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REPORT TO WILLIAM ANDERSON, DIRECTOR
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ANALYSIS OF THE REQUIREMENTS FOR COMMUNITY PLANNING GROUP
COMPLIANCE WITH THE RALPH M. BROWN ACT AND COUNCIL POLICY 600-24

INTRODUCTION

San Diego's recognized Community Planning Groups [CPGs] and its Community Planners Committee [CPC] are legislative bodies whose meetings are governed by the Ralph M. Brown Act [Brown Act]. City Att'y MOL No. 2006-26 (Oct. 27, 2006). This analysis compares Council Policy 600-24 with the Brown Act in order to clarify when and how CPGs and CPC must comply with the Brown Act.

This report provides an overview of some of the major topics of interest to CPGs as a guide to ensure they are in compliance with the Brown Act and Council Policy 600-24, including open decision-making, meetings, majorities and quorums, notice, jurisdictional boundaries, planning group structure, elections, voting, public comment, record keeping, financial contributions, and registration of the public.

DISCUSSION

I. The Brown Act

The Brown Act was enacted in 1953 and can be found at California Government Code sections 54950 through 54963. Its only *raison d'être* is to ensure the public's right of *access* to meetings of legislative bodies. The Brown Act section 54950 specifies just how these fundamental rights are to be implemented in California. Its preamble 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 their 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.

As noted by the Attorney General, local legislative bodies, such as the CPG and CPC, are created in recognition of the fact that “several minds are better than one, and that through debate and discussion, the best ideas emerge.” “The Brown Act, Open Meetings for Local Legislative Bodies,” California Attorney General’s Office (2003).

II. Council Policy 600-24

Council Policy 600-24 was enacted in 1976 and amended four times, most recently in October 2005. Its purpose is to identify responsibilities and to establish minimum operating procedures governing the conduct of planning groups when they operate in their officially recognized capacity. To implement this, CPGs must enact bylaws that include and expand upon the provisions of Council Policy 600-24, which in turn, incorporates the spirit and much of the letter of the Brown Act. In other words, the Brown Act primarily addresses public meetings while Council Policy 600-24 is a comprehensive guideline that speaks to all prescribed CPG activities - not merely meetings.

III. A Comparison of the Council Policy 600-24 and the Ralph M. Brown Act

A. Open Decision-Making

Council Policy 600-24, Article VI, section 10 and the Brown Act have the same theme with very little variation in that Policy 600-24 incorporates all portions of the Brown Act that apply to the decision-making process of legislative bodies.

The core and guiding principle of the Brown Act is that:

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter. Cal. Gov't Code § 54953(a).

Adopting this principle, Council Policy 600-24, Article VI, section 10 provides:

It shall be the duty of all recognized community planning group members to conduct official business of the planning group in a public setting.

B. Meetings

The CPGs must conduct open, noticed, public meetings with the opportunity for public participation. Council Policy 600-24 does not define the word “meeting” – it presumes that CPG members know what a meeting is. In contrast, meetings of legislative bodies are the very essence as well as the target of the Brown Act. Under the Brown Act, a “meeting” is defined as:

Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains. Cal. Gov’t Code § 54952.2(a).

Council Policy 600-24, Article VI, section 10 applies Brown Act principles and even much of its actual wording to CPGs:

Any attempt to develop a collective concurrence of the elected or appointed members of a recognized community planning group as to action to be taken on an item by members of the [planning group], other than at a properly noticed public meeting, either by direct communication, personal intermediaries, serial meetings, or technological devices, is prohibited.

. . . It is recognized that the officers of the planning group may oversee administrative business of the planning group, such as the assembling of the draft agenda, in preparation for public discussions. However, all substantive discussions about agenda items or possible group positions on agenda items shall occur at the noticed planning group meetings.

In practice, the Brown Act prohibits any gathering that leads to an agreement between a majority of a body’s members out of public view. While contact between members and staff to discuss meeting times, dates, and the order of agenda items are permissible, any communications that may lead to a consensus regarding CPG business are strictly prohibited. These include serial meetings of member aides or personal intermediaries, or a series of one-to-one phone calls, faxes or e-mails that can result in a collective concurrence among the majority. Cal. Gov’t Code § 54952.2(b). In other words, members cannot climb a ladder rung by rung in private when climbing the whole ladder must be done in public.

There are exceptions to the general rule. For instance, under the Brown Act, CPG members may have individual contacts with colleagues, planning staff, the City Council, constituents, advocates and the press. A majority of them may attend social and ceremonial events together. A majority may also attend conferences or meetings of local agencies and other organizations as long as the members do not discuss official business among themselves. Cal. Gov’t Code § 54952.2(c)(2-5). A majority may even have a teleconferencing meeting under stringent guidelines set forth in the Brown Act. Cal. Gov’t Code § 54953(b)(1). When it is unclear whether the Brown Act will apply to the majority at a forthcoming gathering, members

should seek legal guidance. When a gathering is spontaneous, members should ask themselves: “Has the public had a meaningful opportunity to hear and participate in the discussion at hand?” If there is any doubt, members should err on the side of caution and refrain from discussion of the item until agendized as part of a noticed, public meeting.

C. Majorities and Quorums

The CPGs may only conduct official business with a quorum of CPG members present. Subcommittee and standing committees may meet and make recommendations that will be agendized later for CPG official action.

The Brown Act only comes into play when there is a meeting of a legislative body in which there are *sufficient members present to conduct official business*, whether the meeting is for purposes of discussion, information-gathering or decision-making. Therefore, the Brown Act applies to a “majority” or a “quorum” or any other minimum number required for the conduct of public business, whether that number is specified by state or local law, policy or by-laws. Cal. Gov’t Code §54952.2.

Council Policy 600-24, Article VI designates the number required to conduct the official business of CPGs. It provides: “A quorum, defined as a majority of non-vacant seats of a planning group, must be present in order to conduct business and/or to vote on projects or to take actions at regular planning group meetings.”

The Brown Act does not require open meetings of ad hoc or temporary committees which are composed of less than a majority of the legislative body members. However, standing committees, irrespective of their composition, are subject to the Brown Act. Cal. Gov’t Code § 54952(b). To avoid any confusion on the part of CPG members with respect to this Brown Act provision, Policy 600-24, Article VI, section 2 takes a more stringent stance. It simply states:

Planning groups are encouraged to establish subcommittees when their operation contributes to more effective discussions at regular planning group meetings. All meetings of committees and subcommittees shall be open to the public . . .

D. Notice

The CPGs must provide notice of their meetings. Under the Brown Act, a meeting can only be deemed open, public, and accessible if there is timely, effective notice of the meeting and specific notice on the agenda of all matters to be heard by the legislative body. Consequently, a written agenda must be posted in an accessible location at least 72 hours before a regular meeting; it must indicate when and where the meeting will be held; and it must succinctly but sufficiently describe all items to be heard. The description “generally need not exceed twenty words,” but it must be detailed enough to alert the public to inquiries it may want to make regarding the item. Cal. Gov’t Code § 54954.2(a). The Brown Act also requires legislative bodies to mail agendas to members of the public upon request and without a charge for this beyond the cost of mailing. Cal. Gov’t Code § 54954.1.

The Brown Act prohibits discussion on any item that does not appear on the noticed agenda. Even committee recommendations to the CPG or CPG recommendations to be presented to the city decision-makers must be placed on the agenda. However, there are exceptions to this rule. Emergency measures may be heard provided: (1) the need for action arose after the agenda was posted; and (2) two-thirds of the members present agree to hear it, or all members present agree to hear it when less than two-thirds are present. Continued items may be heard if they were noticed on the agenda of a meeting that was held no less than five days earlier. In addition, members of legislative bodies may make short personal announcements, briefly ask or answer questions, or respond to non-agenda comments from the public - as long as these non-noticed matters are not discussed at the meeting. Members may, of course, schedule a public comment for discussion at a future meeting or refer it to staff for review. Cal. Gov't Code § 54954.2(b)(3).

CPGs already observe the Brown Act's basic noticing requirements which are generally incorporated into their bylaws. Council Policy 600-24 adopts them implicitly and expands them in Article VI, section 3:

The planning group shall inform the project applicant or representative each time that such review will take place and provide the applicant with an opportunity to present the project. Any interested member of the public shall be given an opportunity to comment on projects during planning group meetings."

It shall also be the duty of a planning group, when reviewing development projects, to allow participation of affected property owners, residents and business establishments with proximity to the proposed development."

It should be noted that while Council Policy 600-24 incorporates most of the Brown Act noticing provisions that govern *regular* meetings, CPGs need not concern themselves with the Brown Act's requirements for *closed* meetings (closed sessions) as Council Policy 600-24, Article VI expressly forbids them:

A planning group may hold meetings other than regular meetings in accordance with a policy established by the planning group except that executive sessions [meetings excluding some planning group members or members of the public] shall be prohibited.

E. Jurisdictional Boundaries

CPG meetings should be held in the community planning area for each respective CPG.

Council Policy 600-24, Article I designates the jurisdictional boundaries for CPG authority. It provides that a recognized CPG's area of authority is based on the boundary of its adopted community plan or under certain circumstances, a boundary of lesser or greater area identified by the City Council. Article I does not indicate where CPG meetings must be held. The Brown Act, however, with specific exceptions, requires legislative bodies to hold their meetings within their jurisdictional boundaries and in locales that are non-discriminatory and accessible to

all. Cal. Gov't Code §§ 54954(b); 54953.2. Under certain circumstances, if there is a lack of available meeting space, a CPG may meet in the closest available meeting facility. Cal. Gov't Code § 54954(b)(4). However, when it is necessary that a CPG hold a meeting outside its jurisdictional boundaries, the CPG should inquire how it can do so legally under the Brown Act.

F. Planning Group Structure

Council Policy 600-24, Articles II, III, IV address the purpose of CPGs, their activities, duties, organizational structures, membership, board composition and the filling of vacancies. The Brown Act does not address any of these matters.

G. Elections

The CPGs must conduct elections in accordance with Council Policy 600-24 and may establish voting procedures as long as they “demonstrate an ability to assure fair access and avoidance of voting improprieties.” Council Policy 600-24, Article V establishes the process for the election of CPG officers. It requires CPGs to encourage community participation: (1) by seeking more candidates than seats to be filled; (2) by using multiple voting times or locations or mail-in ballots if it wishes; (3) by publicizing the election by means “appropriate to their communities.”

Council Policy 600-24, Article V, section 3 further provides that “Voting shall be by secret written ballot” and that “[u]nder no circumstances is proxy voting for elections allowed.”

The Brown Act and Council Policy 600-24, Article V, are similar in that both seek to ensure the public's right to notice and the opportunity to participate in the legislative process. However, the Brown Act is not concerned with the *specific* procedures for electing officers of legislative bodies; it governs the *general* conduct of meetings which may or may not include elections. In addition, the use of “secret” ballots solely to elect members of the legislative body is not deemed a “meeting” under the Brown Act. As such, the Brown Act does not modify Council Policy 600-24, Article V.

H. Voting

The CPGs must take a public vote on agenda items. The Brown Act's objective is to preserve the public's right to know about the *collective* decisions of a *legislative body*. It therefore prohibits all secret balloting and proxy voting in any *meeting* held to conduct the public business. Cal. Gov't Code § 54953(c).

Council Policy 600-24 Article VI, section 9 adopts this requirement of the Brown Act. It provides that recognized CPGs shall not engage in, or allow, proxy voting on any agenda item. It also prohibits absentee voting on agenda items by telephone and e-mail.

CPG members must recuse from voting on agenda items when they have a conflict of interest. It should be noted that the Brown Act does not govern the ethical obligations of members

who may have or appear to have conflicts of interest. This matter is left to other state code sections and to Council Policy 600-24, Article VI, sections 7 and 8 which provide:

Any member of a recognized community planning group with a direct economic interest in any project that comes before the planning group or its subcommittees must disclose to the planning group that economic interest, and must recuse [himself or herself] from voting and not participate in any manner as a member of the planning group for that item on the agenda.

In limited circumstances, recognized community planning group members may abstain from either voting on an action item, or from participating and voting on an action item. The member must state, for the record, the reason for the abstention.

I. Non-agenda Public Comment

CPGs must provide for non-agenda public comment at CPG meetings.

Although Council Policy 600-24 is silent on the matter of public comment, its thrust, as implemented by CPG bylaws, requires CPGs to provide a place on the agenda for public comments that are unrelated to items on the docket. This coincides with the Brown Act which provides:

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on *any* item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body . . . (emphasis added). Cal. Gov't Code § 54954.3.

CPGs must refrain from taking action on non-agenda items, but may refer a matter to staff, subcommittee, or to be docketed on another meeting agenda.

J. Record Keeping

CPGs have an obligation to keep records of materials from meetings and to make those materials available for review upon request by a member of the public.

Council Policy 600-24, Article VI, section 2 provides:

A report of attendance and a copy of approved minutes, which include the votes taken on each matter acted upon for each meeting, shall be retained by a planning group and shall be available for public inspection Planning group actions on specific projects should include the planning group's vote, and should indicate whether or not the applicant appeared before the planning group,

and if not, should indicate what type of notification was provided to the applicant requesting his/her appearance at the planning group meeting.

The Brown Act is far more comprehensive. It provides that, with the exception of privileged materials, the public has the right to review, without delay, all meeting-related documents, i.e. materials in the agenda packet, records, audio or videos tapes, films or recordings that have been distributed to and are to be considered by a majority of the legislative body members at the subject meeting. These materials are to be available at the meeting when prepared by a member of the CPG or by city officials or staff, and they are to be made available after the meeting when prepared by other parties. The public is entitled to view these materials without charge although it's permissible to charge an ordinary fee for document copies and a deposit for the use of audio-visual materials. Cal. Gov't Code § 54957.5 (b) and (c). The Brown Act further provides that no member of the public shall be prohibited from filming or taping a meeting absent a finding that this would disrupt the meeting. Cal. Gov't Code § 54953.5 (a).

K. Financial Contributions

CPGs may seek voluntary contributions but must not require contributions from anyone.

Council Policy 600-24, Article VI, section 5 provides:

A recognized community planning group may develop a policy for financial contributions from the citizens of the community for the purposes of furthering the efforts of the planning group to promote understanding and participation in the planning process.

However, no membership dues shall be required. All contributions must be voluntarily made, and no official planning group correspondence may be withheld based on any individual's desire to not make a voluntary contribution.

The Brown Act prohibits legislative bodies from charging the public any fees or coerced contributions for admittance to public meetings. Cal. Gov't Code § 54961.

L. Registration of the Public

Council Policy 600-24 is silent on the subject of registering members of the public who wish to attend or speak at public meetings. The Brown Act makes it clear that a CPG cannot require members of the public to sign in or identify themselves as a prerequisite to attending a meeting. Thus, if a registration form is to be circulated or posted at a meeting, it must state that registration is purely voluntary and not a precondition for attendance. This rule does not preclude legislative bodies from using speaker slips to determine the order of speaking for those who want to address the body, but if members of the public do not wish to identify themselves, they cannot be prohibited from speaking. Cal. Gov't Code § 54953.3.

M. Remedies for Violation of the Brown Act

Council Policy 600-24, which closely mirrors the Brown Act, provides various remedies for violation of its provisions by CPGs. Where a CPG does not cure a violation by itself, it may forfeit its status as a recognized advisory body and lose its right to indemnification and defense by the City.

CONCLUSION

This report indicates how and when the Brown Act applies to the meetings of CPGs. Although the Brown Act governs these legislative bodies independently, they are governed also through Council Policy 600-24 which is more comprehensive and stringent than the Brown Act itself. Of note, CPGs who are and have been operating in compliance with Council Policy 600-24 by and large comply with the Brown Act. Consequently, the principle of open meetings is quite familiar to CPGs. It is anticipated that most CPGs already operate in substantial compliance with the Brown Act. They have embraced the spirit of the Brown Act for decades and they are to be commended for honoring its letter through their bylaws as prescribed by Council Policy 600-24.

Respectfully submitted,

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cc: Honorable Mayor
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