


MEMORANDUM

To: Greg Nelson
General Manager, Department of Neighborhood Empowerment

From: Gwendolyn R. Poindexter 
Managing Assistant City Attorney, Neighborhood Council Advice Division
General Counsel Practice Group

Re: Quorums and Neighborhood Councils

Date: December 3, 2004

You have asked for guidance in advising neighborhood councils when the neighborhood council either cannot obtain a quorum or loses a quorum. In particular, you have asked whether a neighborhood council board may meet at all to conduct official business, including engaging in discussion of items that are on the agenda, or taking public comment or testimony, in the absence of a quorum.

This question arose initially in connection with a neighborhood council which cannot currently obtain a quorum. This office advised your Department that the neighborhood council must not conduct an official meeting of its neighborhood council. This advice was premised, in part, upon general parliamentary principles which define a quorum as that number of voting members who must be present in order for business to be legally transacted. Roberts Rules of Order, 10th ed., § 40. Under these rules, technically the only business that can legally be transacted in the absence of a quorum is to: 1) fix the time to adjourn; 2) adjourn; 3) recess; 4) or take measures to obtain a quorum. See, Roberts Rules, § 40, p. 336. We understand that many neighborhood councils have adopted Roberts Rules of Order as their operating principles or refer to them for guidance.

However, we recognize that City bodies, on occasion, meet and engage in limited public business even when there is no quorum, such as the taking of public comment or testimony pursuant to a public hearing, or discussion of items. Thus, we have attempted to craft some general guidelines that neighborhood councils may use to provide flexibility in evaluating those situations where limited activities may occur.

Please note, however, that 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. See Plan, Article III, § 2(c)(iii) (4); thus any variation from the general principles

which contemplate meeting as an official neighborhood council should be the exception, rather than the rule. Under most circumstances, no *action* may be taken when a quorum has been lost, or never achieved. Neighborhood councils should address these issues and decide for themselves what practice they will follow under certain circumstances, and memorialize those practices in their standing rules. In the interim, here are some suggested guideposts to handle certain situations.

By e-mail, you have posed several scenarios (not in the exact order listed) relating to whether neighborhood councils can hold a meeting when there are problems obtaining or retaining a quorum¹:

- 1) The group knows that they will not have a quorum before the 72-hour deadline [under the Brown Act] arrives and before noticing the meeting;
- 2) After the meeting has been noticed (the day before, hours before, etc.) it is clear that there will not be a quorum;
- 3) The meeting cannot begin because not enough people showed up to make a quorum; and
- 4) A quorum is lost during the meeting.

We address each situation below:

1. **The group knows that they will not have a quorum before the 72-hour deadline arrives and before noticing the meeting.**

If the neighborhood council knows it will not have a quorum in time for a meeting, an official meeting of the neighborhood council board should be re-scheduled. Some neighborhood councils, which for a variety of reasons, cannot obtain a quorum under any circumstance until another election is held. In this situation if a group of board members (that constitutes less than a quorum) wishes to host a stakeholder or community meeting, it may do so BUT it must make clear in the advertising flyer, that it is a community/stakeholder meeting and NOT an official meeting of the neighborhood council and make a similar announcement at the gathering.

¹ As a preliminary matter, please note that the following comments are meant to provide guidance to the boards of neighborhood councils and are not necessarily applicable to the boards' committees or subcommittees. Committee members often continue to meet although a quorum has been lost. For example, the City Council allows its committees to meet with less than a quorum and allows for the submission of "minority reports" which allows an individual committee member to forward his or her recommendation (usually the Chair's) to the Council, although the recommendation is not treated as a *Committee Report*. See, Council Rule 70.

2. **After the meeting has been noticed (the day before, hours before, etc.) it is clear that there will not be a quorum.**

Under this circumstance, the meeting should be canceled and a notice POSTED in all of the neighborhood council's normal posting locations.

3. **The meeting cannot begin because not enough people initially show up to make a quorum.**

This situation provides for some flexibility and exercise of judgment. The strong recommendation is not to begin the meeting 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 becomes evident that a quorum will not be obtained, the better practice is to adjourn, absent any neighborhood council rule to the contrary. There are several options available to the neighborhood council at this point: 1) it could announce that it cannot obtain a quorum and adjourn the meeting and/or continue it to another date; 2) it could announce that a quorum cannot be obtained, but board members will stay to discuss items on the agenda.

If a neighborhood council chooses to entertain discussion on the agenda items, it should be made clear by the Chair that there is no quorum and therefore no "official" meeting, but the board members will remain to discuss the remaining items and the public is welcome to remain and engage in the discussion. If a public hearing has been scheduled and a large contingent of stakeholders and members of the public are present to hear an item, those remaining members could decide to hold the public hearing as an accommodation to those who have attended. But again, it must be clear that no action on the item will be taken, and that without a quorum, the taking of public comment is for only those board members present and not the official body. These announcements are crucial to avoid the appearance that the continued discussion of neighborhood council business is within the context of an official meeting.

4. **A quorum is lost during the meeting.**

This scenario assumes that the neighborhood council had a quorum when the meeting began, but sometime during the meeting, board members had to leave, and a quorum is lost. There are several options available to the neighborhood council at this point:

1) it could announce that a quorum has been lost and adjourn the meeting and/or continue it to another date 2) it could announce that a quorum has been lost, take limited public comment or testimony and adjourn the meeting and/or continue it to another date; or 3) similar to the situation in 3 above, it may adopt standing rules to decide if it wishes to cancel the meeting under these circumstances or entertain ONLY comments and discussion on the agenda items. If a neighborhood council chooses to entertain discussion on the agenda items, it should be made clear by the Chair that a quorum has been lost,

and therefore the meeting is no longer “official,” but the board members will remain to discuss the remaining items and the public may remain and engage in the discussion.

We hope these guidelines provide some flexibility for neighborhood councils. While our strong recommendation remains that neighborhood councils should not meet at all when they lack a quorum, should neighborhood councils desire to engage in some limited discussion, we recommend that the neighborhood councils adopt standing rules that document how they wish to operate in that regard.²

Please communicate this information to the neighborhood councils by sending them each a copy of this memorandum. If you have any further questions regarding this matter, please feel free to contact this office again.

cc: Board of Neighborhood Commissioners

[108162]

² If neighborhood councils decide to engage in limited discussion on agenda items without a quorum being present, they need to be cognizant of the Brown Act prohibition against serial meetings. The Brown Act applies when a majority or quorum of a neighborhood council board meets as well simply to *discuss, deliberate or acquire* information. The danger that is posed when less than a quorum gather to discuss, deliberate or acquire information pertaining to neighborhood council business is inadvertently engaging in a serial meeting. Thus, the members of a neighborhood council board who remain to discuss neighborhood council business, must take care not to engage in subsequent [private] discussions with enough members who were not present that would constitute a majority or quorum of the board, resulting in a serial meeting. The best practice is to leave those conversations until the next official meeting of the neighborhood council.