

DATE: May 15, 1987

TO: Richard J. Enriquez, Associate Administrative
Analyst via Dave Twomey, Assistant Director,
Park and Recreation Department
FROM: City Attorney
SUBJECT: Applicability of Brown Act to Certain
Committees, Boards and Councils of the Park and
Recreation Department

Your memorandum of April 20, 1987 requested our comments on the applicability of the "Brown Act" (Government Code section 54950, et seq.) to certain boards, committees and recreation councils for which the Park and Recreation Department bears administrative responsibility.

A previous memorandum from this office dated March 30, 1987 to the City Manager's office addresses the applicability of the Brown Act either directly or as a matter of policy to the following:

Los Penasquitos Citizens Advisory Committee (Brown Act applies)

Los Penasquitos Canyon Preserve Task Force (applies as a matter of policy)

Tecolote Canyon Task Force (applies as a matter of policy)
Mission Trails Regional Park Citizens Advisory Committee (applies)

Mission Trails Regional Park Task Force (applies as a matter of policy)

With regard to the Park and Recreation Board (the "Board") which is created by ordinance (San Diego Municipal Code section 26.30) the Brown Act applies. Government Code section 54952.3.

Your memorandum next listed a number of committees of the Board. Three of them - the Balboa Park Committee, the Mission Bay Park Committee and the San Diego-La Jolla Underwater Park Committee - are specifically referred to in San Diego Municipal Code section 26.30 as standing committees. The Brown Act would apply to these standing committees by Government Code section 54952.5, since they are designated as permanent boards of a "local agency."

The other committees of the Board, however, are not created by ordinance, resolution or other formal action of the City Council, but by action of the Board itself. Since the Board is a "legislative body" within the meaning of section 54952.3 then under section 54952.2 each advisory committee appointed by the "legislative body" would also be included as a "legislative body"

to which the Brown Act applied. Section 54952.3 only exempts such committees from the Brown Act if the membership is comprised solely of members of the Board, and is less than a quorum of that body. We do note that because committee membership may include non-Board members, the exemption does not apply. However, even if it were so to apply, we would still recommend such committees be considered subject to the Act for uniformity along with the three standing committees.

The question regarding whether Recreation Councils are subject to the Brown Act is different. None of the Recreation Councils is created by ordinance or resolution. They are issued special use permits by the Park and Recreation Department to administer and operate recreation programs based on community needs. They are sometimes considered advisory to the Park and Recreation Board. Otherwise, they are operating instrumentalities of the Park and Recreation Department. Although they are referred to in Council Policy 700-42, that policy does not otherwise create them. Since the Recreation Councils owe their status to administrative action through the City Manager and his designate, the Director of Park and Recreation, they do not meet the statutory definition under section 54952.3. Therefore, you need not, as a matter of law, require them to comply with the Brown Act.

You may wish to consider, however, that the principal components of the Brown Act are open meetings, advance publication of agenda and action based on the agenda. Consistent with Council Policy 000-16, however, you should include these requirements as part of the operating practices of the councils, although not with specific reference to the Brown Act.

Please feel free to contact the undersigned if you have any further questions on this or related subjects.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:mrh:072(x043.2)

cc Daryl Grigsby

Hal Valderhaug

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