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DEPT. OF NEIGHBORHOOD EMPOWERMENT

Rosalind Stewart, General Manager
Department of Neighborhood Empowerment
305 E. First Street
Los Angeles, California 90012

Re: Legal Issues Regarding Neighborhood Councils

Dear Ms. Stewart:

During our meetings with you and your staff, we have discussed several legal issues pertaining to neighborhood councils upon which our office is prepared to provide written legal advice to assist your Department and the Board of Neighborhood Commissioners ("Commission"). On October 18, 2000, we sent you a letter identifying the legal issues that we plan to address. This letter responds to your recent request that our office first address the Brown Act issue.

Question: Whether the Brown Act, (Government Code §54950, et seq.), applies to neighborhood councils?

Answer: Yes. As advisory bodies to the City created by the City Charter, as well as by City ordinance (Ordinance No. 172,728), neighborhood councils fall within the provisions of the Brown Act.

Background and Analysis

The Brown Act (Cal. Gov't. Code § 54950, et seq.) governs the meetings of all "legislative bodies" of local agencies and sets forth requirements to ensure that actions and the deliberations of public commissions, boards and councils and other public agencies are taken openly. One of its major objectives is to "facilitate public participation in all phases of local government decisionmaking and to curb misuse of democratic process by secret legislation by public bodies." *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.

The Brown Act has been interpreted to mean that all of the deliberative processes of local legislative bodies, including discussion, debate and acquisition of information must be open and available for public scrutiny. *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41.

ordinance, or resolution are covered by the Brown Act." (See Report No. R94-0089 - 3/15/94).¹

Case law supports this position. In *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, the court of appeal held that the Brown Act applied to an advisory committee of a school board in which the school board adopted procedures for creation of the advisory committee. In so holding, the court looked at the language of the Brown Act to assess what "created by" meant in the context of the Brown Act and as applied to this advisory body to determine whether the committee had been created by "formal action of a legislative body."

There, the advisory committee had been appointed pursuant to a written school board policy. However, the school district's superintendent, not its board, selected the members of the advisory committee. Appellants argued that the establishment of the committee pursuant to this written policy satisfied the test under the Brown Act of having been "created by charter, ordinance, resolution, or by any similar formal action of a legislative body . . . of a local agency." Respondents, on the other hand, argued that its creation under the board policy was insufficient to meet the Brown Act standard and that to fall under the Brown Act, the board must have actually appointed the committee members. The court, broadly construing the Brown Act "to prevent evasion," ruled that the Brown Act did apply to the advisory committee. 18 Cal.App.4th 782. It noted that the Brown Act "clearly contemplates that many of these [legislative] bodies will establish 'advisory committees' to assist with the 'examination of facts and data' and that the mechanisms by which such advisory bodies are created will be equally varied." *Id.*

A recent case involving the City of Los Angeles is also instructive on the broad interpretation courts give to the Brown Act. In *International Longshoremen's and Warehousemen's Union et al v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, the court of appeal addressed whether a consortium of private corporations and the City's Harbor Department that was formed as a for-profit corporation to design, construct, and operate a dry bulk handling facility for the export of coal on land leased from the City was subject to the Brown Act. The City's Harbor Department was a shareholder of this corporation, the Los Angeles Export Terminal ("LAXT"). The LAXT contended that because it was 'created' by the collective action of all of its shareholders, rather than by a governmental entity, it was not a public body under the Brown Act and therefore not subject to its open meeting law requirements.

¹ Some examples of advisory committees to the City that have operated under the Brown Act are the Park Advisory Board (PAB), the Solid Waste Citizens Advisory Group, the Golf Advisory Committee and the Volunteer Neighborhood Oversight Committee (VNOC).

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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).

Our office will provide you with any assistance you may need in implementing the Brown Act's provisions as they relate to neighborhood councils. Should you have any further questions regarding this matter please do not hesitate to contact our office.

Very truly yours,



JAMES K. HAHN
City Attorney

JKH:GRP:rp

cc: Mayor Richard Riordan
President and Members of the City Council
Each Member of the Board of Neighborhood Commissioners

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