

MEMORANDUM OF LAW

DATE: March 7, 2000
TO: Betsy McCullough, Long Range Community Planning Director
FROM: City Attorney
SUBJECT: Application of Brown Act to Community Planning Groups

QUESTION PRESENTED

You have asked me to update and expand a legal opinion issued by our Office in 1982 on the issue of whether Community Planning Groups are subject to the Brown Act.

SHORT ANSWER

The Brown Act only applies to the legislative bodies of local agencies. Local Planning Groups do not fit the statutory definition of a “legislative body.” They are considered private organizations because membership is not under the control of the City and they are not delegated legal authority by the City Council to take actions on behalf of the City.

ANALYSIS

The Brown Act was enacted to ensure public access to local government. Cal. Gov’t Code 54950 - 54952. It provides that “[a]ll meetings of the legislative body of the 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. The Brown Act is directed toward the conduct of public officials and seeks to ensure that their actions be taken openly and that their deliberations be conducted openly. *Farron v. City and County of San Francisco*, 216 Cal. App. 3d 1071, 1074 (1989).

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.

Cal. Gov’t Code 54950.

Although the Brown Act has a broad purpose, it only applies to those entities which it defines as “legislative bodies of local agencies.” Cal. Gov’t Code 54953. For example, the Council of The City of San Diego is a legislative body subject to the Brown Act. Cal. Gov’t Code 54951, *see also San Diego Union v. City Council*, 146 Cal. App. 3d 947

(1983) (City of San Diego is a local agency). Legislative bodies are also defined in relevant part as “[a] commission, committee, board or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution or other formal action of a legislative body.” Cal. Gov’t Code 54953 (b). For example, where a school board created an advisory committee in order to investigate, review, and deliberate on parental complaints, the advisory committee was deemed a legislative body and was thus subject to the Brown Act. *Frazer v. Dixon Unified School District*, 18 Cal. App. 4th 781 (1993). The school board was the local agency. *Id.* at 793. The school board created the advisory committee pursuant to school board policy 7138. *Id.* The school board appointed all of the members of the committee. *Id.* at 792. The committee exercised the investigatory and review authority delegated to it by the school board. *Id.*

In contrast, the court held that if a private organization operating a coal exporting facility was a pre-existing organization which simply entered into a contractual arrangement with the City to develop a coal facility, the organization did not meet the statutory definition of a legislative body and was not subject to the Brown Act. *International Longshoremen’s and Warehousemen’s Union v. Los Angeles Export Terminal*, 69 Cal. App. 4th 287 (1999). The city would not have created the coal export organization, it would have merely chosen to do business with it. *Id.*

Similarly, although the City “officially recognizes” Community Planning Groups [CPGs], it does not create, maintain, or manage them. They are voluntarily created and perpetuated by interested members of the local communities. The appointment of members is not subject to review or approval by the City Council or any other City agency. Article III, Section 2 of Council Policy 600-24 provides that “[t]he members of this committee shall consist of the members as of the date of recognition by the City Council, and of such additional members as shall thereafter be elected by eligible community members in the manner prescribed by these Operating Procedures.” Section 3 goes on to provide that: “Community planning committee members shall be elected by and from eligible members of the community.”

It is also important to note that no authority of the City is delegated to CPGs. Under City Council Policy 600-24 “[t]he City merely ‘recognizes’ one group of individuals over others for purposes of receiving input on certain land use matters.” 1992 Op. City Att’y 366, 367. There is no agency relationship established between the City and a particular CPG by the City’s mere recognition of a group. *Id.* at 367. Thus, because the City does not appoint or control membership of CPGs and does not delegate authority to act on behalf of the City to the CPGs, CPGs are not legislative bodies. Because they are not legislative bodies they are not subject to the Brown Act.

It must be understood, however, that in exchange for official recognition from the City, CPGs are encouraged to follow the spirit of the Brown Act. Council Policy 600-24 establishes procedures to be incorporated into the bylaws of each CPG in order to qualify for official recognition. Although these procedures are not as expansive as those in the Brown Act, they do serve the same general purpose of keeping the meetings open to the public. For instance, “[a]ll meetings of committees and subcommittees shall be open to the public . . . except as otherwise provided in this Council Policy and/or committee bylaws.” Council Policy 600-24, art. VI, 2.

In addition, Administrative Guidelines for Council Policy 600-24 further elaborates on

encouragement of community participation. Section 1 provides:

[CPGs are required to] periodically seek community-wide understanding of, and participation in, the planning and implementation process. [They] must provide participation during review of specific development proposals to property owners, residents, and business establishments affected by the proposed project. Any interested member of the public should be allowed to address the proposal, though [the CPGs can define] time limits and . . . method[s] of participation [CPGs must also make] a good faith effort . . . to advertise regularly scheduled meetings and annual elections

Administrative Guidelines for Council Policy 600-24, (1) Encouraging Community Participation (1991).

CONCLUSION

Community Planning Groups are not subject to the Brown Act because they do not meet the statutory definition of a legislative body. The local agency, the City, would have to create and annually appoint the membership of Community Planning Groups in order for them to qualify as legislative bodies. The City does not create Community Planning Groups, it merely recognizes them. Although Community Planning Groups are not subject to the Brown Act, they are required by Council Policy 600-24 to establish procedures which encourage community participation. Thus, they comply with the spirit of the Brown Act by striving to be open and public in the conduct of their business.

CASEY GWINN, City Attorney

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