

Neighborhood Council Plan Review and Reform Initiative

Session V Worksheet:

Brown Act, Sunshine Ordinance, and Meeting Posting Requirements

- Should neighborhood councils continue to be subject to the Brown Act and Public Records Act or should a “sunshine ordinance” for neighborhood councils replace them?
- Should the current policy requiring neighborhood councils to post meeting notices in 5-7 locations (including one that is Brown Act-compliant) be maintained, eliminated, or altered?

NEIGHBORHOOD COUNCIL SUNSHINE ORDINANCE (DRAFT)

Section 1: Purpose.

The system of neighborhood councils exists to promote stakeholder involvement and participation in City governance, decision-making and problem-solving processes that affect their neighborhoods.

Because neighborhood councils serve as Charter-recognized voices for their communities, neighborhood councils must operate as openly and transparently as possible, and should maximize opportunities for stakeholder participation in their own decision-making and problem-solving processes.

However, because neighborhood councils have an advisory role and are volunteer-based, neighborhood councils should not be subject to unnecessary restrictions that hinder, rather than enhance, the ability of neighborhood councils to participate in City governance, decision-making and problem-solving processes.

This ordinance balances the public interest in openness, transparency and public participation with the equally important public interest in having neighborhood councils' that are effective voices for their community.

Section 2: Definitions.

For purposes of this ordinance:

- (a) "Neighborhood council" or "council" is defined to include a certified neighborhood council formed pursuant to Article IX of the Los Angeles City Charter, any of a neighborhood councils' standing committees which have a continuing subject matter jurisdiction, the board of directors of a certified neighborhood council, or any member of a neighborhood council's standing committees.
- (b) "Meeting" is defined as any congregation of a majority of the members of a neighborhood council at the same time and place to make a collective decision, or to adopt or take any formal position, decision or recommendation on any item within the subject matter jurisdiction of the neighborhood council.
- (c) "Records" includes any writing containing information relating to the conduct of the neighborhood council's business prepared, owned, used, or retained by any neighborhood council, regardless of physical form or characteristics.

- (d) "Writing" means any handwriting, typewriting, printing, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.
- (e) "Department" means the Department of Neighborhood Empowerment.
- (f) "Board" means the Board of Neighborhood Commissioners.

Section 3: Public Meetings

- (a) Except as specified in this section, any meeting of a neighborhood council is exempt from the Ralph M. Brown Act Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).
- (b) Any formal position, decision or recommendation of a neighborhood council must be made, taken or adopted at a meeting.
- (c) Members of neighborhood councils may exchange information, ideas and positions with each other on matters within the subject matter jurisdiction of the neighborhood council. However, such exchanges shall not be used to develop a collective concurrence on any such matter other than at a meeting. To the greatest extent feasible, members of neighborhood councils should exchange information using methods, such as Internet message boards or blogs, that make such exchanges available to the public. The Board of Neighborhood Commissioners may promulgate regulations to give effect to this subsection.
- (d) Any meeting of a neighborhood council shall be subject to the following requirements:
 - (1) The meeting shall be open to the public;
 - (2) The meeting shall be held within the boundaries of the neighborhood council, except that:
 - (a) a neighborhood council may meet in any facility owned or operated by the City of Los Angeles that is within three (3) miles of the neighborhood council boundaries;
 - (b) if a neighborhood council does not have access to a meeting facility within its boundaries, it may meet in a meeting facility within three (3) miles of the neighborhood council's boundaries;

- (c) a neighborhood council may meet in office space it maintains that is within 3 miles of its boundaries; and
 - (d) in the case of a joint meeting of more than one neighborhood council, the meeting shall be held at a location where it would be permissible for one of the participating neighborhood councils to hold a meeting.
- (3) At least 72 hours before the time set for the meeting:
- (a) Notice of the meeting shall be posted at an appropriate place accessible to the public within the boundaries of the neighborhood council;
 - (b) Notice of the meeting shall be made available on the neighborhood council's Internet site, if any; and
 - (c) Notice of the meeting shall be distributed electronically by means of the Early Notification System to persons who have requested notification.
- (4) The notice shall:
- (a) specify the date, time, and location of the meeting;
 - (b) include the name, address, and telephone number of any person who can provide further information prior to the meeting;
 - (c) include the address of the Internet site where notices and other information required by this section are available;
 - (d) include an agenda containing a brief description of the items of business to be discussed or acted upon. A brief general description of an item generally need not exceed 20 words.
 - (e) be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

- (5) Neighborhood councils should maximize opportunities for stakeholder participation in meetings. At a minimum:
 - (a) During the meeting, members of the public shall be given an opportunity to directly address the neighborhood council on any item within the subject matter jurisdiction of the council.
 - (b) On agenda items, members of the public shall be given an opportunity to directly address the neighborhood council before or during the council's consideration of each agenda item.
 - (c) Neighborhood councils may adopt reasonable policies to ensure that the intent of subdivisions (a) and (b) are carried out, including policies limiting the total amount of time allocated to public testimony on particular issues and for each individual speaker.
 - (d) No person shall be required, as a condition to attendance at, participation in, or speaking at a meeting of a neighborhood council, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.
 - (e) If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.
- (6) The council may not take any action on any item of business unless that item appeared on the posted agenda or unless the council members present, by two-thirds vote, make specific findings stating why there is a need to take immediate action and that the need for action came to the attention of the council subsequent to the posting of the agenda.
- (7) Questions or brief statements made at a meeting by members of the council or public that can be resolved solely by the provision of information need not be described on an agenda as items of business, and may be addressed by the neighborhood council at that meeting.
- (e) All meetings of a neighborhood council that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(f) Records of Meetings:

- (1) Agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a neighborhood council by any person in connection with a matter subject to discussion or consideration at a public meeting of the body shall be made available without undue delay to any member of the public who requests the materials.
 - (2) Writings that must be made available to the public under subdivision (1) and that are distributed to all, or a majority of all, of the members of a neighborhood council prior to or during a meeting, pertaining to any agenda item, shall be made available for public inspection at the meeting if prepared by the neighborhood council, or after the meeting if prepared by some other person.
 - (3) At or within a reasonable time after a meeting, the neighborhood council shall prepare minutes that clearly indicate what action was taken with respect to each agenda item.
- (g) Any person attending an open and public meeting of the neighborhood council shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the neighborhood council that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.
- (h) No neighborhood council shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.
- (i) Enforcement of Requirements:
- (1) If a council violates the procedural meeting requirements of this ordinance, and upon demand of any person, the council shall reconsider the item at its next meeting, after allowing for public input on the item.
 - (2) If a neighborhood council does not comply with a demand made pursuant to paragraph (1), within 30 days following the failure to comply, any person may file a written complaint with the Department of Neighborhood Empowerment, stating forth the facts supporting the complaint.

- (3) The Department shall have 30 days to investigate the complaint and, if it is determined that the complaint is valid, to direct the neighborhood council to reconsider the item at its next meeting, after allowing for public input on the item. The Department shall promptly notify the complainant, in writing, of its decision regarding the complaint.
- (4) Any person or council who disagrees with the result of the Department's investigation shall have 30 days from the date of the Department's decision to file a written appeal to the Board of Neighborhood Commissioners, on a form to be provided by the Board.
- (5) The Board shall have 60 days to investigate and make a decision regarding the appeal.
- (6) Decisions of the Board shall be final, except as provided under Charter section 245.

Section 3: Neighborhood Council Records

- (a) Each neighborhood council shall maintain records in compliance with a records retention schedule adopted by the Board of Neighborhood Commissioners.¹
- (b) Every person has a right to inspect or obtain copies of records maintained by a neighborhood council. However, there is no right to inspect or obtain copies of records that would be exempt from release under the Public Records Act, California Government Code sections 6250 *et seq.*

¹ A Document Retention Schedule might look something like the following:

or (b) and (c)

- (a) Each neighborhood council shall maintain the following records for a period of three years:
 - (1) The neighborhood council's current and past bylaws and standing rules;
 - (2) Agendas of public meetings and other writing described in section 3(f) of this ordinance;
 - (3) Writings relating to neighborhood council elections;
 - (4) Writings or records of communications transmitted by the neighborhood council or any person acting on behalf of the neighborhood council;
 - (5) Writings or records of communications received by the neighborhood council, other than documents transmitted by any other City of Los Angeles entity and which the City is required to maintain under federal, state or local law;
- (b) Each neighborhood council shall maintain the following records for 60 days:
 - (1) Any tape, film, digital or electronic record of an open and public meeting made for whatever purpose by or at the direction of the neighborhood council

- (c) Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (d) When a person makes a written request for a copy of records to a neighborhood council that reasonably describes an identifiable record or records, the neighborhood council shall make the records available to that person within 30 days of the request, except with respect to records exempt from disclosure by express provisions of law, upon payment of fees covering direct costs of duplication. Upon request, an exact copy shall be provided unless impracticable to do so.
- (e) When a member of the public requests to inspect a record or obtain a copy of a record, the neighborhood council shall assist the requester in making a focused and effective request that reasonably describes an identifiable record or records, by doing the following, to the extent reasonable under the circumstances:
 - (1) Assisting the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
 - (2) Describing the information technology and physical location in which the records exist.
 - (3) Providing suggestions for overcoming any practical basis for denying access to the records or information sought.
- (f) When a person makes a request for a copy of records, the neighborhood council shall, within 21 calendar days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable records in the possession of the neighborhood council, and shall promptly notify the person making the request of the determination and the reasons therefor.
- (g) Upon a determination of good cause, the General Manager of the Department of Neighborhood Empowerment may extend the time periods set forth in subsections (f) and (h). The neighborhood council shall give written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched.
- (h) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.

- (i) Any inspection of an audio or video recording shall be provided without charge on an audio or video player made available by the neighborhood council.
- (j) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable record, that is subject to disclosure pursuant to this ordinance, which is in an electronic format shall make that information available in an electronic format when requested by any person.
 - (1) Nothing in this section shall be construed to require a neighborhood council to reconstruct a record in an electronic format if the council no longer has the record available in an electronic format.
 - (2) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format
- (k) The General Manager of the Department of Neighborhood Empowerment may authorize a neighborhood council to withhold a record if he or she finds that, on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. Among the factors the Department may consider are:
 - (1) whether the nature or scope of a request for documents makes compliance unduly burdensome for the neighborhood council.
 - (2) whether the request is duplicative or harassing; and
 - (3) whether the request invades legitimate privacy interests of a person participating in a neighborhood councils with respect to materials in that person's personal possession, including material stored on a personal computer or a personal e-mail account.
- (l) If a neighborhood council withholds any record or portion thereof requested by any person, or determines that it does not possess any of the requested documents, the neighborhood council shall notify the requester in writing, setting forth the reasons for not producing the document for inspection or copying.
- (m) Except as provided in section (k), this ordinance does not allow limitations on access to a record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.
- (n) Enforcement of Requirements:

- (1) If a neighborhood council fails to comply with the time periods set forth in this section, the person who requested that record may submit a written complaint to the Department of Neighborhood Empowerment, on forms to be provided by the Department, within 30 calendar days after the time period has elapsed.
 - (2) If a neighborhood council withholds any requested record, the person who requested that record may submit a written complaint to the Department of Neighborhood Empowerment, on forms to be provided by the Department, within 15 calendar days after the written notice of withholding was sent to the requester.
 - (3) Within 45 calendar days after receiving a written request, the Department of Neighborhood Empowerment shall respond either by providing the requested record or notifying the requester, in writing, that it is upholding the denial.
 - (4) If the person who requested the record is not satisfied with the response from the Department of Neighborhood Empowerment, that person may, within 15 calendar days after receiving the response, submit a written appeal to the Board of Neighborhood Commissioners.
 - (5) Decisions of the Board shall be final, except as provided under Charter section 245.
- (o) Some neighborhood council board members might represent, be an officer of, or belong to other organizations, including but not limited to homeowners or residents associations; public or private schools; chambers of commerce; or religious, cultural or social institutions. Nothing in this ordinance gives any person any right of access to records of any organization other than the neighborhood council itself.