



Department of Neighborhood Empowerment
The Brown Act and Neighborhood Councils

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THE BROWN ACT AND NEIGHBORHOOD COUNCILS

1. What is the Ralph M. Brown Act?

The Brown Act is a California state law governing open meetings for local governmental bodies. The Brown Act is contained in the Government Code beginning at Section 54950, 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.

2. Why are neighborhood councils subject to the Brown Act?

The Brown Act governs the meetings of all local “legislative bodies,” which include advisory commissions, committees, boards, or other bodies of a local government agency created by charter, ordinance, resolution, or formal action of another legislative body. Neighborhood councils qualify as “legislative bodies” under the Brown Act because the Los Angeles City Charter created the Neighborhood Council System and both the Charter and City ordinances provide for the recognition and certification of neighborhood councils. This combination of features, *i.e.*, the Charter-created system and City ordinances, satisfies the “creation by charter, ordinance or formal action” test of the Brown Act.

3. What constitutes a meeting of a neighborhood council?

Under the Brown Act, a “meeting” of your neighborhood council will occur when a majority of the members of your board or a committee meets at the same time and place to *hear, discuss, deliberate, or take action* upon any matter under the subject matter jurisdiction of your neighborhood council. Meetings subject to the Brown Act may lawfully be held only if the notice, agenda, and other requirements discussed in this guidance document are followed.

Majority of Members. What constitutes a “majority” will depend on the number of board members your neighborhood council bylaws require to take an official action on behalf of the neighborhood council. Some bylaws may state that decisions of their governing body are made by a majority vote of the total number of board members. Others may state that decisions are made by a majority vote of the number of board members *present* at the meeting. If your bylaws provide that some number *less* than a simple majority of the board can take official action on behalf of the neighborhood council, the gathering of that group of members qualifies as a meeting under the Brown Act.¹ The least number of persons under your bylaws who can take an official action for your neighborhood council (the number of affirmative “aye” votes) is the number to be aware of for purposes of complying with the Brown Act.

¹ Accordingly, whenever this guidance document uses the term “majority” to define a meeting, it refers to the least number of members required to take an official action on behalf of the neighborhood council board.

For example, if your neighborhood council has 15 board members, and your bylaws state that official action can be taken by a majority vote of the total board membership, a gathering of eight board members to hear, discuss, deliberate, or take action on a matter within the neighborhood council's subject matter jurisdiction is a "meeting" under the Brown Act, and may occur only in compliance with the Brown Act's notice and agenda requirements.

On the other hand, if your neighborhood council has 15 board members, but the bylaws state that official action can be taken by a majority vote of the members *at the meeting* and your bylaws set quorum at 11 members, as few as six "aye" votes might be needed to pass a motion. Therefore, a gathering of six board members to hear, discuss, deliberate, or take action on a matter within the neighborhood council's subject matter jurisdiction could constitute a meeting under the Brown Act.²

Subject Matter Jurisdiction. The subject matter jurisdiction of your neighborhood council may be broad since neighborhood councils are advisory bodies to all the City's decision-makers on issues of concern to your neighborhoods. Some neighborhood councils may have specified particular areas of neighborhood concerns in their bylaws, so those listed areas will also provide guidance as to the neighborhood council's subject matter jurisdiction.

To Hear, Discuss, Deliberate, or Take Action. One might think that the Brown Act applies only when a board is making decisions at a public meeting. In fact, the Brown Act also applies when a majority of your neighborhood council board meets to simply *discuss, deliberate* or *acquire* information about a matter within your neighborhood council's subject matter jurisdiction. A meeting subject to the Brown Act may occur in many different settings, even beyond regular and special meetings. For example, neighborhood council board retreats, lunch or dinner meetings, and similar gatherings involving a majority of members are subject to the Brown Act because they involve the discussion of issues within the neighborhood council's subject matter jurisdiction. Such gatherings must be open to the public and comply with the Brown Act's notice and agenda requirements.

Exceptions. The Brown Act creates limited exceptions in which a majority of a board may gather without constituting a "meeting."

- **Individual Contacts:** Communications between one member of a neighborhood council board and any other person do not constitute a meeting. However, such contacts may constitute a "serial meeting" (See No. 4) or be prohibited on a social media platform (See No. 5).

² Under this type of bylaws structure, the least number of members who can take official action on behalf of the neighborhood council is often referred to as the "majority of the quorum."

- **Conferences:** A majority of a board may attend a conference or similar gathering that is open to the public and involves a discussion of issues of general interest to the public, as long as a majority of members do not discuss among themselves items relating to their neighborhood council other than as part of the scheduled program. However, gatherings by a majority of members who discuss board related matters at retreats, team-building sessions, or workshops do not apply as exceptions under the Brown Act.
- **Open and Publicized Community Meeting:** A majority of a board may attend an open and publicized meeting held by a person or organization other than the neighborhood council (for example: town hall forums, chamber of commerce lunches or other community meetings), as long as a majority of members do not discuss among themselves items relating to their neighborhood council other than as part of the scheduled program. Therefore, for example, attendance at a homeowner's association meeting that is limited to certain residents and publicized in a limited manner, would not qualify as an open and publicized community meeting.
- **Other Legislative Bodies:** A majority of a board may attend an open and noticed meeting of another public body, including another neighborhood council meeting, a City commission or a City Council meeting as long as the board members do not discuss among themselves items relating to their neighborhood council other than as part of the scheduled meeting.
- **Social or Ceremonial Occasions:** A majority of a board may attend a purely social or ceremonial occasions as long as the members do not discuss among themselves items relating to their neighborhood council. Such purely social or ceremonial occasions might include picnics, block parties, fundraisers, etc.
- **Standing Committee:** A majority of a board may also attend meetings of the neighborhood council's own standing committees, provided those who are not members of the standing committee attend only as *observers* and do not speak or otherwise participate in the meeting. This means that board members who are not members of the standing committee should not speak at the meeting, sit in their usual seat on the dais/serve as a panelist, or otherwise participate in the standing committee's meeting.

4. **What limits apply to communications among neighborhood council board members (Serial Meetings)?**

The Brown Act prohibits what courts have called “serial meetings” conducted by a majority of your board members using a series of communications to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the neighborhood council. This prohibition exists because the Brown Act's main goal is to ensure that the public's business is in fact conducted *in public*.

A serial meeting may arise under several circumstances. For example, a serial communication occurs when one board member separately 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. until a majority or more of members have been contacted. 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, for example to poll the board members or ask about board members positions on certain issues.

Serial meetings can occur over the phone, by email, text message, or any other form of written communication. The concern under the Brown Act is not *how* the discussion was communicated among the board, but instead whether an inappropriate number of persons received the serial communication.

However, communications between board members and an executive officer, such as a President or Secretary, to discuss times or dates for a future meeting, and placement of matters on the agenda, and the availability of board members to assess whether an upcoming meeting will have a quorum, may occur without violating the Brown Act. A majority of board members should refrain from circulating motions, proposals and similar documents among themselves for review and signature other than at a noticed public meeting.

5. What limits apply to the use of social media?

To ensure that members do not discuss matters among themselves on social media, the Brown Act was amended in 2021.³ The Brown Act expressly prohibits members of a legislative body from directly responding to a communication on a social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body. *This prohibition applies even if only responding to one member and not to a majority of the members of the neighborhood council board.* Responding to another member's social media post includes commenting, sharing, retweeting, or liking or disliking a post including by use of emojis.

6. What are the agenda requirements for Regular and Special meetings?

Regular meetings. Regular meetings are meetings of the neighborhood council's governing board and standing committees that occur on a regular basis at a date, time and location set by resolution or other formal action.⁴ The agenda for a regular meeting must set forth the time and place of your meeting and must be posted *at least* 72 hours

³ Cal. Gov. Code § 54952.2 (b)(3) (as amended by AB 992).

⁴ The Administrative Code requires that neighborhood councils meet at least once per calendar quarter.

before the meeting in a physical location that is freely accessible to members of the public.⁵ The agenda must list all items that will be discussed or acted upon by your neighborhood council. That listing should be described in an informative way so that board members and the public understand the general nature of the agenda item and can make an informed decision whether to attend the meeting or not. The Brown Act provides that this description need not exceed 20 words, but you are certainly free to use more words if necessary. The goal of the description is to provide a reasonably clear understanding of what is to be considered by the board at its meeting. No discussion or action may be taken on any item not appearing on the posted agenda.

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 on the agenda 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 decisionmakers. Those matters should be separately listed on the agenda with enough information to identify the project, such as the address, type of project, *etc.* Neighborhood councils are limited to acting on (as well as discussing) only those matters which have been listed on the agenda.

Special meetings. Special meetings should be held infrequently and should not be used to take the place of a regular meeting. For example if an issue arises that is time-sensitive and cannot be considered at your regular meeting, a special meeting may be appropriate.

A special meeting may be called by the presiding officer of your neighborhood council or by a majority of the board members by delivering written notice (usually the agenda) to each board member *at least 24 hours* prior to the meeting. Written notice must also be sent to each local newspaper, radio, or television stations that has requested notice in writing. The agenda must be posted *at least 24 hours* prior the meeting in a location that is freely accessible to the public, stating the time and place of the meeting and items to be transacted and discussed. Only matters that are on the agenda may be discussed or acted upon at that meeting. Your bylaws should specify whether your neighborhood council may hold special meetings.

Emergency meetings. The Brown Act only allows emergency meetings to be called to address a defined “emergency situation” (e.g., work stoppage, crippling disaster, or terrorist act) that justifies a legislative body such as the City Council to take prompt action that is necessary due to the disruption or threatened disruption of public facilities. **As such, neighborhood councils should never have the need to call an emergency meeting.**

⁵ 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.

Exceptions to the agenda requirement. The general rule is that a matter may not be discussed or decided by Board members unless it is listed on the agenda. Unlike members of the public who can speak during public comment about items not on the agenda but within the subject matter jurisdiction of the neighborhood council, Board members may only discuss or take actions on items listed on the agenda. There are limited exceptions to this general rule:

a) *Exception: **Brief Board Member Statements***

Board members may *briefly* respond to statements made or questions posed by the public during public comment (*but no discussion, deliberation or action may be taken on matters brought up during public comment*). Board members may ask a question for clarification, make a brief announcement, or make a brief report on their own activities. Board members may take action to direct their secretary (or whomever is in charge of placing items on the agenda) to place a specific matter on the agenda for a future meeting.

b) *Exception: Continuances*

If an item was posted pursuant to the Brown 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 neighborhood council plans to hold weekly meetings.*

c) *Exception: Immediate Action*

Board members may take immediate action on an item if there is a finding by two-thirds votes of the neighborhood council board that there is a need to act immediately, and the neighborhood council's consideration of the matter cannot await the next meeting and that the need for immediate action arose after the posting of the agenda. ***This should only occur in very rare occasions, and you should consult with the Department of Neighborhood Empowerment or the City Attorney's Neighborhood Council Advice Division before relying on this exception.*** (*Note: If an item does come up after the posting of the 72-hour agenda, but before the meeting, you should consider whether you have time to notice a 24-hour special meeting that could follow your regular meeting and allow discussion only of that item.*)

Agenda Posting on Website and Early Notification System. Although the Brown Act does not require neighborhood councils to post agendas on its website,⁶ a Board of Neighborhood Commissioners ("BONC") Policy (Policy No. 2014-01.1) requires every neighborhood council to post all board and committee meeting agendas on its website

⁶ Although the Brown Act does require certain legislative bodies to post agendas on a website, this requirement is not applicable to neighborhood councils (see Government Code Section 54954.2(a)(2)(D)(ii)).

and submit to the Department for posting to the Early Notification System. Please consult with your Department representative for further guidance on the requirements of this BONC policy.

7. What public participation requirements apply to neighborhood council meetings?

Open meetings. The Brown Act specifically requires that your meetings must be open to the public. 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.⁷ Use of speaker cards to organize the order of people who wish to speak is allowed without violating the prohibition of requiring people to register to attend a meeting. However, a neighborhood council may not prohibit a member of the public from speaking if they refuse to fill out a speaker card. Discussion and deliberation of agenda items by your neighborhood 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; in facilities that prohibit the admittance of any persons on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation; or where members of the public may not be present without making a payment or purchase.

Public Comment. 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 deliberates or 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 “General Public Comment” because the Brown Act allows members of the public to comment on any item within the subject matter jurisdiction of your neighborhood council even if the matter is not specifically listed on the agenda. It is up to your neighborhood council where you want to place this item on the agenda. Some agencies place general public comment at the front of the agenda, while some place it at the end. It does not matter where you put it as long as you provide for that opportunity at every regular meeting (special meetings do not require a *general* public comment item; however, the public must still be provided an opportunity to speak on the agenda items for the special meeting.) Your neighborhood council is allowed to adopt reasonable rules to govern the length of time for public comment on agenda and non-agenda items.

⁷ If a sign-in sheet or 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.*

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 Brown 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's Office should be consulted to discuss how and when this provision of the Brown Act may be invoked. At no time should you engage in physical confrontations or force or attempt to physically remove a disruptive person.*

Writings Distributed at Meetings. Members of the public also have a right to see materials that are distributed to your neighborhood council at its meetings. The Brown 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, Department staff, prepare materials for distribution at your meetings, copies must be made available for the public during the meeting. Otherwise, if materials are distributed by other individuals, such as other stakeholders or members of the public, these must be retained and be made available after the meeting. Writings that are public records, related to a matter on your agenda, and are distributed less than 72 hours to a majority of your board must be made available for public inspection at the time of their distribution and your agenda should state where (address/location) such materials may be viewed.

8. May a neighborhood council hold a meeting that is closed to the public (Closed Session)?

No. The Brown Act provides for specific and limited circumstances under which a closed session may be held by a legislative body. The only circumstance, *if at all*, that would apply to a neighborhood council would be to discuss pending litigation.⁸ Under very limited circumstances, a neighborhood council *might* be allowed to meet in closed session with the Office of the City Attorney to discuss pending litigation to which the neighborhood council is or may be a party when litigation has been formally initiated or when there is significant exposure or threat of litigation.

What you cannot do is use a closed session to discuss items because you might be uncomfortable discussing the item in public or because you want to confer with legal counsel for non-litigation purposes. As such, the need for a closed session is unlikely to arise for a neighborhood council.

⁸ The personnel exception in the Brown Act which allows a body to discuss the "appointment, employment, evaluation of performance, discipline or dismissal of a public employee" does not apply to neighborhood councils because the term "public employee" in the City of Los Angeles context would mean a City employee. Neighborhood councils have no authority over personnel matters of City employees. The other exceptions listed in the Brown Act are not applicable to neighborhood councils.

9. How does the Brown Act apply to neighborhood council committees?

Standing Committees, which are committees having a continuing jurisdiction over a particular subject matter, are subject to the Brown Act, even if the committee comprises less than a majority of board members or includes or is comprised of only stakeholders from your neighborhood council. Therefore, no neighborhood council committee should include a majority or more of board members because the committee meeting would also be considered a “meeting” of the board under the Brown Act. If your bylaws have created several standing committees, these will be subject to the Brown Act’s provisions.

Ad Hoc Committees. Temporary advisory committees (sometimes referred to as “ad hoc committees”) created by the board from among its members and numbering less than a quorum⁹ are normally not subject to the Brown Act. Generally, temporary advisory committees are utilized by boards to address a specific issue for a limited time and report back with recommendations to the full board. To be exempt from the Brown Act’s requirements, a temporary advisory committee must be composed of less than a quorum of the board, must be composed of only board members, must serve a temporary and limited or single purpose, and must be dissolved once its task is complete. If you include *any* non-board member on a temporary committee, that committee will be subject to the Brown Act requirements.

Subdivision Formation Committee or Similar Committee for Neighborhood Council Certification. Once a neighborhood council is certified by the City, the Subdivision Formation Committee or other group of individuals authorized to act on behalf of the newly-certified neighborhood council may also be subject to the Brown Act.

10. May a neighborhood council board hold a joint meeting?

The Brown Act’s rules for notice and public participation mean that joint meetings of multiple bodies subject to the Brown Act should be rare, for a specific purpose in line with the Brown Act, and carefully planned. A “joint” meeting should not be held to evade any Brown Act provisions such as the rule that a majority of the board may attend a standing committee meeting only if they attend as *observers and do not speak or otherwise participate in the meeting*. In addition, the joint meeting should not be an opportunity for board members to resolve a matter prematurely before it is presented to the full board for its consideration or serve as an opportunity to minimize public participation in any way. Assuming a joint meeting is appropriate, the agenda must provide clear notice to the public about which entities are meeting and which entities may take action on any particular agenda item.

⁹ As with the term “majority,” the term “quorum” herein refers to the least number of members required to take an official action on behalf of the neighborhood council board.

11. What limits apply to Teleconference meetings (Virtual Meetings)?

A “teleconference” meeting occurs when a neighborhood council board or committee meets with its members in different locations and connected by electronic means, through either audio, video, or both (also referred to as “virtual” meetings). Under its default rules, the Brown Act only allows teleconference meetings to occur under very strict circumstances. Strict requirements include posting an agenda at all teleconference locations, listing each teleconference location on the agenda, opening each teleconference location to the public, and at least a quorum of members must teleconference from within the neighborhood council boundaries.

In response to the COVID-19 pandemic, recent amendments¹⁰ to the Brown Act, which expire in 2024, allow a legislative body to hold virtual meetings without following the usual strict rules if supported by specific findings. Under its Chartered responsibility for policy setting and oversight over the Neighborhood Council System, the BONC has and continues to make the requisite findings to allow all neighborhood council boards and committees to meet virtually under the Brown Act. Pursuant to BONC policy (Policy Number 2021-1) all neighborhood councils shall only hold virtual meetings pursuant to the Department’s EmpowerLA Virtual Governance Plan and until this policy is lifted.

When holding virtual meetings neighborhood councils must still comply with the Brown Act’s notice and agenda requirements, including the physical posting of an agenda. The agenda must identify how a member of the public may access the virtual meeting and offer public comment. All votes taken during a virtual meeting must be by a verbal roll call. If a virtual meeting ceases to broadcast using a call-in option or internet-based option provided on the agenda, or if a disruption within your neighborhood council’s control prevents members of the public from offering public comment using the call-in or internet-based option, your neighborhood council cannot take any further action and should recess the meeting until public access to the meeting via call-in or internet-based broadcast is restored.

Special Rules for Public Comment at Virtual Meetings. The Brown Act sets forth specific rules concerning the timing of public comment periods during virtual meetings:

- If your neighborhood council provides a timed public comment period for each agenda item (for example, taking 10 minutes of public comment on Item 1) then your board must not close the public comment for the agenda item until the time period has elapsed. For example, if only five minutes’ worth of members of the public request to speak, your neighborhood council will need to wait an additional five minutes before closing public comment on the item.
- If your neighborhood council takes public comment on each agenda item but does not provide a specific amount of total time, your board must allow for a “reasonable” amount of time per item for public comment.

¹⁰ Cal. Gov. Code § 54953 (as amended by AB 361).

- If your neighborhood council provides a timed general public comment period, then your Board must not close public comment until the time period has elapsed.

12. How does the Brown Act apply to board appointments, candidate forums, town halls, or similar gatherings?

Selections and Appointments. Some neighborhood councils do not hold elections for their board seats at an “election day;” rather, their boards vote to select or appoint board members and officers. Other neighborhood councils choose to participate in “election day” so that stakeholders may vote for candidates to board seats but provide for their *officers* to be selected or appointed by the neighborhood council board members. And many neighborhood councils regularly participate in the “election day” but fill interim vacancies not by a general vote of the stakeholders, but by board selection or appointment.

In all these cases – where boards and officers are not decided by general vote of the stakeholders on election day – the appointment or selection process should occur at a public meeting held in compliance with the Brown Act. At that meeting where the board members or officers are selected or appointed, an item should appear on the agenda for the appointment or selection, and the process may *not* be conducted by secret ballot. The votes must be recorded openly, either by voice, hand vote or by a written ballot that can be identified to the voter, and the results must be publicly tallied.

Candidate Forums and Town Halls. Some neighborhood councils may wish to provide a forum for candidates or hold town halls on specific issues. Various laws, such as the First and Fourteenth Amendments of the Constitution, sections 424 and 542 of the California Penal Code, and court decisions regarding the use of public funds, limit or otherwise restrict the use of public resources in relation to election matters and political activities. However, if your neighborhood council wishes to consider hosting candidates or holding a town hall notwithstanding the resulting legal risks associated with doing so, your neighborhood council will need to plan in advance and follow the Department’s specific guidance catered to your planned activity. The candidate forum or town hall will likely need to comply with all applicable meeting requirements, including the Brown Act, Board of Neighborhood Commissioners’ policies, and any other applicable laws and rules for neighborhood council meetings.

13. What can happen if a neighborhood council violates the Brown Act?

Civil remedy. Violations of the Brown Act may 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 Brown 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. A response may be required.

If a member of the public sends the neighborhood council correspondence complaining of a Brown Act violation, the Neighborhood Empowerment Advocate and the City Attorney's Office should be contacted immediately.

Criminal penalty. Violations of the Brown 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 Brown 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.

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