

Bylaws Analysis

In analyzing Neighborhood Councils bylaws, there are several sections in bylaws where very different options are available. It's good to know the pros and cons for each option, which the Bylaws Resource Team (BRT) can provide. Board discussion of the various options should always be encouraged. While the BRT may make recommendations, ultimately, the Neighborhood Council should decide what is best for their community.

Here are some areas to be aware of:

Uniform Table of Contents – Per Board of Neighborhood Commissioners' policy, all NC bylaws have to use the same table of contents. When reorganizing the bylaws to fit the new table of contents, there will be sections that are missing, obsolete, wrong, redundant, contradictory, etc. Please use the Bylaws Template for sample language. No articles or sections can be removed or added though subsections can be added.

Article IV Stakeholder – this definition is defined via ordinance and cannot be changed though Councils can include examples of the stakeholders, e.g. community based organizations, churches, homeowners associations, etc.

Article V Governing Board

Section 1 Composition – if the Board is concerned about the factual basis stakeholder candidates and voters, one way to limit the impact on the Board is to assign one factual basis stakeholder seat and factual basis stakeholders can only vote for that seat.

Section 2 Quorum – Boards must state a quorum and the quorum cannot change based on the number of seats filled, i.e. no floating quorums. Generally, the quorum should be half of the total Board seats plus one. If a Board is having a problem getting quorum, they can address it with a stricter absence clause, the loss of quorum policy or reducing quorum and/or Board seats depending on what the issue is.

Section 3 Official Action – Boards should clarify here how abstentions are addressed to be clear.

Section 7 Absences - Some issues to consider for various options:

Option 1: Intentionally Left Blank - NC's which hold yearly elections have been able to deal with a board member's chronic absence by replacing him/her at the next election. This leaves the decision to the voters, which is the best option. Often, board members who are chronically absent won't run for reelection anyway. Currently, yearly elections are not possible. We don't know what the future of the City Clerk run elections is, but if the Clerk is removed from the process, it may be possible that NC's will be allowed to return to yearly elections if they choose. The concern here is that a governing board which lacks the ability to replace people who have simply walked away may run into quorum problems, and in the absence of clear language that defines when a seat becomes vacant, even the "loss of quorum" system may not help.

Option 2: Language provided in the Bylaws Template - fill in the blanks for the number of consecutive absences and/or fraction of total regularly scheduled governing board meetings missed. (Some NC's also include committee meetings, but this adds unnecessary complexity and could usefully be omitted.)

What is an absence?

One definition is that the Board member is not present for any part of the meeting. Tardiness is not counted as absence. There may be other ways to do this, but they all have some problem. For example, suppose a Board member arrives an hour late, but in arriving allows the Board to have a quorum and complete its agenda business. This should be counted as being present. On the other hand, a Board member who walks into the

meeting at the very end, after all the action items have been completed, might conceivably be counted as absent. The problem of defining an absence for the purposes of Board removal is properly a bylaws issue (rather than a standing rules issue) so it may be advisable to treat absences as failure to appear at all.

Can absences be excused, and thereby not count against the total?

Some bylaws allow for excused absences. The argument in favor of this is that some Board members have other responsibilities or have suffered a prolonged illness.

The counterargument is that a Board member who misses 4 consecutive meetings in order to attend other events has made a choice that the NC is less important than those other responsibilities. Since the NC and its governing board seats are, in essence, the property of the people (stakeholders) as a whole, and not the property of any one person, it follows that the bylaws may properly allow for automatic removal of a Board member who misses 4 consecutive meetings for any reason at all. Some bylaws set the number at 3 meetings.

In the new system of extended Board terms, it becomes necessary to be able to replace an elected Board member who abandons the seat or moves away without submitting an official resignation. Otherwise, the number of vacant seats might mount up until quorum issues or simple inability to function effectively take hold. This is the main function of the "consecutive absences" language, rather than the desire to deal with Board members who miss the occasional meeting.

The extended illness of a Board member is a different matter, since it is the result not of intent but misfortune. The problem once again is that a Board seat that should represent the community (or some part of the community) is being left unfilled. The remedy for this problem is that the Board may reappoint the board member upon his/her return to the vacated seat. This allows for human judgment and allows for the retention of obviously useful people who have simply been misfortunate for a while.

Discussion regarding excused absences

The problems associated with excused absences have come up repeatedly in board removals. One problem is the question of how one gets excused. For example, some systems allow for an excuse based on notification (prior to the meeting), either to the Secretary or the President. Other than acute illness, it is hard to understand how this differs from any other absence. If the board member has to take 4 consecutive excused absences, it is hard to argue that the board seat is being represented productively. Again, the alternative is to have a vacancy replacement system which would allow the governing board (possibly with the agreement of a majority of stakeholders present) to fill a vacant board seat with the previous holder of that seat. This allows the board and the public a chance to decide whether it would be better to replace that member or not.

If the board wishes to retain the option of excused absences, it is important to define precisely how an absence becomes excused, whether there is a limit on the number of consecutive excused absences or on the total number of excused absences. For example, one excused absence per year might be a reasonable limit, all other absences being counted against the board member for the purpose of removal. If that excused absence is part of a run of consecutive absences, it shouldn't be allowed, as that would negate the whole point of removal for consecutive absences.

Section 8: Censure – Some boards like having a censure provision in self governance. This provision compliments any removal process by making sure the board member is aware of any inappropriate actions made.

Section 9: Removal - If a NC has a removal process, issues of due process should be addressed in the procedures.

Discussion to not have a Removal Process: Some NC's have functioned since their beginnings without removal language. The argument is that removal of board members is a power best left to the voters. This seemed to work well during the years when elections were held yearly. It also seems to work well in smaller NC's where the voters know the candidates running for board seats, and in NC's where stakeholders and candidates vet slates of candidates in advance.

Discussion to have a Removal Process: With board members having 2 or 4 year terms, stakeholders should have a process to remove board members who are violating policies or procedures or who are not representing the stakeholders who elected them to the NC.

Article VI Officers

Section 4: Officer Terms – NC's should decide whether officers should serve at the pleasure of the board, i.e. they can be removed if they are not doing their jobs by the board. The same discussion for board member removal can be used for board officer removal.

Article VII Committees and Their Duties

Section 1: Standing – Some NC's may want to put this into standing rules so they are easy to change, which is also the reason some NC's want to name them in the bylaws so they are not easy to change.

Section 3: Committee Creation and Authorization – this can be entirely in the standing rules to save on space though some NC's may want them in bylaws so they are not easy to change.

Article VIII Meetings

Section 2: Agenda Setting - The power to set the agenda is the power to limit the ability of the governing board in its actions and therefore the ability to limit the power of the community as a whole from acting through its neighborhood council. Therefore, it is extremely important that the process for setting the agenda be open, transparent, and as democratic as possible.

Here are some alternative approaches for bylaws and standing rules language:

1. "The agenda shall be created by the elected officers of the board and posted in a manner consistent with state and local requirements as well as requirements set by the city through its lawful agencies."
2. Same as 1 above, except that in addition, the governing board shall appoint 2 additional people to the agenda committee, either board members or non-board member stakeholders"
3. The bylaws state: "The governing board shall establish the method by which agendas for governing board meetings shall be set." The intent here is that a neighborhood council may wish to experiment with different approaches by making use of standing rules for creating agendas. This method allows for the governing board to do so without requiring it to go through the bylaws amendment procedure every time it wishes to tweak a rule. It also places the ultimate power for agenda setting where it belongs, in the governing board as a whole. (see a standing rule example below)
4. The governing board shall appoint a committee to create agendas from among its own members or from all stakeholders including its own members. This is just a limited version of 3 above.

5. Example of a standing rule used by one NC for the past 8 years: The agenda shall be created by a meeting chaired by the Vice President of this neighborhood council, or in his/her absence by anyone elected by the stakeholders present at the meeting. All stakeholders, including members of the governing board and those who are not members of the governing board are eligible to participate and vote at this meeting. The agenda meeting shall take place at least 4 days prior to the governing board meeting and shall be noticed and conducted consistent with the Ralph M Brown Act of the State of California. The person who presides over the agenda meeting is responsible for putting the agreed-upon agenda in written form, but may invite participation by the Secretary, and is responsible for transmitting the finished agenda to the Secretary for posting.

Section 3: Notifications/Postings – The NC may want to include language to comply with the Board of Neighborhood Commissioners new Posting Policy. For example, “At a minimum, notice shall be posted at the Council’s five (5) Public Notice Locations specified on the Posting Location Form filed with the Department, on its website (if applicable) and emailed out to the Stakeholders if the Council maintains such a database. Regular and Special meeting agendas shall also be emailed to the Department.”

Article IX FINANCES – Many Department funding policy and procedures have changed recently. The template language is general enough to cover these and future changes. There should be no mention of petty cash or checking accounts in these sections as they are not allowed.

Article X ELECTIONS – the language and chart here are requested by the City Clerk.

Article XI GRIEVANCE PROCESS – NC’s are required to have their own grievance process. While a regional system is being created, it’s still some time away and will most likely require an ordinance change.

Article XII PARLIAMENTARY AUTHORITY - There are various rules of order. NC’s should choose the one the Board members all know. In other words, if they choose to have Robert or Rosenberg’s Rules of Order, they should know all the applicable rules unless they are relying on a parliamentarian for all of their meetings. Otherwise, it is better to create a very simple version unique to the NC and make sure copies are available for Board members and stakeholders for reference.

Article XIV COMPLIANCE

Section 1: Code of Civility – NC’s may choose to have these in standing rules instead.

Section 2: Training – NC’s may choose to establish consequences, e.g. suspending voting rights, for failing to take ethic training, which is mandated, and fundamental board orientation training. A lot of conflict and mistakes can be avoided if all board members have a basic understanding of the various laws, policies and procedures that apply to NC’s.

Section 3: Self Assessment – a yearly self assessment is required by the Plan.