Meeting. Any congregation of a majority of members (or the number that constitutes a quorum), to hear, discuss, or deliberate upon any matter within the NC’s jurisdiction.

Must be open to the public.

Must be conducted at an ADA accessible facility.

Agendas of regular meetings must be posted (and allowed to be viewed) 72 hours in advance/special meeting agendas must be posted 24 hours and delivered to board members; Agendas must include mandatory ADA language.

NC board members may only discuss items that are listed on the agenda.

Exceptions: May discuss and direct that future items be put on the agenda; May briefly discuss own activities or briefly respond to comments made or questions asked during general public comment portion of meeting.

No secret ballots/anonymous voting by board or committee.

> No closed meetings or “executive sessions.” Limited exceptions: a) pending litigation against the NC or; b) personnel exception only involving city employee.¹

What isn’t a meeting. Individual contacts or conversations with a board member/a majority attending; purely social or ceremonial events; other public meetings, conferences advertised to the public.²

No serial meetings. A series of separate communications (usually non-public), each of which involves less than a majority of the legislative body, but which taken as a whole, ultimately involves a majority (or the least number of board/committee members that can take action) of that legislative body. Rule: May not use direct communication, personal intermediaries, or technological devices (phone, fax, e-mail) by a majority to develop a collective concurrence as to action to be taken.

These exceptions shall not be invoked before conferring with the Office of the City Attorney.

² A majority of members at public events may not discuss among themselves business of a specific matter under the NC’s jurisdiction.
Standing committee meetings are subject to the Act/ Ad hoc Committee meetings are not if committee is comprised solely of less than a majority of the NC board members.

Location of Meetings

Meetings (including retreats) must be held within the boundaries of the Neighborhood Council, unless an exception under the Act can be met.

Teleconferencing allowed under carefully defined conditions and the meeting notice must identify all teleconference locations and each location must be fully accessible to members of the public.

Accessible to the public under the Americans With Disabilities Act.

Rights of the Public

Members of the public may comment on each agenda item which opportunity must be offered before decisions/recommendations are made regarding that item; NC has right to limit public testimony by time per individual, or total subject matter. Chaffee v. San Francisco Public Library Commission (2005) 134 Gal. App 4th 109.

Members of the public may make general public comments on items not specifically listed on the agenda but within the NC’s jurisdiction.

Members of the public have a right to see materials that are distributed at meetings.

Members of the public may record (audio/video) meeting

No sign-in requirement. (Although speaker cards may be used- no one may be required to fill it out to speak or attend).

Remedies/Penalties

Civil Remedies. Individuals or the district attorney may file a civil lawsuit for injunctive, mandatory or declaratory relief or to void actions taken in violation.

Criminal Penalties. The district attorney may seek misdemeanor penalties against wilful violations. Standard: the member intended to deprive the public of information that the members knows (or has reason to know) the public is entitled to.
Are there limits on the ability of board/committee members to communicate with one another outside of Neighborhood Council meetings?

Yes. The Brown Act prohibits Neighborhood Council board members and committee members from engaging in any form of communication among one another outside of a public meeting that leads to a majority developing a concurrence on an action to be taken. The Brown Act states "any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a concurrence as to action to be taken on an item by members of the legislative body is prohibited." (Gov. Code § 54952.2.)

Why does the Brown Act prevent communications outside of public meetings?

The purpose of the Brown Act is to avoid secrecy in government. Neighborhood Council board members and committee members are representatives of the stakeholders in their area. The discussions and actions of the Neighborhood Council must be conducted at publicly noticed meetings. (Gov. Code § 54952.2.) Government Code section 54950 states:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

What are examples of communications that trigger a concern under the Brown Act?

The Brown Act applies broadly to any type of discussion or communication. Communications may include oral or written discussions, the use of personal intermediaries, agents, family members or messengers to convey information, or the use of technological devices, such as e-mail or website conferencing to disseminate information. Communication includes sharing or distributing information, hearing a proposal, or communicating information that allows members of the body to gather information or formulate a point of view on an issue that is within the subject matter jurisdiction of the legislative body.

What is a “serial communication?”

The Brown Act prohibits serial communications that lead to a concurrence among the majority of the members of the legislative body. Any type of communication is prohibited if that communication allows the majority of the members of the body to engage in a communication
that should instead occur at a public meeting. The term “serial communication” is often used because it describes a communication that, for practical purposes, results in a meeting of the members although the members are not present at a publicly posted and conducted Brown Act meeting. The serial communication may involve a series of communications, each communication involving less than a quorum of the board, but when taken as a whole, involve a majority of the board.

A serial communication may arise under a number of circumstances. For example, a serial communication occurs when one board member 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. 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.

The concern under the Brown Act is not how the discussion was communicated among the board. Instead, the concern is whether an inappropriate number of persons received the serial communication and whether that serial communication led to a concurrence among the majority of the members on an issue that is likely to be considered by the legislative body.

What does the term “developing a concurrence” mean?

The Brown Act prohibits serial communications that lead to “developing a concurrence.” Developing a concurrence on an item is broadly construed. It means any discussion or information that assists you in voting. It means any information that assists or clarifies your understanding of an issue. It means any information that leads to an agreement or compromise among the members. It means any discussion or information that advances the resolution of an item that is on the agenda or within the board’s subject matter jurisdiction. (California Attorney General, The Brown Act: Open Meetings for Local Legislative Bodies, 2004, p. 11.)

How many board members are allowed to communicate outside of a meeting before an improper serial communication occurs?

The number will depend on the Neighborhood Council’s bylaws. The least number of people who could make a decision at a public meeting should not be engaging in communications outside of the public meeting. For example, if the Neighborhood Council bylaws state that the board is 21 members, the quorum is 11, and the board takes action by a majority of those members present at the meeting, then if 6 people engaged in a discussion that led to a concurrence on an item there would be a Brown Act violation. This concern also applies to the board’s committees. For example, if the committees are comprised of 5 members, the quorum is 3 and decisions are made by a majority vote of the entire committee, then 3 committee members may not engage in a discussion that leads to a concurrence on an item outside of their committee meeting.

What are some examples of prohibited serial communications?

- E-mails among a majority of the board or committee members that discuss or argue a member’s opinion or point of view.
A meeting with the majority of the board or committee members that discusses or seeks clarification on an issue that will be heard by the board or committee.
A majority of members participating in a website conference, internet list service or chat room where opinions or information are discussed on a matter that lies within the jurisdiction of the board or the committee.
- Circulation of minutes or other documents for approval by the board outside of a public meeting.

**What are some examples of proper communications?**

- The board or committee members may discuss their availability for an upcoming meeting, e.g., the dates and times of an upcoming meeting.
- Providing information to the other members on an upcoming matter on the agenda by distributing reading materials, information necessary to prepare for a meeting, newspaper articles, scientific journals, or magazines. (However, the Neighborhood Council should adopt a rule that allows the distribution of information by one board member, e.g., the Board Secretary, and the information should be distributed by the Board Secretary along with distributing of the agenda for the public meeting.)
- Distributing legal advice to the board/committee from the Office of the City Attorney.
- Distributing general public announcements. For example, notifying the other board members of a City Council meeting or a community event.

**What should a board member do if it is believed that there are serial communications occurring among the board?**

If a board member becomes aware of improper communications, the board member should notify the Neighborhood Council President of the improper discussions. The President should notify the board regarding the prohibition against serial communications and provide this handout along with the warning that the matter being discussed should be reserved for discussion at a public meeting.

The Department and the Office of the City Attorney have prepared a video regarding the Brown Act that should be reviewed by each board/committee member. In addition, the Department offers regional training on the Brown Act to those groups requesting assistance.

**What are the penalties for engaging in serial communications?**

Violations of the Brown Act may result in civil and criminal penalties. There are a number of civil remedies that a person may pursue if it is believed that there are impermissible serial communications occurring by board/committee members, including making a demand to cure upon the Neighborhood Council or filing a complaint with the Department of Neighborhood Empowerment. A demand to cure might include requesting that a meeting item be set aside and re-hear that item with a disclosure of the improper communications. Also, a decision made in violation of the Brown Act is subject to being set aside as void. The Neighborhood Council may be required to remedy its improper actions and pay attorney fees and costs from its own funds to a person who brings a challenge. In addition, individuals may be criminally prosecuted for misdemeanor violations of the law.
Standing and *Ad Hoc* Committees of Neighborhood Councils Under the Brown Act

Office of the City Attorney
Neighborhood Council Advice Division

Standing Committees.

Standing committees of Neighborhood Councils are subject to the Brown Act (also, “Act”). The Act describes a standing committee as one which has “continuing subject matter jurisdiction.” This means that a permanent committee that is designed to handle an issue or issues on a continual basis will be a standing committee and is subject to the Act’s notice and posting requirements. For example, many Neighborhood Councils have established various committees through their bylaws, such as Land Use and Planning Committees, Public Safety Committees, Election Committees, etc.¹ These committees, because of their subject matter, generally are of an ongoing nature and regardless of their configuration, (whether comprising solely less than a majority of board members, or of a combination of board members and stakeholders) are subject to the notice and posting requirements of the Act.²

Standing committees need not establish a “regular meeting time and place” in any operating rules but they must meet in public and post notices of their meetings. The Act presumes that whenever a standing committee holds a meeting that is posted at least 72 hours in advance, that noticed meeting is considered the “regular meeting” of the standing committee. See Gov’t Code § 54954.

Establishing Standing Committees.

Standing committees, as noted above, are generally established in the operating bylaws of the Neighborhood Council by simply listing their titles and functions. However, a Neighborhood Council may also create additional committees by formal board action (i.e., a vote or resolution of the board to establish a committee). In situations where the board creates a new standing committee that has not been listed in the bylaws, the best practice is for the Neighborhood Council to amend its bylaws to identify this new standing committee.

¹ Many Neighborhood Councils also have Executive Committees, comprised of the Governing Body’s officers. The functions depending upon the Neighborhood Council may vary, but generally since this Committee is set up by the bylaws, it too is a standing committee, subject to the Act.

² A standing committee can also be created if it has a meeting schedule that is fixed by charter, ordinance, or resolution, or formal action of a legislative body.
Ad Hoc Committees.

Ad hoc or “temporary” committees are treated differently under the Act. Ad hoc committees are not subject to the notice and posting requirements of the Act so long as the committee is comprised solely of members of the governing body, i.e., the committee may not contain individuals other than the members of the governing body; consists of less than the number of board members who, if present at a meeting, would be able to make a decision, (e.g., if a Neighborhood Council has 21 board members, a quorum of 11 and makes decisions by a majority of those board members present at a meeting, then as few as 6 board members would have the ability to make a decision; therefore, the ad hoc committee should be comprised of less than the majority or, as stated in this example, less than 6 board members); has a defined purpose and a time frame to accomplish that purpose; and is advisory, i.e., the committee has not been delegated any decision-making power and will be returning to the full board on its recommendation. See, Joiner v. City of Sepastopol (1981) 125 Cal App. 3d 799.

Ad hoc committees are commonly used in City government. For example, the President of a City commission or the commission itself might choose to appoint three or fewer commissioners (depending upon the size and quorum of the board) to evaluate and report on a particular issue or subject relevant to that commission. Once that committee has completed its work, the committee is then disbanded.

Neighborhood Councils may create ad hoc committees in similar fashion by having the board or the President, depending on the bylaws, appoint less than a majority of the Neighborhood Council board members to evaluate a particular issue and report its findings, conclusions or recommendations to the full body. However, should any person other than an existing Neighborhood Council board member be appointed to the ad hoc committee, then the committee must operate under the notice and posting requirements of the Brown Act.

Establishing Ad Hoc Committees.

Members of ad hoc committees designed to be advisory to the Neighborhood Council may be appointed by the President, on behalf of the entire board, or by action of the entire board, depending upon the rules under which the Neighborhood Council operates. Although, as noted above, the ad hoc committee itself is not subject to the Act, if the board desires to create an ad hoc committee, then the action to create the
committee should be done at a publicly noticed meeting under the Act and the item should be placed on an agenda for that purpose. 3

**Establishing Committees That Are Not Subject to the Brown Act.**

Advisory committees composed of non-Neighborhood Council board members may be created that are not subject to the Brown Act but only if they are advisory to a single-decision maker, rather than to the entire Neighborhood Council board. The Attorney General has concluded that advisory bodies that report to a single member of a legislative body or a single officer are not subject to the Act since they are not “created” by any formal action of the entire legislative body. See, 56 Ops. Cal Atty Gen 14 (1973).

Thus, an individual board member could create an advisory committee that reports directly to him or her. For example, a board member could ask a group of stakeholders (not during a public meeting to avoid the appearance that the entire board has created the advisory body by “consent”) to investigate a particular item, report to the appointing board member, after which the board member could then make a recommendation or initiate discussion on the item that the committee investigated. As long as it is clear that the advisory committee is not created by the Neighborhood Council itself, these types of committees are not subject to the Brown Act.4

**Implementing Projects - Not a Committee.**

One point that may need clarification: Groups that are formed to implement a project are not treated as a standing or ad hoc committee under the Act; thus, gatherings to implement a project would not be considered a “meeting” subject to the Brown Act. For example, if a Neighborhood Council approves an action to conduct a tree-planting project along a street, the gathering of those people at a certain place and time to plant the trees would not be treated as a “meeting” under the Act. That would be true of other activities such as, purchasing goods and supplies for the Neighborhood Council or implementing other projects approved by the board, such as a graffiti abatement projects, etc., or activities designed to outreach to stakeholders.

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3 The appointments to that Committee, if made by the President, may occur either in or outside a public meeting, depending upon the Neighborhood Council's rules; however, the better practice is for this to be done publicly.

4 Of course, stakeholders may also separately, and on their own initiative, form advisory groups and report the results, findings or recommendations to the Neighborhood Council board.