Procedures.

\* Added per Resolution dated May 20, 2005

# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article VI**

### **Certified Neighborhood Council Self Assessment, Boundary and Bylaw Adjustment, Complaints, and De-Certification**

#### **1. Self Assessment**

Each Certified Neighborhood Council shall, with the assistance of DONE as requested, survey its Community Stakeholders at least once biennially, to assess whether their Certified Neighborhood Council has met applicable goals set forth in the Charter and Article I, "Goals and Objectives of the Neighborhood Council System". The form of the review shall be prescribed by DONE, and the results of the review shall be made public and posted on DONE's Web site. A copy of the review shall be sent to the affected Certified Neighborhood Council.

#### **2. Boundary Adjustment**

- (a) A Certified Neighborhood Council may petition the Commission to adjust its boundaries. All such petitions shall remain in accordance with Article III, Section 2. Reasons for boundary adjustment may include, but are not limited to:
  - (i) Including an uncertified adjacent community;
  - (ii) Reconfiguring based on population decrease or increase; or,
  - (iii) Increasing or reducing a Certified Neighborhood Council's size to increase effectiveness and efficiency.
- (b) Petitions shall be reviewed by DONE which shall forward the petition, any accompanying information, and its recommendation, within 15 business days of receipt, to the Commission for consideration at its next regularly scheduled meeting. If the Commission approves the petition, the Neighborhood Council boundary shall be deemed changed. If the Commission rejects the petition, the Governing Body of the petitioning Certified Neighborhood Council may take an action to, within five meeting days of the City Council during which the Council has convened in regular session, file an appeal with the City Council. The appeal will automatically be placed on the Council's next regular agenda for Council consideration. The Council may, by ten votes, sustain, reverse, or modify the Commission's decision.
- (c) The Commission shall have the authority to expand a Certified Neighborhood Council's boundary in order to incorporate an area of the City that has not formed a Certified Neighborhood Council into the boundary of another, adjoining Certified Neighborhood Council, provided that:
  - (i) The proposed area to be incorporated into a Certified Neighborhood Council's boundary lies between two or more Certified Neighborhood Councils;

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- (ii) The area to be incorporated does not qualify for certification under the provisions of this Plan; and,
  - (iii) Community Stakeholders of the area to be incorporated and of the affected Certified Neighborhood Council(s) agree to the proposed incorporation.
- (d) If incorporation of an area into an existing Certified Neighborhood Council's boundary is initiated by an entity other than the Commission, Community Stakeholders of the area to be incorporated and of the affected Certified Neighborhood Council(s) must agree to the proposed incorporation prior to consideration by the Commission. The following process shall apply.
- (i) An Incorporation Petition, as prescribed by DONE, shall be completed in order to document the proposed incorporation. An Incorporation Petition shall be filed with DONE for evaluation.
    - (a) DONE shall have 20 business days from receipt of the Incorporation Petition to evaluate the incorporation request. If an Incorporation Petition is complete according to DONE's evaluation, DONE shall forward the Incorporation Petition, any accompanying information, and its recommendation to the Commission for consideration. If DONE fails to evaluate or forward the Incorporation Petition (and any accompanying information, including its recommendation) to the Commission within said time period, the Incorporation Petition shall be automatically forwarded to the Commission for consideration.
    - (b) If, at any time during the processes described in this section, DONE determines that an Incorporation Petition is incomplete, it shall return the petition to the applicants along with a detailed list in writing of DONE's objections to the Incorporation Petition and suggestions on how to revise the Incorporation Petition. An Incorporation Petition returned by DONE may at any time be re-submitted after it is amended to meet all the necessary criteria cited by DONE.
  - (ii) DONE shall have ten business days, from the date that it forwards an Incorporation Petition to the Commission for consideration, to prepare, translate (if necessary), and post public notices that an Incorporation Petition has been received, according to the following:
    - (a) A copy of the notice shall be posted in at least five public, easily accessible places within the boundaries of the proposed incorporated area and all affected Neighborhood Councils. Examples of appropriate posting locations include, but are not limited to, libraries, police stations, fire stations, or DONE's Web site.
    - (b) Copies of the notice shall be posted for 15 business days.
    - (c) The notice shall be translated into all languages other than English that the City Clerk Election Division uses to produce sample ballot information if the



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proposed Neighborhood Council boundaries include communities where such languages are spoken. At the present time, a sample ballot is published in Chinese, English, Japanese, Korean, Spanish, Tagalog, and Vietnamese. This list of languages may change from time to time, and DONE shall be responsible for keeping current with said changes. DONE shall be responsible for translating the notice into any other language upon request.

- (iii) Within the same ten business-day time period referenced in Article VI, Section 2(d)(ii), DONE shall provide written notice to the applicant group of the date that the Commission will conduct its public hearing during which the applicant's Incorporation Petition will be considered.
- (iv) Within ten business days after the expiration of the 15 business day public notice period described in Article VI, Section 2(d)(ii)(b), the Commission shall conduct a public hearing to take testimony from members of the public regarding the proposed incorporation. The following shall apply:
  - (a) The public hearing shall be conducted as part of the Commission's next regularly scheduled meeting or as part of a special meeting if no regularly scheduled meeting falls within said ten business-day period.
  - (b) The Commission meeting shall be conducted within the boundaries of the proposed incorporated area or within the boundaries of any of the affected Certified Neighborhood Councils.
- (v) During the meeting where the Commission conducts a public hearing for the purpose of considering an Incorporation Petition, and at the close of the public comment period and after the Commission's deliberations, the Commission shall either approve or reject the Incorporation Petition. With concurrence from the applicant, the Commission may defer its decision on an Incorporation Petition until its next regularly scheduled meeting in order to receive additional information on a matter brought to its attention during its public hearing or to allow for more time to consider the Incorporation Petition.
- (vi) If the Commission approves the Incorporation Petition, the proposed area shall be incorporated into the specified Certified Neighborhood Council named in the Incorporation Petition. If the Commission rejects the Incorporation Petition, the applicants may, within five meeting days of the City Council during which the Council has convened in regular session, file an appeal with the City Council. The appeal will automatically be placed on the Council's next regular agenda for Council consideration. The Council may, by ten votes, sustain, reverse, or modify the Commission's decision.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

### **3. Bylaw Adjustment**

A Certified Neighborhood Council that wishes to change or adjust its bylaws shall complete an Application to Change or Adjust Bylaws, as prescribed by DONE, and submit the application to DONE for evaluation. DONE shall have ten business days from receipt of the application to complete its evaluation.

- (a) If DONE determines that the application is incomplete, it shall return the application to the Governing Body of the affected Certified Neighborhood Council along with a detailed list in writing of missing or incomplete items in the application and suggestions on how to complete the application successfully. An application returned by DONE may at any time be re-submitted after it is adjusted to meet all the necessary criteria cited by DONE.
- (b) If the application is complete and consistent with the principles governing a Certified Neighborhood Council's purpose or operations according to DONE's evaluation, DONE shall file the application and the change in the affected Certified Neighborhood Council's bylaws shall be deemed approved. Upon filing the change, DONE shall provide written notice to the affected Certified Neighborhood Council that the change in its bylaws was duly recorded with DONE.
- (c) If DONE determines that the changed bylaws are inconsistent with the principles governing a Certified Neighborhood Council's purpose or operations, DONE shall forward an evaluation to the Commission for its review. The Commission, at its next regularly scheduled meeting, shall approve or reject the change in bylaws application. If the Commission approves the change of bylaws, the Certified Neighborhood Council's proposed bylaws shall be deemed approved and become effective immediately. If the Commission rejects the change of bylaws application, the Certified Neighborhood Council's bylaws shall remain as adopted prior to the filing of the application.

### **4. Complaints Against Certified Neighborhood Councils**

Complaints against a Certified Neighborhood Council of any nature shall be filed with DONE, on a form prescribed by DONE. A copy of the complaint shall be delivered by DONE to the affected Certified Neighborhood Council against which the complaint is made within five business days of receipt of the complaint. Exhaustive efforts to remedy all complaints shall be taken by DONE. In the case where a complaint is in regards to a violation of this Plan and a remedy cannot be reached, the process prescribed in Article VI, Section 5 shall be followed.

### **5. Involuntary De-Certification of a Certified Neighborhood Council**

Before initiating de-certification of a Certified Neighborhood Council, DONE shall take all steps available to remedy a violation of the Plan. If DONE finds that efforts to comply with a proposed remedy have failed, the General Manager of DONE shall initiate a process of de-certification.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- (a) DONE shall complete an Application to De-Certify a Certified Neighborhood Council, as prescribed by DONE, and immediately transmit a copy of the application to both the Commission, for consideration at its next regularly scheduled meeting, and to the affected Certified Neighborhood Council.
- (b) DONE shall, immediately after transmitting copies of the application to the Commission and affected Certified Neighborhood Council, post public notices that a de-certification application has been filed with the Commission according to the following:
  - (i) A copy of the notice shall be posted in at least five public, easily accessible places within the boundaries of the affected Neighborhood Council, and shall post the notice on DONE's Web site. Examples of appropriate posting locations include, but are not limited to, libraries, police stations, or fire stations.
  - (ii) Copies of the notice shall be posted for 15 business days.
  - (iii) The notice shall be translated into all languages other than English that the City Clerk Election Division uses to produce sample ballot information if the proposed Neighborhood Council boundaries include communities where such languages are spoken. At the present time, a sample ballot is published in Chinese, English, Japanese, Korean, Spanish, Tagalog, and Vietnamese. This list of languages may change from time to time, and DONE shall be responsible for keeping current with said changes. DONE shall be responsible for translating the notice into any other language upon request.
- (c) Within ten business days after the expiration of the 15 business day public notice period described in Article VI, Section 5(b)(ii), the Commission shall conduct a public hearing to take testimony from members of the public regarding the proposed de-certification application. The following shall apply:
  - (i) The public hearing shall be conducted as part of the Commission's next regularly scheduled meeting or as part of a special meeting if no regularly scheduled meeting falls within said ten business-day period.
  - (ii) The Commission meeting shall be conducted within the boundaries of the affected Certified Neighborhood Council proposed for de-certification.
- (d) During the meeting where the Commission conducts a public hearing for the purpose of considering a de-certification application, and at the close of the public comment period and after the Commission's deliberations, the Commission shall either approve or reject the de-certification application. With concurrence from the affected Certified Neighborhood Council, the Commission may defer its decision on the application until its next regularly scheduled meeting in order to receive additional information on a matter brought to its attention during its public hearing or to allow for more time to consider the application.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- (e) If the Commission approves the application, the affected Certified Neighborhood Council shall be deemed de-certified and will be no longer be recognized as a Certified Neighborhood Council in the City of Los Angeles.
- (f) If the Commission approves the application, any members of the Governing Body of the affected Certified Neighborhood Council may, within five meeting days of the City Council during which the Council has convened in regular session, file an appeal with the City Council. The appeal will automatically be placed on the Council's next regular agenda for Council consideration. The Council may, by ten votes, sustain, reverse, or modify the Commission's decision.
- (g) A Certified Neighborhood Council shall return all City-owned resources, including unexpended City-appropriated funds, to the City immediately upon its decertification.

### **6. Voluntary De-Certification of a Certified Neighborhood Council**

A Certified Neighborhood Council may petition the Commission to be de-certified as a Certified Neighborhood Council in the City of Los Angeles.

- (a) An Application to De-Certify a Certified Neighborhood Council, as prescribed by DONE, shall be completed and signed by at least 3/4 of the Governing Body of the affected Certified Neighborhood Council seeking de-certification. The application shall be filed with DONE.
- (b) DONE shall have ten business days, from the date of receipt of an application, to prepare, translate (if necessary), and post public notices that a group has applied for de-certification according to the following:
  - (i) A copy of the notice shall be posted in at least five public, easily accessible places within the boundaries of the affected Neighborhood Council, and shall post the notice on DONE's Web site. Examples of appropriate posting locations include, but are not limited to, libraries, police stations, or fire stations.
  - (ii) Copies of the notice shall be posted for 15 business days.
  - (iii) The notice shall be translated into all languages other than English that the City Clerk Election Division uses to produce sample ballot information if the proposed Neighborhood Council boundaries include communities where such languages are spoken. At the present time, a sample ballot is published in Chinese, English, Japanese, Korean, Spanish, Tagalog, and Vietnamese. This list of languages may change from time to time, and DONE shall be responsible for keeping current with said changes. DONE shall be responsible for translating the notice into any other language upon request.
- (c) Within ten business days after the expiration of the 15 business day public notice period described in Article VI, Section 6(b)(ii), the Commission shall conduct a public hearing to take testimony from members of the public regarding the proposed de-certification application. The following shall apply:

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- (i) The public hearing shall be conducted as part of the Commission's next regularly scheduled meeting or as part of a special meeting if no regularly scheduled meeting falls within said ten business-day period.
- (ii) The Commission meeting shall be conducted within the boundaries of the affected Certified Neighborhood Council proposed for de-certification.
- (d) During the meeting where the Commission conducts a public hearing for the purpose of considering a de-certification application, and at the close of the public comment period and after the Commission's deliberations, the Commission shall either approve or reject the de-certification application. The Commission may defer its decision on the application until its next regularly scheduled meeting in order to receive additional information on a matter brought to its attention during its public hearing or to allow for more time to consider the application.
- (e) If the Commission approves the application, the affected Certified Neighborhood Council shall be deemed de-certified and will no longer be recognized as a Certified Neighborhood Council in the City of Los Angeles.
- (f) If the Commission rejects the de-certification application, Community Stakeholders of the affected Certified Neighborhood Council, who have regularly attended the affected Certified Neighborhood Council's meetings, that has filed for de-certification and who disagree with the Commission's decision may appeal. The applicants may, within five meeting days of the City Council during which the Council has convened in regular session, file an appeal with the City Council. The appeal will automatically be placed on the Council's next regular agenda for Council consideration. The Council may, by ten votes, sustain, reverse, or modify the Commission's decision.
- (g) A Certified Neighborhood Council shall return all City-owned resources, including unexpended City-appropriated funds, to the City immediately upon its decertification.

# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article VII**

### **Responsibilities of the Department of Neighborhood Empowerment**

At a minimum, the Department of Neighborhood Empowerment shall:

1. Implement and oversee compliance with City ordinances and regulations relating to a Citywide system of Neighborhood Councils.
2. Assist neighborhoods and Certified Neighborhood Councils with public and civic education, outreach, and training with an emphasis given to areas that have traditionally low rates of participation in government.
3. Assist applicants and neighborhoods with preparation of all petitions and forms referenced in this Plan, identify suitable Neighborhood Council boundaries, and organize Neighborhood Councils in accordance with this Plan.
4. Help coordinate meetings and facilitate communication among Certified Neighborhood Councils that request assistance.
5. Help coordinate, arrange, and convene the biannual Congress of Neighborhood Councils meetings.
6. Promote and facilitate open communication among City agencies and Certified Neighborhood Councils, and provide education, guidance, and assistance in developing strategies for providing comments and feedback to the City Council and its committees and City boards and commissions.
7. Assist Certified Neighborhood Councils with the election or selection of their Governing Body.
8. Provide operational support to and facilitate the sharing of resources among Certified Neighborhood Councils, including, but not limited to, meeting and office space, office equipment, and mail and communications in order to communicate among constituents, Certified Neighborhood Councils, and government officials.
9. Create and maintain a database of information about Certified Neighborhood Councils, including, among other information, names and contact information that will be available for public use.
10. Act as an information clearinghouse and resource to Certified Neighborhood Councils.
11. Create and maintain an Early Notification System as prescribed in this Plan.
12. Assure equal opportunity to form and develop Certified Neighborhood Councils. DONE shall assist groups and Community Stakeholders seeking Certified Neighborhood Council status by:

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- (a) Helping understand the processes and procedures for establishing a Certified Neighborhood Council.
  - (b) Assisting with completion of certification application.
  - (c) Providing assistance to areas with traditionally low rates of participation in government.
  - (d) Mitigating barriers to participation, such as the need for translation and childcare services.
- 13.** Review and evaluate the Citywide system of Neighborhood Council. As part of its annual report, DONE shall provide information on the size, geographic scope, and economic and demographic conditions of areas of the City in which Certified Neighborhood Councils have and have not been certified.
- 14.** Report quarterly, commencing from the adoption date of this Plan, to the appropriate Council Committee on the Department's certification efforts, and on strategies and recommendations for certifying areas with traditionally low rates of civic participation in government to ensure participation by all the City's neighborhoods in the certification process.
- 15.** Arrange training for Neighborhood Councils' officers and staff.
- 16.** Provide adequate levels of staffing, with consideration to resource availability, for each Certified Neighborhood Council.

# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article VIII**

### **Early Notification System**

DONE shall create and maintain an Early Notification System (ENS) in accordance with City Charter Section 907. The ENS is designed to supplement current state and local laws regarding public notification. The ENS will operate according to the following:

1. Subject to all other provisions of this Plan, all Certified Neighborhood Councils shall be provided access to a computer and to the Internet. DONE shall provide technical training on the use of a computer to each Certified Neighborhood Council.
2. An ENS Web site shall be created and maintained where information regarding the City Council and its committees and City boards and commissions will be available.
3. In addition to accessing information through the ENS Web site, Certified Neighborhood Councils will be able to subscribe to services whereby they will receive electronic mail notifications regarding updates to the information on the ENS Web site.
4. Information on the ENS Web site shall be provided as soon as is practical so that Certified Neighborhood Councils are afforded an opportunity to prepare and provide comments before decisions are made.
5. The City shall provide each Certified Neighborhood Council with an electronic mail (e-mail) address. The use of this e-mail address shall be limited strictly to official Certified Neighborhood Council business, such as communicating with Neighborhood Council Community Stakeholders about meeting times and places and communicating with the City on matters of importance to the Certified Neighborhood Council. Each Certified Neighborhood Council shall be required to use the City's officially designated e-mail address to correspond with City departments and agencies if the Certified Neighborhood Council expects their correspondence to be entered into the public record.
6. Certified Neighborhood Councils shall be allowed to provide comment and feedback electronically to the City Council, its committees, and City boards and commissions via the ENS. Comments from a Certified Neighborhood Council's officially designated e-mail address (as described in Article VIII, Section 5) shall be printed and placed into the public record.
7. DONE may coordinate additional information for distribution through the ENS from public or private entities as they directly relate to Certified Neighborhood Councils and issues affecting Certified Neighborhood Councils, provided that they are subject to all regulations and requirements of this Plan.



## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

### **Article IX**

#### **Funding\***

1. At the beginning of each fiscal year, the Mayor and Council shall appropriate money for Certified Neighborhood Councils for costs related to the functions, operations, and duties of being a Certified Neighborhood Council. Such functions, operations, and duties include, but are not limited to, meeting and office space, office equipment, computers, supplies, and communications, such as costs associated with newsletters, postage, or printing written materials. At the discretion of each neighborhood council, and as approved by the DONE, all or part of the money so appropriated may be used for neighborhood improvement projects.
2. Any money which the Mayor and Council appropriate as grant funds each fiscal year shall be made available to Certified Neighborhood Councils for various neighborhood improvement projects. In order to be eligible for grant money, a Certified Neighborhood Council shall submit an application to DONE, as prescribed by DONE. Grant money shall be awarded to Certified Neighborhood Councils based on criteria and procedures established by DONE and the Commission. Each Certified Neighborhood Council that receives grant money shall be required to account for its expenditures pursuant to this Plan (Article III, Section 2(d)).

\*Amended 11/08/02 per Resolution dated November 8, 2002

# **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

## **Article X**

### **Financial Accountability and Technical Assistance Policy\***

#### **1. Preliminary Review of Expenditures**

The DONE may make a preliminary review of any expenditure or financial transactions contemplated by a Certified Neighborhood Council to ensure that it is acceptable, appropriate, and comports with DONE guidelines and laws that pertain. Where a Certified Neighborhood Council is unsure whether a proposed expenditure is appropriate, it shall make a written request for guidance from the DONE on the matter before any commitment to expend funds is made or the transaction is completed.

#### **2. Expenditure Oversight**

The DONE may monitor and review any and all financial transactions made by a Certified Neighborhood Council as follows:

- (a) Computer based [on-line] review of any information concerning Commercial Prepaid Card transactions, negotiable instruments, or any other applicable method by which Certified Neighborhood Councils may access City funds and make financial transactions.
- (b) On-site review of any Certified Neighborhood Council's accounts, statements, books, records, receipts, invoices, or any other document that evidences any financial transaction.
- (c) A DONE in-house review of any Certified Neighborhood Council's accounts and business records prior to releasing funds to the Certified Neighborhood Council for the conduct of its business.

#### **3. Admonition**

When the DONE determines that a Certified Neighborhood Council has failed to account for its funds or has misused its funds, then the DONE may issue a Fiscal Responsibility Admonition Letter informing the Certified Neighborhood Council of the problem. Where the DONE deems it necessary, the Financial Responsibility Admonition Letter may request as follows:

- (a) That the Certified Neighborhood Council take specific corrective action to comply with Generally Accepted Accounting Principles or those prescribed by the DONE under the Neighborhood Council Funding Program.
- (b) That the Treasurer, or any other Certified Neighborhood Council representative, shall meet with the DONE staff to discuss accounting practices or any other financial matter involving the Certified Neighborhood Council and, thereafter, follow a remedial plan as prescribed by the DONE.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

### **4. Corrective Action and Remedial Measures**

If the DONE determines that a Certified Neighborhood Council has misused its funds, then the DONE may impose corrective action or remedial measures on the Certified Neighborhood Council. The DONE's decision to impose corrective action or remedial measures, or both, is final; except where de-certification is initiated as set forth in Section 22.810.1(e)(2) of the Los Angeles Administrative Code.

### **5. Corrective Action**

As outlined in the DONE's Fiscal Responsibility Admonition Letter, the corrective action prescribed by the DONE may include, but is not limited to, the following:

- (a) Denying funding requests for payment on purchases or transactions deemed unacceptable or a misuse of public funds.
- (b) Suspending all access to and the use of Certified Neighborhood Council funds, including Commercial Prepaid Cards or City issued demand warrants.
- (c) Reducing funding to a Certified Neighborhood Council in amounts that equal or approximate the amount necessary to compensate for, or remedy, any unacceptable purchase or financial transaction, or to redeem misused public funds; including any administrative or incidental costs associated therewith.

### **6. Remedial Measures**

The DONE is authorized to impose remedial measures on any Certified Neighborhood Council when the Department determines that an unacceptable purchase, financial transaction, or misuse of public funds has occurred, or may occur, in violation of accounting principles, DONE guidelines, or laws that pertain. Any remedial measures imposed by DONE will be identified in a Fiscal Responsibility Admonition Letter and may include any combination of corrective actions and remedial measures that the DONE deems appropriate under the circumstances.

In an effort to insure that the Certified Neighborhood Councils operate in a fiscally responsible manner and to support the financial integrity of the Neighborhood Council Funding Program, the Department may impose the following remedial measures:

- (a) Require mandatory supplemental training for any treasurer or fiscal agent of a board or, if necessary, the entire board of the Certified Neighborhood Council.
- (b) Require that the Certified Neighborhood Council develop and commit to a written remedial action plan within 45 days from the date when the DONE mails a Fiscal Responsibility Admonition Letter imposing such a measure.

## **PLAN FOR A CITYWIDE SYSTEM OF NEIGHBORHOOD COUNCILS**

- (c) Require that the Certified Neighborhood Council be placed on formal probation when the DONE determines that a Certified Neighborhood Council has been repeatedly deficient in its accounting practices or has consistently mishandled or misused its funds.
- (d) Require that the Certified Neighborhood Council immediately relinquish all access to, and tender all control of, its business records and funds to the DONE. The DONE may impose this measure when it determines that the Certified Neighborhood Council has not complied with the corrective or remedial measures outlined in a previous Financial Admonition Letter, the prospect of rectifying the problem is unlikely, or the circumstances require immediate action to safeguard public funds.
- (e) Refer the matter to the Commission with a recommendation that the Certified Neighborhood Council be involuntary decertified as set forth in section 22.810.1(e) (2) of the Los Angeles Administrative Code. DONE may recommend decertification when it determines that a Certified Neighborhood Council is incapable of handling its accounts, its Governing Body refuses to follow the advice, corrective action, or remedial measures outlined by the DONE, or the circumstances require immediate action to safeguard public funds.
- (f) Refer the matter to the appropriate department, commission, or law enforcement agency when the Department has reasonable cause to believe that someone has engaged in unlawful or criminal activity involving a Certified Neighborhood Council's public funds.

\* Added per Resolution dated October 25, 2006



# **ADMINISTRATIVE CODE**

## **CHAPTER 28**

### **THE DEPARTMENT OF NEIGHBORHOOD EMPOWERMENT**

#### **Article**

- 1 Duties of the Department**
- 2 Control and Management**

**CHAPTER 28, ARTICLE 1**  
**DUTIES OF THE DEPARTMENT**

**Section**

**22.800 Purposes.**

**22.801 Duties of the Department.**

**Sec. 22.800. Purposes.**

There shall be a department in the City government known as the Department of Neighborhood Empowerment which shall be referred to in this chapter as the "Department". This Department shall be charged with the goal of promoting increased public participation in government and working to make government more responsive to local needs. The Department shall ensure that every part of the City is within the boundaries of a neighborhood council. The Department shall provide equal opportunity for all by enabling neighborhood groups to form neighborhood councils. The Department shall facilitate the delivery of City services to the neighborhoods by helping to identify and coordinate the needs of the communities with the responsibilities of the City departments by coordinating and involving the relevant City staff in integrated problem-solving with the neighborhood councils.

**SECTION HISTORY**

Chapter, Article and Section Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.801. Duties of the Department.**

The Department shall:

(a) implement and oversee compliance with City ordinances and regulations relating to a system of neighborhood councils;

(b) prepare a Neighborhood Council Plan (Plan) for the creation of a system of neighborhood councils to ensure that every part of the City is within the boundary of a neighborhood council and that each neighborhood has an opportunity to form a neighborhood council, in accordance with Section 22.809;

(c) determine methods for certification of neighborhood councils;

(d) assist neighborhoods in preparing petitions for recognition or certification, identifying boundaries that minimize the division of communities and organizing themselves in accordance with the Plan;

(e) help neighborhood councils to meet together on a citywide basis and facilitate these meetings if and when requested to do so by recognized neighborhood councils;

(f) assist neighborhood councils with the election or selection of their officers;

(g) assist neighborhood councils to share resources, including offices, equipment and other forms of support and to communicate with constituents, other neighborhood councils and with government officials;

(h) arrange training for department staff and neighborhood councils' officers and staff, such as training in leadership, cultural awareness, dispute mediation, civics, communications, equipment utilization and any other training necessary to achieve the goals set forth in Section 22.809;

(i) arrange community empowerment education for top level City officials, including elected officials and commissioners;

(j) with the assistance of the Information Technology Agency, create and maintain an internal and external information and communication network, including a Citywide database of neighborhood organizations and similar information, that would be available for public use;

(k) help coordinate the relationships between existing and newly created advisory committees and neighborhood councils;

(l) perform other duties as provided by ordinance;

(m) ensure that notification required in Section 22.809(f) is provided to the neighborhood councils along with sufficient committee or staff reports on the matters of interest to facilitate meaningful participation; and

(n) facilitate citywide meetings to be held, on at least a semi-annual basis, of representatives of all neighborhood councils.

(o) ensure that neighborhood councils have adequate office and meeting space to conduct their business by facilitating the shared utilization of City owned or leased space, coordinating the acceptance and use of donated space by private donors, as well as securing suitable office and meeting space on behalf of certified neighborhood councils. The Department shall have the authority to execute standard short-term rental and lease agreements with a duration of one year or less for the purpose of fulfilling its obligations under this subsection, pursuant to Department of Neighborhood Empowerment guidelines.

#### SECTION HISTORY

Added by Ord. No. 172,728, Eff. 8-30-99.

Amended by: Ord. No. 175,937, Eff. 6-1-04.



**CHAPTER 28, ARTICLE 2**  
**CONTROL AND MANAGEMENT**

- Section  
22.802 General Manager.  
22.803 Appointment and Removal of the General Manager.  
22.804 Powers and Duties of the General Manager.  
22.805 Board of Neighborhood Commissioners.  
22.806 Powers and Duties of the Board.  
22.807 Conflict of Interest.  
22.808 Organization and Meetings of the Board.  
22.809 Development of the Neighborhood Council Plan.  
22.810 Implementation of the Plan.  
22.810.1 Regulations Implementing the Plan for a Citywide System of Neighborhood Councils (Plan).  
22.811 Certification of Neighborhood Councils.  
22.812 Annual City Budget Priorities.  
22.813 Monitoring of City Services.

**Sec. 22.802. General Manager.**

The Department shall be under the control of a General Manager.

**SECTION HISTORY**

Article and Section Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.803. Appointment and Removal of the General Manager.**

The General Manager shall be appointed by the Mayor, subject to confirmation by the Council, and may be removed by the Mayor, as provided in Charter Section 508.

**SECTION HISTORY**

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.804. Powers and Duties of the General Manager.**

The powers and duties of the General Manager shall be those specified in Charter Section 510.

**SECTION HISTORY**

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.805. Board of Neighborhood Commissioners.**

(a) The Board of Neighborhood Commissioners shall consist of seven board members and be referred to in this chapter as the "**Board**" or the "**Commission**".

(b) The Board shall be comprised of seven members, all of whom shall represent the City in its entirety. The members shall reflect the diverse geographic areas of the City and the diversity of communities of interest, neighborhoods, ethnicity, race, gender, age and sexual orientation.

(c) The Board members shall be appointed by the Mayor and confirmed by the Council and may be removed by the Mayor and vacancies filled in accordance with the provisions of the City Charter.

**SECTION HISTORY**

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.806. Powers and Duties of the Board.**

The Board shall be responsible for setting and overseeing policy, approving contracts and leases and promulgating rules and regulations. It shall not be responsible for the day-to-day management of the Department.

**SECTION HISTORY**

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.807. Conflict of Interest.**

Members of the Board and Board nominees shall be subject to all ethics and conflict of interest laws and regulations applicable to governing boards and commissions in the City of Los Angeles.

**SECTION HISTORY**

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.808. Organization and Meetings of the Board.**

(a) The Board shall adopt rules of order and appoint from among its members a president and vice-president who each shall hold office for one year or until their successors are elected, unless their respective membership on the Board ceases sooner. The Board shall hold regular public meetings at least twice each month and may hold meetings more often if necessary to conduct business. All meetings shall be noticed and held in accordance with law. Members of the Board shall be paid \$50 per meeting for each meeting of the Board attended, not to exceed \$250 in any one calendar month.

(b) At least four members shall constitute a quorum, but a smaller number may adjourn from time to time until a quorum is present. The Board may establish a committee or committees composed of three of its members to consider matters for, to conduct hearings on behalf of, and make recommendations to the board on matters relating to neighborhood empowerment.

(c) The powers conferred on the Board shall be exercised by order or resolution adopted by a majority of its members and recorded in the Board's minutes.

**SECTION HISTORY**

Added by Ord. No. 172,728, Eff. 8-30-99.

Amended by: Ord. No. 173,492, Eff. 10-10-00.

**Sec. 22.809. Development of the Neighborhood Council Plan.**

The Department of Neighborhood Empowerment shall seek public input in its development of a Plan for a Citywide system of neighborhood councils. The Plan shall contain a statement of goals, policies and objectives of the Neighborhood Council system, and shall contain specific regulations, in draft ordinance format. These regulations,

when adopted by ordinance, shall be sufficient to implement the Plan and shall conform with the following:

(a) The regulations shall establish the method by which boundaries of neighborhood councils will be determined based on standards adopted by the Commission and approved by City Council. The system for determining boundaries shall maintain neighborhood boundaries to the maximum extent feasible and may consider community planning district boundaries where appropriate.

(b) The regulations must ensure that all areas of the City are given an equal opportunity to form neighborhood councils.

(c) The regulations shall establish the procedure and criteria for recognition or certification of neighborhood councils.

(d) The regulations shall not restrict the method by which the members of a neighborhood council are chosen, if the process otherwise satisfies the requirements of this article.

(e) The regulations shall require that neighborhood councils adopt fair and open procedures for the conduct of their business. However, neighborhood council meetings are not all required to be held within the boundaries of the area represented by the neighborhood council.

(f) Early Notification Procedures. The regulations shall establish procedures for receiving input from neighborhood councils prior to decisions by the City Council, City Council committees and boards and commissions. The procedures shall include, but need not be limited to, notice to neighborhood councils as soon as practical and a reasonable opportunity to provide input before decisions are made. That notice shall be required for matters that will be considered by the City Council, City Council committees, City boards or commissions and any other City official who is required to hold a noticed public hearing. However, failure of a neighborhood council to receive notice shall not invalidate any action of the City Council, City Council Committees, City boards or commissions or any other City official.

**SECTION HISTORY**

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.810. Implementation of the Plan.**

The Department of Neighborhood Empowerment shall complete development of the Plan and present it and all necessary regulations for a system of neighborhood councils to the Council and Mayor within one year of the establishment of the department and commission. The Council shall consider the regulations and, within six months after presentation of the Plan to Council, may adopt ordinances to implement the regulations as proposed or as modified by the Council consistent with the requirements of the plan set forth above in Section 22.809. If implementing ordinances are not adopted within the time period set forth in Charter Section 905, then the regulations adopted by the Board shall become effective, and to the extent not inconsistent with law shall be binding upon all City departments and offices.

**SECTION HISTORY**

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.810.1. Regulations Implementing the Plan for a Citywide System of Neighborhood Councils (Plan).**

(a) **Department Responsibilities.** In addition to the responsibilities set forth in Article IX of the City Charter and Section 22.801 of this Code, the Department of Neighborhood Empowerment (Department) shall:

(1) Assist all groups and stakeholders seeking certification so they will have an equal opportunity to form and develop Neighborhood Councils by:

(A) Providing assistance to areas of the City with traditionally low rates of participation in government;

(B) Helping communities understand the processes and procedures for establishing a Neighborhood Council;

(C) Assisting with completion of certification documentation; and

(D) Mitigating barriers to participation, such as the need for translation and child care services.

(2) Assist neighborhoods and Neighborhood Councils with public and civic education, outreach and

training with an emphasis given to areas that have traditionally low rates of participation in government.

(3) Assist applicants and neighborhoods to prepare all petitions and forms referenced in the Plan, to identify suitable Neighborhood Council boundaries, and organize Neighborhood Councils in accordance with the Plan.

(4) Assist Neighborhood Councils with the election or selection of their governing body.

(5) Help coordinate meetings and facilitate communication among Neighborhood Councils that request assistance.

(6) Help coordinate, arrange, and convene the biannual Congress of Neighborhood Councils meetings.

(7) Promote and facilitate open communication among City agencies and Neighborhood Councils, and provide education, guidance and assistance in developing strategies for providing comments and feedback to the City Council and its committees and City boards and commissions.

(8) Provide operational support and facilitate the sharing of resources among Neighborhood Councils, including, but not limited to, meeting and office space, office equipment, and mail and communications in order to communicate among constituents, Neighborhood Councils, and government officials.

(9) Create and maintain a database of information about Neighborhood Councils, including, among other information, names and contact information that will be available for public use.

(10) Act as an information clearinghouse and resource to Neighborhood Councils.

(11) Coordinate efforts to establish and ensure continued operation of the Early Notification System as prescribed in the Plan.

(12) Arrange training for Neighborhood Councils' officers and staff.

(13) Review and evaluate the Neighborhood Council System on an annual basis. As part of its

annual report, the Department shall provide information on the size, geographic scope, and economic and demographic conditions of areas in which Neighborhood Councils have and have not been certified.

(14) Report quarterly, commencing from the adoption date of the Plan, to the appropriate Council Committee on the Department's certification efforts, and on strategies and recommendations for certifying areas with traditionally low rates of civic participation in government to ensure participation by all the City's neighborhoods in the certification process.

(15) Provide adequate levels of staffing, with consideration to resource availability, for each Neighborhood Council.

**(b) Certification of Neighborhood Councils.**

**(1) Department Responsibilities.** The Department shall have the following responsibilities:

(A) Announce and inform the public of the Neighborhood Council certification process Citywide.

(B) Actively promote the formation of Neighborhood Councils Citywide, giving emphasis to those areas and community stakeholder groups with traditionally low rates of civic participation in government.

(C) Facilitate and encourage collaboration and discussion among neighboring and overlapping applicant groups.

(D) Provide technical assistance on how to proceed with a unified certification application.

(E) Provide dispute resolution services to applicants where more than one application is submitted for a Neighborhood Council boundary area to gain consensus on a unified certification application.

**(2) Qualification and Criteria for Neighborhood Council Certification.** Any group of persons in a community may seek certification as a Neighborhood Council by presenting an application to the Department that includes the following information:

(A) A boundary proposal that sets forth the rationale for the boundary choice, and shows how the boundaries comply with the following Boundary Goal Criteria:

(i) The proposed area has a minimum of 20,000 residents. However, areas that have fewer than 20,000 residents may be considered for certification providing they meet the following criteria and otherwise meet all other requirements of the Plan:

(1) The proposed area is separated from adjacent communities by significant geographic or other features; or

(2) The proposed area is identified by name within any of the adopted community plans within the City of Los Angeles; or

(3) The proposed area represents an historic, identifiable neighborhood or community and includes local City service providers, such as a public library, park or recreation center, fire or police station or a public school.

(ii) The proposed area, to the maximum extent feasible, follows historic and contemporary community and neighborhood borders, utilizes natural boundaries or street lines and is geographically compact and contiguous.

(iii) Neighborhood Council boundaries may not overlap with other Neighborhood Council boundaries unless the area proposed for inclusion into each Neighborhood Council is designated for a public use, such as a park, school, library, police or fire station or major thoroughfare or contains a landmark or facility with historical significance.

The application proposal for overlapping boundaries with another Neighborhood Council must include a detailed rationale for incorporating the proposed area.

(B) A detailed description of the outreach process used to identify community stakeholders within the proposed Neighborhood Council boundary as well as the following:

(i) Proof of the collection of no less than 200 and no more than 500 signatures from community stakeholders within the proposed Neighborhood Council boundaries.

(ii) Signatures shall, to the maximum extent feasible, reflect the broadest array of community stakeholders who will be active participants in the Neighborhood Council.

(C) A copy of the Neighborhood Council's approved by-laws which shall include the following:

(i) The Neighborhood Council name.

(ii) A statement that the Neighborhood Council membership is open to all community stakeholders.

(iii) A list of the offices of its governing body and its method for regularly electing or selecting its officers who shall serve as the governing body subject to the following:

(1) The governing body must, to the extent possible, reflect the diversity of the Neighborhood Council's community stakeholders. No single stakeholder group may comprise a majority of the Neighborhood Council's governing body, unless approved by the Department upon a showing of extenuating circumstances.

(2) No person may serve more than eight consecutive years in any office of the governing body.

(3) The governing body shall include an officer named "Treasurer," whose duties shall include, but not be limited to, maintaining the Neighborhood Council's book of

accounts and submitting account statements to the Department no less than once but not more than three times during the fiscal year, as prescribed by the Department.

(iv) A description of its meeting procedures which shall include provisions that each Neighborhood Council shall do the following:

(1) Meet at least once per calendar quarter.

(2) Obey any or all applicable sections of the state's Ralph M. Brown Act.

(3) Establish procedures for communicating with all Neighborhood Council community stakeholders on a regular basis in a manner that ensures that information is disseminated throughout and in a timely manner.

(4) Adopt procedures for running meetings, including provisions that identify: the number of governing body members that constitute a majority and a quorum; the number of votes by which a governing body may take an action on a matter before it; the manner in which an action by the governing body can be reconsidered, if at all.

(v) The method it will use to address grievances and resolve disputes by which an individual community stakeholder or group of community stakeholders of a Neighborhood Council may express concerns to their Neighborhood Council about its actions.

(D) A description of its system of financial accountability that meets the requirements set forth in Article III, Section 2(d) of the Plan.

(E) An acknowledgment and agreement that the Neighborhood Council will abide by any applicable provisions of

the City's Governmental Ethics Ordinance, as set forth in Los Angeles Municipal Code Section 49.5.1 et seq., and an acknowledgment and agreement that it will abide by all applicable laws of the federal, state and local government.

(F) The names of no fewer than three and no more than five individuals who shall act as official contacts between the applicants and the Department until the Neighborhood Council is certified.

**(c) Certification Process.**

(1) **Certification.** The Department will review and make an evaluation of the certification application to determine whether the application meets all of the criteria set out in Article III, Section 2 of the Plan.

(2) **Department Responsibilities.** Once a certification application is submitted to the Department, the Department shall evaluate the application to determine whether it is complete. After determining that an application is complete and that it describes a specific set of boundaries for a proposed Neighborhood Council, the Department shall forward the application, any accompanying information, and its recommendation to the Board of Neighborhood Commissioners (Commission) for consideration and notify the Neighborhood Council in writing that the application has been forwarded to the Commission for its consideration. The Department shall evaluate the certification application and make a recommendation to the Commission pursuant to the procedures set forth in Article IV of the Plan.

(A) If the Department receives two or more certification applications that identify the same, similar, or overlapping Neighborhood Council boundaries, the Department shall immediately notify in writing all contacts, as required to be identified in Paragraph (F) of Subdivision (2) of Subsection (b) of this section and Article III, Section 2(f) of the Plan, for all affected applicant groups in an effort to work with applicants to produce a unified application. The procedures set forth in Article IV Section 2(b) of the Plan should then be followed to the maximum extent feasible.

(B) If at any time during the process as described in Article IV of the Plan, the

Department determines that an application is not complete, it shall return the application to the applicants along with a written description of the missing components required for the certification application. Applicants may thereafter at any time re-submit the application after amending it to meet all the necessary criteria.

(C) If the Department fails to evaluate or make a recommendation on the application as set forth in Article IV, Section 2 of the Plan, the Department shall forward the application to the Commission for its consideration without the Department's recommendation.

(3) Before the Commission acts on a proposed certification, the matter shall be set for a public hearing. The Department shall post public notices, as set forth in Article IV, Section 3 of the Plan, setting forth the time, place and purpose of the hearing, which shall be posted within the boundaries of the proposed Neighborhood Council for 15 days. The notices shall be translated in accordance with the provisions set forth in Article IV, Section 3 of the Plan.

Notice of the time, place and purpose of the hearing shall also be mailed to the applicant and to the contacts identified in the application as required in Paragraph (F) of Subdivision (2) of Subsection (b) of this section, within the time frames set forth in Article IV, Section 3 of the Plan. The Commission shall act on the certification within ten days after the expiration of the 15 day posting period, unless the Commission's regularly scheduled meeting does not fall within this ten day period or unless the Commission and the Neighborhood Council applicants agree to an extension of time.

The Commission meeting should be conducted within the boundaries of the proposed Neighborhood Council, if feasible. In a case where two or more certification applications have identified the same, similar, or overlapping Neighborhood Council boundaries, the Commission shall make a final determination on how the final boundaries of each Neighborhood Council shall be drawn, giving consideration to the criteria set forth in Article III, Section 2(a) of the Plan and any other applicable provisions of the Plan. The Commission shall either approve or disapprove the certification application based upon the criteria set forth above in Subdivision (2) of Subsection (b) of this section and the criteria set forth in the Plan.

(4) **Appeals.** If the Commission approves the application, the proposed Neighborhood Council shall be recognized and certified as a Neighborhood Council. If the Commission disapproves the application, the applicants may appeal to the City Council within the time as set forth in Article IV, Section 9 of the Plan. The City Council may, by ten votes, sustain, reverse or modify the Commission's decision to disapprove a certification application.

(d) **Boundary Adjustment.**

(1) **Adjustment of Boundaries.** A Neighborhood Council may file a petition with the Commission to adjust its boundaries. All petitions must meet the criteria set forth in this section and in Article III, Section 2 of the Plan. Reasons for boundary adjustments may include, but are not limited to:

(A) Incorporating an uncertified adjacent community into the Neighborhood Council;

(B) Reconfiguring the size of the Neighborhood Council based on a decrease or increase in population; or

(C) Increasing or reducing the size of the Neighborhood Council to increase effectiveness and efficiency.

(2) **Boundary Adjustment Other Than Incorporation.**

(A) **Department Responsibilities.** The Department shall review a petition within 15 days of its receipt and make a recommendation to the Commission. Before the Commission acts on a proposed boundary adjustment, the matter shall be set for a public hearing. Fifteen days prior to the hearing, the Department shall post public notices within the boundaries of the Neighborhood Council, stating the time, place and purpose of the hearing, as set forth in Article VI, Section 2(d) of the Plan. The notices shall be translated in accordance with the provisions set forth in Article VI, Section 2(d)(ii) of the Plan.

Notice of the time, place and purpose of the hearing shall also be mailed to the applicant pursuant to the time frames set forth in Article VI, Section 2(d) of the Plan. The Commission meeting should be conducted within the boundaries of the proposed Neighborhood

Council, if feasible. The Commission shall act on the boundary adjustment within ten days after the expiration of the 15-day posting period, unless the Commission's regularly scheduled meeting does not fall within this ten day period or unless the Commission and the Neighborhood Council applicants agree to an extension of time.

(B) **Commission Action.** The Commission shall consider the recommendation of the Department, review the petition and determine whether the petition meets the criteria of this ordinance and Article VI, Section 2 of the Plan at a public hearing, noticed as set forth in Paragraph (2)(A) above, and make its determination within ten days of receipt of the Department's recommendation, unless the Commission's regularly scheduled meeting does not fall within this ten day period or unless the Commission and the Neighborhood Council applicants agree to an extension of time.

(C) **Appeals.** If the Commission approves the petition, the Neighborhood Council boundary shall be determined to be changed in accordance with the petition. If the Commission disapproves the petition, the Neighborhood Council may appeal to the City Council within the time set forth in Article VI, Section 2(b) of the Plan. The City Council may, by ten votes, sustain, reverse or modify the Commission's decision to disapprove a boundary adjustment petition.

(3) **Incorporation Into Adjoining Neighborhood Councils.** The Commission shall have the authority to expand a Neighborhood Council's boundary in order to incorporate an area of the City that has not formed a Neighborhood Council into the boundary of another, adjoining Neighborhood Council provided that:

(A) The proposed area to be incorporated into a Neighborhood Council's boundary lies between two or more Neighborhood Councils;

(B) The proposed area to be incorporated does not qualify for certification under the provisions of this Plan; and

(C) Community stakeholders of the proposed area to be incorporated and of the affected Neighborhood Council agree to the proposed incorporation.

(4) **Incorporation Initiated by an Entity Other than the Commission.** An incorporation petition may be submitted by an entity other than the Commission, if community stakeholders of the area to be incorporated and of the affected certified Neighborhood Council have agreed to the proposed incorporation.

(A) **Department Responsibilities.** After determining that an incorporation petition initiated by community stakeholders or an entity other than the Commission is complete, the Department shall forward the petition, any accompanying information and its recommendation to the Commission for consideration. The Department shall notify the Neighborhood Council in writing that the petition has been forwarded to the Commission for its consideration. The Department shall evaluate the petition and make a recommendation to the Commission pursuant to the procedures set forth in Article VI of the Plan.

(i) If at any time during the process as described in Article VI of the Plan, the Department determines that a petition is not complete, it shall return the petition to the applicants along with a written description of the missing components required for the petition. Applicants may thereafter at any time re-submit the application after amending it to meet all the necessary criteria.

(ii) If the Department fails to evaluate or make a recommendation on the petition as set forth in Article VI, Section 2(d) of the Plan, the Department shall forward the application to the Commission for its consideration without the Department's recommendation.

(B) **Commission Action.** Before the Commission acts on the petition, the matter shall be set for a public hearing. The Department shall post public notices, as set forth in Article VI, Section 2(d) of the Plan, stating the time, place and purpose of the hearing, which shall be posted within the boundaries of the proposed Neighborhood Council for 15 days. The notices shall be translated in accordance with the provisions set forth in Article VI, Section 2(d)(ii) of the Plan.

Notice of the time, place and purpose of the hearing shall also be mailed to the applicant pursuant to the time frames set forth in Article VI, Section 2(d) of the Plan. The Commission meeting should be conducted within the boundaries of the proposed Neighborhood Council, if feasible. The Commission shall act on the incorporation petition within ten days after the expiration of the 15-day posting period, unless the Commission's regularly scheduled meeting does not fall within this ten day period or unless the Commission and the Neighborhood Council applicants agree to an extension of time.

(C) **Appeals.** If the Commission approves the petition, the proposed area shall be incorporated into the Neighborhood Council named in the Incorporation Petition. If the Commission disapproves the petition, the applicants may appeal that decision to the City Council within the time frames set forth in Article VI, Section 2(d)(vii) of the Plan. The City Council may, by ten votes, sustain, reverse or modify the Commission's decision to disapprove the petition.

(e) **Complaints Concerning Neighborhood Councils, De-Certification.**

(1) **Complaints Concerning Neighborhood Councils.** If the Department receives a complaint of a violation of any provision of the Plan, including, but not limited to, a violation of open meeting procedures, a failure to comply with the diversity goals of the Plan, violations of the code of ethics, and/or violations of the Neighborhood Council Election Procedures, the Department shall notify the Neighborhood Council of these complaints and take steps to resolve the complaint with the Neighborhood Council. Efforts to achieve compliance with the Plan and any other applicable state, federal and local ordinances, including but not limited to complaints involving violation of open meeting procedures, a failure to comply with the diversity goals of the Plan, and/or violations of the code of ethics must first be made by the Department prior to initiating an action to de-certify a Neighborhood Council. For violations of the Neighborhood Council Election Procedures, the Department may, on its own, file a report with the Commission asking it to consider decertification without a complaint with the Department having first been filed, provided that the Department has already taken steps with the Neighborhood Council in an effort



to achieve compliance with the Neighborhood Council Election Procedures.

(2) **Involuntary De-Certification.** If the Department finds that efforts taken pursuant to Subdivision (1), above, to bring the Neighborhood Council into compliance with the Plan or applicable local, state or federal laws have failed, the Department may initiate de-certification by recommending to the Commission that the Neighborhood Council be de-certified.

(A) **Department Responsibilities.** Once the Department has determined that efforts taken pursuant to Subdivision (1), above, to bring the neighborhood into compliance with the Plan have not been successful, the Department may initiate de-certification by taking the steps set forth in Article VI, Section 5 of the Plan.

(B) **Commission Action.** Before the Commission acts on a proposed de-certification, the matter shall be set for a public hearing. Fifteen days prior to the hearing, the Department shall post public notices within the boundaries of the proposed Neighborhood Council, stating the time, place and purpose of the hearing, as set forth in Article VI, Section 5(b) of the Plan. The notices shall be translated in accordance with the provisions set forth in Article VI, Section 5(b)(iii) of the Plan. At the same time that notices are posted pursuant to Article VI, Section 5(b) of the Plan, notice of the time, place and purpose of the hearing shall also be mailed to the Neighborhood Council.

The Commission meeting should be conducted within the boundaries of the proposed Neighborhood Council, if feasible. The Commission shall act on the de-certification within ten days after the expiration of the 15-day posting period, unless the Commission's next regularly scheduled meeting does not fall within this ten day period or unless the Commission and the Neighborhood Council agree to an extension of time.

The Commission may de-certify a Neighborhood Council based upon substantial evidence and upon a finding that the Neighborhood Council has failed to demonstrate the willingness or ability to comply with the

provisions of the Plan or a finding that the Neighborhood Council is unwilling or unable to comply with applicable local, state and federal laws. If the Commission de-certifies a Neighborhood Council, it shall no longer be officially recognized as a certified Neighborhood Council in the City of Los Angeles and shall return all City-owned resources, including unexpended City-appropriated funds, to the City within five days after the City has taken its final action to de-certify the Neighborhood Council.

(C) **Appeals.** If the Commission de-certifies a Neighborhood Council, the Neighborhood Council may file an appeal pursuant to the provisions of Article VI, Section 5(f) of the Plan. The City Council may, by ten votes, sustain, reverse or modify the Commission's decision to de-certify the Neighborhood Council.

(3) **Voluntary De-Certification.**

(A) A Neighborhood Council may file a petition with the Commission for de-certification. A de-certification application must be signed by at least 3/4 of the governing body of the Neighborhood Council seeking de-certification and must also include the following:

(i) Evidence of the processes used for outreach to stakeholders and the involvement of stakeholders in the decision to de-certify;

(ii) Evidence that stakeholders in the Neighborhood Council area have been surveyed on the de-certification application;

(iii) Evidence that the Neighborhood Council's governing body has widely publicized within the Neighborhood Council area the fact that there is an application for de-certification pending before the Commission in its Neighborhood Council area; and

(iv) Evidence that the Neighborhood Council took its formal action on the de-certification after giving a 15-day public notice.

(B) **Department Responsibilities.** Fifteen days prior to the hearing, the Department shall post public notices within the boundaries of the proposed Neighborhood Council, stating the time, place and purpose of the hearing, as set forth in Article VI, Section 6(b) of the Plan. The notices shall be translated in accordance with the provisions set forth in Article VI, Section 6(b)(iii) of the Plan. At the same time that notices are posted pursuant to Article VI, Section 6(b) of the Plan, notice of the time, place and purpose of the hearing shall also be mailed to the Neighborhood Council.

(C) **Commission Action.** The Commission meeting should be conducted within the boundaries of the Neighborhood Council, if feasible. The Commission shall act on the de-certification within ten days after the expiration of the 15-day notice period, unless the Commission's next regularly scheduled meeting does not fall within this ten day period or unless the Commission and the Neighborhood Council agree to an extension of time. The Commission may de-certify a Neighborhood Council based upon a finding that the evidence set forth in Paragraph (A), above, has been shown and a finding that 3/4 of the governing body of the Neighborhood Council has consented to the de-certification.

If the Commission approves the petition, the Neighborhood Council shall be de-certified and will no longer be officially recognized as a certified Neighborhood Council in the City of Los Angeles and shall return all City-owned resources, including unexpended City-appropriated funds, to the City within five days after the City has made its final decision to decertify the Neighborhood Council.

(D) **Appeals.** If the Commission disapproves the petition, the Neighborhood Council may file an appeal pursuant to the provisions of Article VI, Section 6(f) of the Plan. The City Council may, by ten votes, sustain, reverse or modify the Commission's decision to deny decertification of the Neighborhood Council.

(f) **Early Notification System (ENS).**

(1) **ENS Website.** The Department may assist the Information Technology Agency in coordinating

the development of an ENS website through which information may be made available to certified Neighborhood Councils by the City Council, its committees, and City boards and commissions.

(2) **Procedures for Sharing City Information with and Receiving Comment from Neighborhood Councils.**

(A) Information from the City should be sent to certified Neighborhood Councils as soon as practical so that certified Neighborhood Councils are afforded as much opportunity as is practical to provide comment before decisions are made.

(B) Certified Neighborhood Councils may provide comment and feedback to the City Council, its committees, and to City boards and commissions by using the ENS.

(C) The Neighborhood Council may communicate its views either by way of mailed letter, fax, electronic mail (e-mail), or by a representative appearing in person to make a presentation on an item before the City's decision-makers. Should each certified Neighborhood Council be provided with an e-mail address, pursuant to Article VIII of the Plan, the use of this e-mail address shall be strictly limited to official Neighborhood Council business, such as communicating with Neighborhood Council members about meeting times and places and communicating with the City regarding matters of importance to Neighborhood Councils.

(g) **Funding.**

(1) Money appropriated in the budget each year for certified Neighborhood Councils for costs related to the functions, operations, and duties of being a certified Neighborhood Council shall be placed in the Department of Neighborhood Empowerment Fund. The functions, operations, and duties of a certified Neighborhood Council include, but are not limited to, meeting and office space, office equipment, computers, supplies, and communications, such as the costs associated with newsletters, postage, or printing written materials. At the discretion of each Neighborhood Council, and as approved by the Department of Neighborhood Empowerment, all or part of the money so appropriated may be used for neighborhood improvement projects.

(2) Any money which the Mayor and Council appropriate as grant funds each fiscal year for certified Neighborhood Councils shall be available for various neighborhood improvement projects. In order to be eligible for grant money, a certified Neighborhood Council shall submit an application to the Department and may be awarded grants, pursuant to the provisions as set forth in Article IX Section 2 of the Plan.

SECTION HISTORY

Added by Ord. No. 176,704, Eff. 7-17-05.

**Sec. 22.811. Certification of Neighborhood Councils.**

(a) **By Laws.** Each neighborhood council seeking official certification from the City shall submit an organization plan and by-laws to the Department of Neighborhood Empowerment showing, at a minimum:

(1) the method by which their officers are chosen;

(2) that neighborhood council membership will be open to everyone who lives, works, owns property or otherwise identifies themselves as a stakeholder in the area, based on their participation in among other things, educational institutions, religious institutions, community organizations or other non-profit organizations;

(3) assurances that the members of the neighborhood council will reflect the diverse interests within their area;

(4) a system through which the neighborhood council will communicate with stakeholders on a regular basis;

(5) a system for financial accountability of its funds; and

(6) guarantees that all meetings will be open and public, and permit, to the extent feasible, stakeholders to participate in the conduct of business, deliberation and decision-making.

(b) **Petitioning for Certification and Approval.** Neighborhood councils may petition for certification in accordance with rules and procedures set forth in the Plan.

SECTION HISTORY

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.812. Annual City Budget Priorities.**

Each neighborhood council may present to the Mayor and Council an annual list of priorities for the City budget. The Mayor shall inform certified neighborhood councils of the deadline for submission so that the input may be considered in a timely fashion.

SECTION HISTORY

Added by Ord. No. 172,728, Eff. 8-30-99.

**Sec. 22.813. Monitoring of City Services.**

Neighborhood councils shall monitor the delivery of City services in their respective areas and have periodic meetings with responsible officials of City departments, subject to their reasonable availability.

SECTION HISTORY

Added by Ord. No. 172,728, Eff. 8-30-99.



# CITY OF LOS ANGELES

CALIFORNIA



## VILLAGE NEIGHBORHOOD COUNCIL OFFICERS

MARY GONZALEZ  
PRESIDENT

BOB CHU  
VICE-PRESIDENT

RON JOHNSON  
SECRETARY

JANE BROWN  
TREASURER

## VILLAGE NEIGHBORHOOD COUNCIL

100 E. ELM STREET  
LOS ANGELES, CA 90012

TELEPHONE: (213) 555-1212

FAX: (213) 555-1111

E-mail: [Village@neighborhoodcouncil.org](mailto:Village@neighborhoodcouncil.org)

**SAMPLE**

## VILLAGE NEIGHBORHOOD COUNCIL REGULAR MEETING AGENDA Tuesday April 16, 2003 – 6:30 PM Village Community Center 100 E. Elm Street, Los Angeles, CA 90012

The public is requested to fill out a “**Speaker Card**” to address the Board on any agenda item before the Board takes an action. Public comment is limited to 3 minutes per speaker, but the Board has the discretion to modify the amount of time for any speaker.

*[Insert the prior sentences if your board adopts and agrees to these procedures as a means of running your meetings. Your Board may choose other methods, but please ensure that any methods that you implement and state in this introduction are consistent with your bylaws. Your Board’s operational rules should be reduced to writing and approved by your Board as its standing rules).]*

The public may comment on a specific item listed on this agenda when the Board considers that item. When the Board considers the agenda item entitled “Public Comments,” the public has the right to comment on any matter that is within the Board’s jurisdiction. In addition, the members of the public may request and receive copies without undue delay of any documents that are distributed to the Board, unless there is a specific exemption under the Public Records Act that prevents the disclosure of the record. (Gov’t Code § 54957.5)

The \_\_\_\_\_ Neighborhood Council holds its regular meetings on the \_\_\_\_\_ *[eg., first Thursday of every month]* and may also call any additional required special meetings in accordance with its Bylaws and the Brown Act. The agenda for the regular and special meetings is posted for public review at *[list 5 official public notice posting sites]*.

The \_\_\_\_\_ Neighborhood Council complies with Title II of the Americans with Disabilities Act and does not discriminate on the basis of any disability. Upon request, the \_\_\_\_\_ Neighborhood Council will provide reasonable accommodations to ensure equal access to its programs, services, and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or services may be provided upon request. To ensure the availability of services, please make your request at least 3 business days (72 hours) prior to the meeting you wish to attend by contacting the Neighborhood Council Secretary at (213) 555-5555, or please send an e-mail that states the accommodations that you are requesting to [villageNC@neighborhoodcouncil.org](mailto:villageNC@neighborhoodcouncil.org).

**SI REQUIERE SERVICIOS DE TRADUCCION, FAVOR DE NOTIFICAR A LA OFICINA 3 dias de trabajo (72 horas) ANTES DEL EVENTO. SI NECESITA AYUDA CON ESTA AGENDA, POR FAVOR LLAME A NUESTRA OFICINA AL (213) 555-5555.**

*[Please note that the above example asks for the person seeking an accommodation to contact the Neighborhood Council 72 hours in advance of the meeting. You may be required to insert a different period of time. All efforts should be made to address any request that is received by the Neighborhood Council, even if the request is not made during the time period that you requested. In the example above, if the agenda was posted one week in advance of the meeting, then asking that the person make the request 72 hours before the meeting is a reasonable request. However, if the agenda was posted 72 hours before the meeting, it is unreasonable to request that the request also be made 72 hours in advance.]*

1. Call to Order and Board of Directors Roll Call.
2. Review and possible approval of minutes from prior meeting held on March 15, 2003.
3. Discussion of and possible adoption of Village Neighborhood Council position regarding the LADOT proposed options to expand the 101 Freeway, and decision to forward the VNC position to the all interested governmental agencies, including the Planning Commission, Los Angeles City Council, and LADOT.
4. Committee Reports – consideration by the Board of the reports and recommendations from its committees, including possible action in adopting, rejecting, or modifying any report or recommendation, possible action by the Board implementing the report or recommendation, or possible determination by the Board of the Neighborhood Council's position on a report or recommendation and recommendation regarding communication of the position to the appropriate governmental body:
  - A. Outreach Committee: Presentation on a proposed outreach strategy improving stakeholder involvement in the Neighborhood Council that includes presentations, holding block parties, conducting forums for considering neighborhood issues, creating newsletters and surveys, and conducting door-to-door outreach. Discussion and possible action by the Board on the proposed strategy.
  - B. Bylaw Committee: Presentation on a proposed bylaw amendment to Article 6, Section 2 to change the provision from "... \_\_\_\_\_ ..." to "... \_\_\_\_\_ ..." where this amendment will \_\_\_\_\_ [briefly explain the reason for the change or how this change will assist the NC with its operations]. Discussion and possible Board action amending the bylaws.
  - C. Financial Committee: Report on the expenditures and current balance of the VNC budget.
  - D. Legislative/Governmental Issues Committee: No report this meeting.
  - E. Public Safety Committee: Report on status of Public Safety forum.
  - F. Housing, Land Use and Planning Committee: Report and recommendation by the committee regarding the request for a conditional use permit from the City Planning Department sought by Company XYZ for the property located at 111 E. Elm Street, that will allow \_\_\_\_\_ [briefly explain what is requested]. Committee recommends that the Neighborhood Council support the Company's request for a conditional use permit.
  - G. Grievance Committee: Report and recommendation by the committee regarding the complaint filed by Mr. John Doe against the Neighborhood Council for a Brown Act violation occurring during the April 16, 2003, meeting, for taking an improper action on a matter that was not agendized for Board action or consideration. Committee recommends that the Neighborhood Council re-schedule the item for action at the next regular meeting and state the proposed action on that meeting's agenda.
5. Public Comments – Comments from the public on non-agenda items within the Board's subject matter jurisdiction. [You may wish to insert and repeat a sentence here that states any limits the Neighborhood Council adopted on speaker time limits.]
6. Board Business - Comments from the Board on subject matters within the Board's jurisdiction
  - A. Comment on Board Member's own activities/ Brief announcements.
  - B. Brief response to statements made or questions posed by persons exercising their general public comment rights.

- C. Introduce new issues for consideration by the Board at its next meeting/request that the item be placed on the next meeting's agenda.
- D. Ask Committee Chairpersons to research issues and report back to the Board at a future time.

7. Future Agenda Items and other Calendar Events:

- May 23, 2003 @ 6:30 PM—Next general meeting.  
Location: Village Community Center  
100 East Elm Street  
Los Angeles, CA 90012

8. Adjournment

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**PROCESS FOR RECONSIDERATION:** *[Meeting attendees should be made aware of the process in your bylaws which a vote by the Board can be reconsidered. The following is an example of language that you may use to describe the reconsideration process, however, you must ensure that, if you use this example, it is consistent with your bylaws:]*

The Board may reconsider or amend its actions through the following Motion for Reconsideration process:

1. The Board's approval of a Motion for Reconsideration must occur within the following specific periods of time: The Motion for Reconsideration must be approved either:
  - (a) during the same meeting where the Board initially acted; or
  - (b) during the Board's next regularly scheduled meeting that followed the meeting where the action subject to reconsideration occurred.

These specified time frames do not prevent the Neighborhood Council from convening any special meetings within the specified time frames to address a Motion for Reconsideration.

2. Before the Board reconsiders any matter, the Board must approve a Motion for Reconsideration. The Motion for Reconsideration must be approved by official action of the Board *[OR INSERT HOW the Board takes official action, e.g., a majority of the Board Members present ...]* After determining in the affirmative that an action should be reconsidered, the Board then has the authority to re-hear, continue, or take action on the item that is the subject of reconsideration within any limitations that are stated in the Motion for Reconsideration.

3. The Motion for Reconsideration shall only be proposed by a member of the Board that previously voted on the prevailing side of the original action that was taken by the Board (the "Moving Board Member"). The Moving Board Member may make the Motion for Reconsideration by either:
  - (a) an oral motion that is made during the same meeting where the action that is the subject of reconsideration occurred, or
  - (b) by properly placing the Motion for Reconsideration on the agenda of a meeting that occurs within the allowed specified periods of time as stated above.

4. If the Motion for Reconsideration is made subsequent to the meeting where the action that is the subject of reconsideration occurred, then the Motion for Reconsideration must be on that subsequent meeting's agenda. The Moving Board Member places a Motion for Reconsideration on the agenda by submitting a memorandum to the ... *[whoever creates the agenda ...e.g., Secretary...]* at least ... *[Specify a Time line, e.g., two days in advance of the deadline for posting notices for the meeting....]* The Moving Board Member's memorandum must briefly state the reason(s) for requesting the reconsideration, and provide the *[...Secretary...]* with the language necessary to complete the information that must be stated in the agenda. The language that must be stated in the agenda is an adequate description of the:

- (a) Motion for Reconsideration and its description of the item that is to be re-heard; and
- (b) A proposed action that may be adopted by the Board if the Motion for Reconsideration is approved.

5. When the Motion for Reconsideration is brought before the board for consideration, then that motion may be seconded during the public hearing by any member of the Board.

6. This reconsideration process shall be conducted at all times in accordance with the Brown Act, including that: any discussion on the issue remain within permissible discussion parameters; that any decision is made during the public hearing; and that, if the Motion for Reconsideration is considered at a subsequent meeting to the meeting where the act that is the subject of reconsideration occurred, then the Motion for Reconsideration is properly listed on that meeting's agenda.

**PROCESS FOR FILING A GRIEVANCE:** *[Meeting attendees should be made aware of the process in your bylaws to file a grievance against the neighborhood council and notified of the ability to file a complaint with the Department of Neighborhood Empowerment. The following is an example that may be used as long as]*

Any member of the public may file a grievance by submitting a writing containing the nature of the person's complaint to the Secretary of the Neighborhood Council. The written grievance will then be referred to a grievance committee comprised of five (5) Stakeholders who are randomly selected by the Secretary from a list of Stakeholders who have previously expressed an interest in serving from time-to-time on such a grievance committee. Within fifteen (15) days of referral, the Secretary will coordinate a time and a place for the committee to conduct its public meeting with the person(s) submitting a grievance and to discuss ways in which the dispute may be resolved. The grievance committee will prepare a report and recommendation to the Board to be heard within fifteen (15) days from the date of the grievance committee's meeting. The Board may receive a copy of the panel's report and recommendations prior to the meeting by the Board, but the matter shall not be discussed among the Board members until the matter is heard at a meeting of the Board pursuant to the Brown Act.

This formal grievance process is not intended to apply to persons who disagree with a position or action taken by the Board at one of its meetings. Those grievances can be aired at Board meetings. This grievance process is intended to address matters involving procedural disputes, e.g., the Board's failure to comply with Board Rules or these Bylaws, or its failure to comply with the City's Charter, the Plan, local ordinances, and/or State and federal law.

In the event that a grievance cannot be resolved through this grievance process, then the matter may be referred to DONE for consideration or dispute resolution in accordance with the Plan.



# CITY OF LOS ANGELES CALIFORNIA



THE \_\_\_\_\_ NEIGHBORHOOD COUNCIL

**OFFICERS:**

PRESIDENT

VICE-PRESIDENT

SECRETARY

TREASURER

**NEIGHBORHOOD  
COUNCIL**

C/O Department of Neighborhood  
Empowerment  
3516 N. Broadway  
Los Angeles, CA 90031

TELEPHONE: (323) 224-2321

FAX: (323) 224-2312

Toll Free 1 (866) LA HELPS

[www.neighborhoodlink.com/la/minc](http://www.neighborhoodlink.com/la/minc)

\_\_\_\_\_ Neighborhood Council  
**MEETING AGENDA – REGULAR [or SPECIAL]**  
Friday, April \_\_, 2003 at 7:00 PM  
The Building and Room (ADA Approved)  
1809 Anywhere Blvd.  
Los Angeles, CA 900\_\_

The public is requested to fill out a **"Speaker Card"** to address the Board on any item of the agenda prior to the Board taking action on an item. Comments from the public on Agenda items will be heard only when the respective item is being considered. Comments from the public on other matters not appearing on the Agenda that is within the Board's subject matter jurisdiction will be heard during the Public Comment period. Public comment is limited to **[X]** minutes per speaker, unless waived by the presiding officer of the Board. This agenda is posted for public review at: [List the 5 locations specified for public posting as stated in your application for certification). As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and upon request, will provide reasonable accommodation to ensure equal access to its programs, services, and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or services may be provided upon request. To ensure availability of services, please make your request at least 3 business days (72 hours) prior to the meeting you wish to attend by contacting the Neighborhood Council Project Coordinator at (323) 22X-XXXX or e-mail to [name@mailbox.lacity.org](mailto:name@mailbox.lacity.org).

1. Call to Order and Roll Call
2. Old business: Approval of minutes from prior meeting.
3. Discussion and possible adoption of Standing Rules to assist the Board with its procedural operations.
4. Discussion and adoption of official position to recommend to [the City Council, the Mayor, City Officials ...] on ....
5. Board Member Comment - Comments from the Board on subject matters within the Board's jurisdiction
  1. Comment on Board Members own activities/brief announcements
  2. Brief Response to statements made or questions posed by persons exercising their general public comments rights
  3. Introduce new issues for consideration by the Board at the next meeting and request that [person in charge, charge, e.g., the Secretary] place the matter or item on the agenda

6. Public Comments – Comments from the public on non-agenda items within the Board's subject matter jurisdiction. Public comments are limited to [X] minutes per speaker.
7. Future Agenda Items and other Calendar Events:  
(List Here)
8. Adjournment

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**PROCESS FOR RECONSIDERATION:** [Insert the language from your bylaws regarding reconsideration.]

**GRIEVANCES:** In addition to any other remedies at law, if you have a grievance that you believe has been committed by this Neighborhood Council you may ... [Insert who to contact or how to start the internal grievance process]. A grievance is *not* one that is based on your disagreement with a position taken by the Board, e.g., the Board voted contrary to a position that you strongly supported. A grievance is an objection based on the failure of the Neighborhood Council or its Board to comply with its bylaws, rules, or laws. If you remain unsatisfied with the resolution of your grievance by this Neighborhood Council, then you may also file a complaint with the Department of Neighborhood Empowerment.



## Opening Meeting Sample Script

Ladies and Gentlemen welcome to our Neighborhood Council meeting. Today is *[state the date, eg., Monday, August 2, 2004]*. My name is \_\_\_\_\_ and I am the President our Neighborhood Council's board. Our board is a representative body that is elected by area stakeholders *{state when, e.g., every January}* and if you would like more information or to become more involved with our Neighborhood Council, please meet with me after tonight's meeting.

During tonight's meeting, we will be discussing the items that are listed on the meeting's agenda. There are copies of the agenda for your use *[state the location, e.g., on the table at the back of the room]*.

The agenda contains a list of the items that we will be discussing during tonight's meeting. We will proceed with each agenda item in numerical order. *{alternative example: I have received a request to take item number 4 on the agenda out of order and the board will hear that item first, and then proceed in numerical order with the remaining items on the agenda}*

Now is the time for board members to survey the agenda to determine whether any board member present has a conflict of interest under the state Political Reform Act, Government Code Section 1090, or the common law rules of bias. These rules provide that a board member should not participate in matters in which he or she has a financial interest or when he or she has a personal interest which may conflict with their official duties.

Should any board member have a conflict of interest, at the time the agenda item is announced for discussion, the board member should identify the general nature of the conflict, indicate that he or she is recusing him or herself from participating in the matter, and leave the room during the duration of the discussion of the item.

Before we make a decision on any item, the public is provided with the opportunity to provide its comment on the item that we are considering. If you have a general comment on an item that is not listed on the agenda then you may provide us with your comment during the "Public Comments" portion of the meeting. Please understand that there are certain laws that apply to Neighborhood Councils that limit our discussion to the items that have been listed on the agenda. These laws limit the actions that we may take during tonight's meeting, thus, we may be legally prohibited from acting on a concern that you expressed. However, please note that your concern may become the topic of discussion at a future meeting before our Neighborhood Council after we have had the chance to list the item on the agenda.

In order for you to speak and be heard on any agenda item, you will be called by me when it is your turn to speak. In order for me to know that you want to speak, please fill out a "Speaker Card." Copies of the Speaker Cards are located on the table at the back of the room. After you fill out the

card, please hand it to Mr/Mrs\_\_\_\_ who is seated at the far right of this table.

When a person is speaking, they are entitled to courtesy and respect. There should not be any other discussion occurring in the room. If you want to chat with your neighbor, then please take that discussion outside while our meeting is in session. We will treat one another with respect during this meeting. That means we act with civility and decorum. We do not "boo" or hiss when disagreeing with someone's point of view. Any competing viewpoints may be articulated without the need for inappropriate or uncivil actions.

Last, please turn off your cell phones and pagers.



(SAMPLE)  
NEIGHBORHOOD COUNCIL ECONOMIC INTEREST DISCLOSURE FORM

1. Board Member's Name and Name of Spouse (Last, First, Middle Initial)	2. Neighborhood Council Name
3. Name and Address of Board Member's and Spouse's Employer(s)	4. Address of Real Estate Owned or Leased With a Value of More than \$2,000 Within 1000 Feet of Neighborhood Council Boundary
5. Name and Address of Business Valued at More Than \$2,000 in Which Board Member or Spouse Own At Least 10% Investment Interest	6. Name and Address of Other Sources of Income over \$500 (including investments and stock over \$25,000)
7. Name and Address of Source of Gifts or Travel Benefits Greater than \$360 in the Past 12 Months	8. Name and Address of Source of Loans (Other than Loans from Banks)
9. Signature	10. Date Signed





# Neighborhood Council Bylaws

Under the Plan for a Citywide System of Neighborhood Councils (the “Plan”), each Neighborhood Council is required to have bylaws and these bylaws must state or describe how the Neighborhood Council will operate. This handout will discuss the Plan requirements and provide suggested bylaw language for Neighborhood Councils.

Article III section 2(c) of the Plan states that the bylaws must include the following information:

- “(i) The Neighborhood Council name
- (ii) Community Stakeholder Membership and the Governing Body
  - (1) The bylaws shall state that the Neighborhood Council membership is open to all Community Stakeholders.
  - (2) The bylaws shall include a list of offices of the Governing Body and a method for regularly electing or selecting officers who shall serve as the Governing Body. For purposes of the Plan, the term Governing Body refers to Community Stakeholders of a Certified Neighborhood Council who are empowered to make decisions on behalf of that Certified Neighborhood Council.
    - (a) A Certified Neighborhood Council’s Governing Body must, to the extent possible, reflect the diversity of the Neighborhood Council’s Community Stakeholders. Accordingly, no single Community Stakeholder group shall comprise a majority of a Certified Neighborhood Council’s governing body, unless extenuating circumstances are warranted and approved by [the Department of Neighborhood Empowerment (“DONE”)].
    - (b) In order to encourage diversity and innovation in leadership on the governing body, no person may serve more than eight consecutive years in any office of a Certified Neighborhood Council’s Governing Body.
- (iii) Meeting procedures. Each Neighborhood Council shall:
  - (1) Meet at least once per calendar quarter.
  - (2) Obey any or all sections of the State of California’s open meeting procedures that apply to Neighborhood Councils (Ralph M. Brown Act), which includes posting meeting notices in generally accepted public places or through electronic media, such as e-mail or posting notice on DONE Web page.

- (3) Establish procedures for communication with all Neighborhood Council Community Stakeholders on a regular basis in a manner ensuring that information is disseminated evenly and in a timely manner.
- (4) A process for running meetings, including:
  - (a) The number of Governing Body members that constitute a majority and a quorum;
  - (b) The number of votes by a Governing Body for a Certified Neighborhood Council to take official action, such as adoption of an item or position; and
  - (c) The way in which a vote by the Governing Body or action by a Certified Neighborhood Council can be reconsidered, if applicable.
- (iv) A grievance procedure shall be established by which an individual Community Stakeholder or group of Community Stakeholders of a Certified Neighborhood Council shall be able to express concerns to their Governing Body about its decisions and actions.”

When your Neighborhood Council’s bylaws were evaluated for Certification, they were evaluated based on whether they included bylaw provisions that satisfied these *minimum* Plan requirements.

## **BYLAW CHECK LIST FOR NEIGHBORHOOD COUNCILS**

### **# 1 NAME**

The bylaws must include a statement indicating the official name for the neighborhood council.

**Example:** “Upon certification, the name of this neighborhood council shall be {Insert name}, an officially recognized advisory council hereby part of the Los Angeles Citywide system of neighborhood councils.”

### **# 2 GEOGRAPHIC AREA**

The bylaws must include a statement indicating the geographic boundaries for the neighborhood council.

**Example:** “The boundaries for the {Insert name} include the geographic area described as follows:  
... {Insert a description of your boundaries} ....  
(See Attached Map.)”

Including a Map is helpful to your stakeholders because it is easier for people to visually determine from the map if they are stakeholders in your geographic area.

### **# 3 OPEN MEMBERSHIP**

The bylaws must state that membership in the council is open to all community stakeholders.

**Example:** “Membership in this Neighborhood Council is open to all Community Stakeholders or Stakeholders. A Stakeholder is a person who lives, works, or owns property within the Neighborhood Council boundaries. In addition, ... *{Insert any additional classes that you choose to add, also make sure that you specify any requirements on these optional stakeholder categories, e.g., Stakeholders also include those persons who participate in educational institutions located in the neighborhood council boundaries.}*”

*Note that persons who live, work, or own property within the neighborhood Council boundaries are Mandatory Classes of stakeholders and **must** be included in the neighborhood council.*

*You may add any number of additional stakeholder classes. The Plan provides the following as examples of other optional stakeholder classes that you might choose to add : educational institutions, religious institutions, community organizations or other non-profit organizations, block clubs, neighborhood associations, homeowners associations, apartment associations, condominium associations, resident associations, school/parent groups, faith based groups and organizations, senior groups and organizations, youth groups and organizations, chambers of commerce, business improvement districts, service organizations, park advisory boards, boys and girls clubs, cultural groups, environmental groups, codewatch, neighborhood watch, police advisory board groups, and or redevelopment action boards.*

### **# 4 ESTABLISH INTERIM BODY**

Establish an *Interim* Body that will guide the Neighborhood Council from the point in time after the certification hearing through the initial elections. You must describe the composition of this body by specifically stating the names of the persons involved, explain how the interim body will make decisions by stating the number of votes necessary to take action, and state that the interim body’s authority is limited to matters dealing with the conduct of the initial elections.

**Example:** “After certification and preceding the first elections for this Neighborhood Council, the Neighborhood Council will act...*{by or through? state the names of those people}* A quorum is ... *{state the number}* and decisions shall be made by a ... *{state how many votes are needed to act, e.g., majority of those present}* The interim board’s authority shall be limited to dealing with matters regarding the conduct of the initial elections for this Neighborhood Council.”

### **# 5 OFFICES OF THE GOVERNING BODY**

The bylaws must state all the offices of the governing body, including a description of the roles and responsibilities of each office.

The Treasurer *must* be an Officer of the Board. You *must* state that the Treasurer will comply with Generally Accepted Accounting Principles (GAAP)

## **# 6 INSTALLATION OF GOVERNING BODY**

The bylaws must provide a process by which a **GOVERNING BODY** is elected or selected. The process should be clearly stated so that any third party would be able, on reading the bylaws, to understand how that person, if desired, would be able to run/obtain a board seat. The process for conducting **both** the Initial Elections and Regular Elections must be explained in a clear and understandable manner.

State the eligibility requirements for any special board seats. For example, some neighborhood councils set up geographic sub-regions within their neighborhood council. In this case you would want to state the eligibility requirements for the geographic seats.

If you include any optional stakeholder classes in your neighborhood council, then that group also must have the opportunity to vote and the opportunity to serve on a board seat. One method of providing this opportunity to participate is to create an “At-Large Seat” on the board that is open to every stakeholder.

If you include a Board Seat for a youth member who is less than 18 years of age, you should state: “However, the youth board member shall be precluded and shall be recused from voting on matters regarding: the expenditure of public funds; the entering into of contracts or contractual matters of the neighborhood council; and determinations that will advise any third-party in City government on a contract, including the entry, renewal, or contract terms.”

It is *highly suggested* that you add a provision for filling vacancies on the board. You should also include a specific provision for removing and filling your officer positions as well.

Please note, your Neighborhood Council may wish to include a removal provision. You may remove a board member for “good cause” but board members may not be removed for arbitrary or capricious reasons. The better practice would be to identify in the bylaws the circumstances that constitute “good cause.” Some permissible removal provisions are based on definitive objective criteria, e.g., the failure to attend three consecutive board meetings, or removal triggered by a petition process from the stakeholders who were eligible to vote for the board member’s seat. If you intend to have a removal provision your bylaws should state: “The Neighborhood Council will consult with its legal advisor, the Office of the City Attorney, throughout the removal process.”

## **# 7 TERM LIMITS ON GOVERNING BODY**

Your bylaws must state certain required limitations imposed on the governing body under the Plan:

Example: “No person shall serve more than eight consecutive years.”

*{If your election/selection process permits the possibility that a single stakeholder group could obtain majority control of the governing board, then you must also state:}* No Stakeholder group shall comprise a majority of the Neighborhood Council's governing body, unless extenuating circumstances are warranted and approved by DONE.

### **# 8 INSTALLATION OF OFFICERS**

Explain the process for selecting or electing the **OFFICERS** for the Board. Your explanation must include both the Initial Elections and the Regular Elections that will be conducted by your Neighborhood Council.

**Example:** "Officers shall be elected from the members of the Board by the members of the Board by a majority vote of those board members present at the first meeting following any Board election."

Explain the qualifications of your officers or any of the special duties that they will undertake.

### **# 9 STAKEHOLDER VOTING**

Explain the voting process that Stakeholders will follow to elect their Board members. If your Neighborhood Council uses a selection process to choose your governing board, then provide specific detail on how a Board member is selected. Every Stakeholder must have the right to vote, subject to any reasonable restrictions on the age of minors. If you have minors who will be voting in your elections, it is *highly suggested* that you set forth a minimum voting age in your bylaws. Any person should know, upon reading the bylaws, exactly how many votes they have and how they are allowed to cast their votes

If you have district representation, then explain how Stakeholders vote. Do you vote in each district Or vote in all districts? Or, if you have seats set aside for Stakeholder classes, do the Stakeholders vote for their respective Stakeholder classes? Or does everyone vote for everyone?

### **# 10 MEETING FREQUENCY**

Neighborhood Council meetings must occur at least once per calendar quarter.

**Example:** "...shall meet at least once per calendar quarter, and {... e.g., the President ...} shall call any additional meetings as desired."

### **# 11 MEETING RULES**

Your bylaws must state that the Neighborhood Council will abide by all laws, including the State's Brown Act. The Brown Act mandates that the Neighborhood Council comply with certain methods for noticing its public meetings and conducting these meetings.

**Example:** “...shall abide by any and all Federal, State, and Municipal laws, including the Brown Act. In addition,...may adopt Standing Rules as appropriate by majority vote of those board members present at a duly noticed and agendized meeting.”

If your bylaws are inconsistent with federal, state or local law, the bylaw provision is invalid. In addition, your standing rules must be consistent with your bylaws. Any standing rule inconsistent with federal, state, local law or your bylaws is invalid.

### **# 12 OFFICIAL ACTION**

Specify the number of people needed on your board for a quorum (the minimum number required for the meeting to occur) and state how the board takes official action (majority of those present, majority of the entire board, 2/3 etc.,?)

**Example:** “Of the 13 people on the board, a quorum of 7 board members must be established before the meeting may proceed. Any meeting with less than a quorum shall be adjourned. The Neighborhood Council shall take action only upon agreement by a majority of those board members present at a duly noticed and agendized meeting.”

### **# 13 PROCEDURES FOR COMMUNICATION**

Each Neighborhood Council must explain the process by which it will communicate with all Stakeholders and this communication must occur on a regular and timely basis.

**Example:** “The Neighborhood Council will distribute periodic announcements to all Stakeholders within the boundaries of the Neighborhood Council. The Neighborhood Council will endeavor to use modern technology to its advantage to deliver information to its Stakeholders. The Board shall establish a Communication and Outreach Committee that shall develop further standing rules to achieve these goals, subject to approval by the Board. This Committee shall report to the Board on a monthly basis and shall inform the Board of: the Committee’s outreach efforts for the month; the Committee’s efforts toward sustaining, improving, and obtaining diversity among the Neighborhood Council’s stakeholders; the Committee’s suggestions for further improving communication and outreach for the Neighborhood Council; update the board on the Committee’s ongoing communication and outreach project; and establish measurable goals with deadlines that may track progress toward the overall objectives for improving communication and outreach.”

### **# 14 RECONSIDERATION**

The council must state a process by which its official actions may be reconsidered if the governing board determines that there may be a justification for re-evaluating its earlier decision.

**Example language:**

“The Board may reconsider or amend its actions through the following Motion for Reconsideration process:

1. The Board's approval of a Motion for Reconsideration must occur within the following specific periods of time: The Motion for Reconsideration must be approved either: (a) during the same meeting where the Board initially acted; or (b) during the Board's next regularly scheduled meeting that followed the meeting where the action subject to reconsideration occurred. These specified time frames do not prevent the Neighborhood Council from convening any special meetings within the specified time frames to address a Motion for Reconsideration.
2. Before the Board reconsiders any matter, the Board must approve a Motion for Reconsideration. The Motion for Reconsideration must be approved by official action of the Board [*OR INSERT HOW, e.g., a majority of the Board Members present ...*] After determining in the affirmative that an action should be reconsidered, the Board then has the authority to re-hear, continue, or take action on the item that is the subject of reconsideration within any limitations that are stated in the Motion for Reconsideration.
3. The Motion for Reconsideration shall only be proposed by a member of the Board that previously voted on the prevailing side of the original action taken by the Board (the "Moving Board Member"). The Moving Board Member may make the Motion for Reconsideration by either: (a) an oral motion that is made during the same meeting where the action that is the subject of reconsideration occurred, or (b) by properly placing the Motion for Reconsideration on the agenda of a meeting that occurs within the allowed specified periods of time as stated above.
4. If the Motion for Reconsideration is made subsequent to the meeting where the action that is the subject of reconsideration occurred, then the Motion for Reconsideration must be on that subsequent meeting's agenda. The Moving Board Member places a Motion for Reconsideration on the agenda by submitting a memorandum to the ... [*whoever creates the agenda ...e.g., Secretary...*] at least ... [*Specify a Timeline, e.g., two days in advance of the deadline for posting notices for the meeting....*] The Moving Board Member's memorandum must briefly state the reason(s) for requesting the reconsideration, and provide the [*...Secretary...*] with the language necessary to complete the information that must be stated in the agenda. The language that must be stated in the agenda is an adequate description of the: (a) Motion for Reconsideration and its description of the item that is to be re-heard; and (b) A proposed action that may be adopted by the Board if the Motion for Reconsideration is approved.
5. When the Motion for Reconsideration is brought before the board for consideration, then that motion may be seconded during the public hearing by any member of the Board.

6. This reconsideration process shall be conducted at all times in accordance with the Brown Act, including that: any discussion on the issue remain within permissible discussion parameters; that any decision is made during the public hearing; and that, if the Motion for Reconsideration is considered at a subsequent meeting to the meeting where the act that is the subject of reconsideration occurred, then the Motion for Reconsideration is properly listed on that meeting's agenda.

### **# 15 GRIEVANCE PROCEDURES**

The bylaws must provide a process by which grievances are settled and disputes resolved.

The grievance process is not intended to apply to stakeholders who simply disagree with a position or action taken by the Board, but rather to address matters involving procedural disputes (*e.g.*, the Board's failure to comply with Board Rules or these Bylaws, or its failure to comply with the City's Charter, the Plan, local ordinances, and/or state and federal law).

The initial decision on the grievance should be considered by a neutral third party that is not likely to be the subject of the complaint. The neutral third party's recommendation on a course of action to the Board may lead to the resolution of more problems than simply having the Board, who likely are the subject of the complaint for the actions they took, hear and decide the grievance.

The procedures should state how the grievance is filed, deadlines for any committees to return to the Board with a recommendation, deadlines for the board to take action, and that the person filing the grievance may also file a complaint with DONE.

### **# 16 BYLAW AMENDMENT**

The bylaws must state a process describing how they are to be amended or adjusted.

The amendment procedure must state that no amendment to the bylaws is effective until approved by DONE under Article V of the Plan.

If the Neighborhood Council chooses to initiate the amendment process through some action by its stakeholders, the amendment process must still include a ratification of the amendment by the Board.

### **# 17 STATEMENT ON CODE OF ETHICS**

The bylaws must include a Code of Ethics statement.

**Example:** "The council, its representatives, and all stakeholders will endeavor to conduct council business in a professional and respectful manner. The council, its representative, and all stakeholders will refrain from violating Board Rules and shall abide by the Plan and all City, County, State, and/or federal laws that may apply, including any applicable provisions from the Governmental Ethics Ordinance (Los Angeles Municipal Code '49.5.1 *et seq.*)."



### **# 18 NON-DISCRIMINATION**

The bylaws must include a Non-Discrimination clause.

**Example:** “The council, its representatives, and all stakeholders shall not discriminate in any of their policies, recommendations in any of their policies, recommendations or actions against any individual or group on the basis of race, religion, color, creed, national origin, ancestry, sex, sexual orientation, age, disability, marital status, income, or political affiliation.”

### **# 19 SELF-EXPLANATORY AND CONSISTENT**

Most importantly, the bylaws should explain how to handle future problems in a manner that is clear and precise. There should not be any inconsistencies in the bylaws. Are the bylaws easy to read and understand?

The establishment of clear election procedures and a definitive method for resolving any problems is crucial to the success of your Neighborhood Council. It is best to establish any process/rules for anticipated problems before the problem occurs.