



ADMIN. SUPPORT SVCS.
DONE

2002 MAY 13 P 12:04

OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

May 9, 2002

Mr. Charles Woolf
[REDACTED]

Re: Voting procedures for Certified Neighborhood Councils

Dear Mr. Woolf:

Thank you for your inquiry about the voting procedures which the Brown Act¹ allows neighborhood councils to use in electing its officers. In your letter, you state that an announcement was made at a meeting of the [proposed] Arroyo Seco Neighborhood Council that my office had opined that the Brown Act precludes your neighborhood council from using a "mail-in-ballot" system for "voting on council business/elections and that all voting must be done in person at meetings."

As a general rule, the Brown Act applies to meetings of "legislative bodies." As this office opined in a letter dated November 16, 2000, boards of neighborhood councils will be considered "legislative bodies" within the meaning of the Brown Act.² Therefore, the Act's provisions will apply to the boards of those neighborhood councils. As noted in that letter, the Act prohibits the members of a legislative body to vote by secret ballot.

The purpose of the Brown Act is to ensure that the public's business is conducted openly, to "facilitate public participation in all phases of local government decisionmaking and to curb misuse of democratic participation by secret legislation by public bodies." § 54950, *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555. Because neighborhood councils are part of the structure of City government, operating at a grass roots level, the boards of such councils must comply with the Act.

To date, we have observed a variety of methods that neighborhood councils have set forth to elect their officers. The most common procedure that has been followed is for

¹ Gov't Code §§ 54950-54962

² See City Attorney letter dated November 16, 2000, a copy of which is attached hereto.

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a temporary board or steering committee to approve a set of proposed bylaws that it will submit to the Board of Neighborhood Commissioners as part of its certification application. Those bylaws will include a procedure for electing officers. Until the neighborhood council is certified, that temporary body is not a "legislative body" within the meaning of the Act. However, once the neighborhood council is certified, if its temporary board is provided for in the bylaws, that board would become a legislative body, as would, of course, the permanent governing body of the neighborhood council.

If a steering committee or interim board of a certified neighborhood council plans to hold a formal meeting to conduct business as well as to elect the officers for the council, the strict provisions of the Brown Act would apply to that meeting, including the election of members of a permanent governing board and other officers. In that case, it would not be legal to elect board members and officers by secret ballot.

However, if the steering committee or the interim board chooses simply to "conduct an election" where the stakeholders gather together either at a "polling place" or other location *solely* for the purpose of electing a governing body and officers, that gathering would not be considered a "meeting" for the purposes of the Brown Act, and the Act's prohibition of secret ballots and proxies would not apply.

Similarly, neighborhood council elections could also be conducted by mail-in ballot, as you have described in your letter. That method of electing officers would not implicate the Brown Act because that election system would not involve a "meeting" of the temporary or permanent board of the neighborhood council.

We recommend that your group's proposed by-laws clearly and specifically provide how the council's elections are to be conducted. However, please be aware that decisions of the governing board, including those relating to recommendations of the neighborhood council, must be made at a meeting of the governing body of the neighborhood council. See Plan, Article III, Section (c) (iii). At these meetings, the Brown Act *would* apply, which means that advisory decisions or recommendation of the governing body must be made in public at the meeting. No secret ballots, mail-in ballots or absentee voting by the governing body would be allowed.

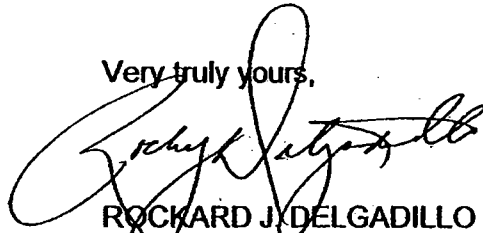
You have expressed concerns about voting from the floor at neighborhood council meetings "where there is no confirmation the person voting is a stakeholder." The City's Plan for a Citywide System of Neighborhood Councils does not prevent your neighborhood council from adopting a reasonable means of ensuring that those seeking to vote for officers or on other neighborhood council business are indeed stakeholders. You may wish

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to speak with the Department's Project Coordinator for your area to get some suggestions in this regard.

We hope we have provided some clarity to you on the issues you have raised in your letter. Please feel free to contact my office again should you have further questions regarding this matter.

Very truly yours,



ROCKARD J. DELGADILLO
CITY ATTORNEY

RJD/GRP:pj
Attachment

(76155)

cc: Greg Nelson, General Manager of the
Department of Neighborhood Empowerment