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From: Darren Martinez
Sent: Wednesday, July 29, 2009 10:41 AM
Subject: Re: committee quorum quickie question

If you have fewer than 7 members on your committee, then you may notice the meeting simply as a committee meeting. If you want to have 7 or more, then you should notice the meeting as a joint meeting of the committee and the board.

Attached is an example agenda where a joint meeting of the committee and the board is noticed. Also attached is a handout, see bottom of p. 9 regarding noticing joint meetings of the committee and the board. Please let me know if you have any further questions.

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(2)

>>> Anne Ziliak - 8/1/2009 12:27 AM >>>

Mr. Martinez,

I thought that this would be true if you had a board of 12.

I understand that you can not have a committee that has so many that it would constitute a quorum of board members, otherwise posting an agenda that reflects the joint meeting would be necessary. Isn't the purpose of this provision to prevent a final board action at the committee level? The GHNNC has a board of 25, so if there are less than 14 board members on a committee the need to post it as a joint meeting should not be applicable.

If committees are limited to six then there may be many Neighborhood Councils that are not in compliance and we need some guidance on how we can remove committee members. The attendance provision will not work to remove members, at least not for the GHNNC PLUM Committee.

Thank you for your patience on this.

Anne Ziliak
Vice-Chair GHNNC

(3)

From: Darren Martinez
Sent: Monday, August 03, 2009 4:24 PM

I'm basing my advice on the following information, I understood your board's quorum is 13 and that your board takes action by a majority of those board members present at a meeting. Under this scenario, as few as 7 board members could decide an issue on behalf of your board.

The gist of the Brown Act is to provide notice and to insure that the board's decisions are made in public. Under your board's bylaws, if 7 board members gather to exchange information, then there is a potential

for a Brown Act violation. The reason is because if these same 7 board members form the majority at a board meeting where 13 board members are present, then the 7 board members have enough votes to make a decision on behalf of their board. If there are 7 or more members on your board meeting at a committee level, then the 7 board members have the ability to make a board decision even though they are only meeting as committee members. Therefore, the problem is avoided if the committee meeting is noticed as a joint meeting of the committee and the board.

If you review the previous example agenda I provided, the language makes it clear that the intent is to conduct only a committee meeting, there will not be any action of the board and the joint meeting with the committee and board is called in order to avoid a technical Brown Act challenge.

I have not said committees are limited to 6, you can choose any number you want. The only issue is how you agendize your committee meetings - e.g., if you have more than 7 board members, the committee meetings should be noticed as joint committee and board meetings. Please let me know if you have any further questions.

Darren R. Martinez

(1)

>>> Eric Rosenberg - 7/29/2009 11:08 AM >>>

Hi, Darren -

In the case of a joint committee-board meeting, what would be the quorum requirements? The committee's normal quorum, the Board's normal quorum, or their quorums combined?

Do you recommend stating in our bylaws that no standing committee may have more than six Board Members? Have you seen the requirement in other NCs' bylaws?

Thank you,
Eric

(2)

From: Darren Martinez
Sent: Wednesday, July 29, 2009 12:40 PM
Subject: Re: committee quorum quickie question

You'll set the joint committee's quorum at whatever number you choose. The committee should have standing rules that address the situation.

Its up to your board on what it wants for the size of the committee. My recommendation is that if your committee is so large that you are effectively having board meetings, then you should really evaluate the need to have a committee meeting in the first instance and simply have the issue decided at a board meeting. You could establish a maximum limit of board members on your committees in your bylaws and other NCs have done so. Please let me know if you have any further questions.

Darren R. Martinez

On 5/29/2009 2:36 PM, "Darren Martinez" <Darren.Martinez@lacity.org> wrote:

Hello GHNC board members,

This is in response to the questions raised by Mr. Rosenberg regarding a proposed bylaw amendment for creating committees. Initially, please note that board members should not reply to each other regarding this e-mail because of concerns with avoiding serial communications under the Brown Act. Instead, you may agendaize and discuss the issues presented in this e-mail at your next board meeting.

Mr. Rosenberg raised several questions in his e-mail, and I've provided my responses below.

Question - One question that was brought up at Wednesday's Policy & Rules Committee meeting was whether every proposed provision is necessary, or if some can be removed because they're either standard practice; in Robert's Rules; in the Brown Act or some other law; or implied/said elsewhere in the Bylaws.

Response - Robert's Rules of Order serves as a guide. It does not mandate that your board adhere to any given process. My best recommendation is that you should strive to achieve clarity in any bylaw amendment because you will avoid disputes if the rule is clearly specified. Even if a rule is clear under the Brown Act or the Plan for a Citywide System, there are benefits in also including a statement referencing to binding law in your bylaws.

Question - Another question was whether the members of a committee could select their own chairperson and vice-chairperson, or if having a majority of the Board do this (14.5) is required for some reason.

Response - Either process is suitable.

Question - Also, do we need to specifically state that any Stakeholder, whether or not they're on the Board, can be the chairperson of a committee?

Response - If your bylaws state that the committees, which may be comprised of non-board members who are stakeholders, shall select their own committee chair from among the committee members, then it is clear that the chair may be a non-board member.

Question - One last question was whether we need to state that the "Board shall appoint standing committees" (preamble) since all standing committees are already listed in these proposed Bylaws (14.9), or if this, as worded, means that the Board shall appoint all committee members to standing committees? If the latter, does it conflict with 14.5 which list several ways for Stakeholders to join committees?

Response - You could state in your bylaws that the Board shall retain authority to appoint and name any standing committees not listed in the bylaws.

Further Comments - I had intended to provide detailed comments on the draft you sent me. However, I must apologize because I have a number of other urgent matters to address at this point. However, I will make several broad comments.

1. You should eliminate the introduction.
2. Combine 14.1 with 14.6.
3. I'm assuming that you anticipate a committee to meet, make a recommendation to the board, then if the board agrees with the recommendation, it appoints a member of the committee to be the board's spokesman on the issue? That is the only way I see this provision working.
4. I would move how the committee takes action in 14.4 to 14.7 and re-label the heading as "Quorum and Action by the Committee." I've previously discussed my concern that it is preferable to have the quorum for the committee specifically listed in the bylaws - that doesn't mean you can't try it the way you're proposing - it is just not the best practice.

Please let me know if you have any further questions.

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"Eric Rosenberg [GHNNC]" <erosenberg@ghnnc.org> 5/5/2009 7:22 AM

Hi, Amelia -

The Bylaws language for Article 14 (Committees) that passed on May 4th doesn't clear up how Stakeholders are added to a committee, unfortunately, so I'd like to get something in writing from the appropriate person at D.O.N.E. that details all the ways members can be added.

Currently, committee chairpersons just allow people who show up at meetings to be on them. If that's acceptable, then that's the easiest way of going about it.

But if, as was previously communicated, chairpersons and Stakeholders don't have this authority, then I need such determination in writing.

Is there a proscribed method by which the Board adds members to committees, or would it be enough for the Board, at a Regular Meeting, to vote in favor of granting blanket approval for committee chairs to add and remove members of their committee?

Thank you,
Eric Rosenberg, Chairperson
GHNNC Policy & Rules Committee

On 5/5/2009 12:47 PM, "Darren Martinez" <Darren.Martinez@lacity.org wrote:

Hello Eric,

There are any number of methods for naming members to committees and your Neighborhood Council is limited only by its creativity in this regard. That being said, the typical methods for naming members to the committee, include (1) having the board name or remove any committee members (2) having the President name or remove any committee members (3) having the board or President name a committee chair and have the committee chair name or remove committee members or (4) other workable combinations of these procedures.

You could attempt to allow anyone showing up to be a member of a committee. But this option proves least workable in determining when a committee meeting occurs, e.g., when is a quorum present, and is problematic under the Brown Act. If there is no fixed number on the committee, then any potential communications among committee members run the risk of being serial communications and presents the possibility of violating the Brown Act. For example, if 2 committee people talk about an issue and they are the only 2 people who show up for the committee meeting to decide an issue, then a Brown Act violation has occurred.

An alternative suggestion, is that your board should name an identifiable number of members, specify clearly how the members are named to the committee, and specify a clear process for removal. Add a bylaw provision, that committee meetings will be conducted in a town hall format, where the committee members will solicit the votes of the stakeholders in attendance at the meeting and any recommendations made by the committee to the board will convey both the committee votes and the stakeholder votes to the full board.

Please let me know if you have any further questions.

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"Eric Rosenberg [GHNNC]" <erosenberg@ghnnc.org> 5/6/2009 3:39 PM

Thank you, Darren, for that information.

Just to clarify, D.O.N.E. and the City Attorney's Office wouldn't have any problem with a committee chairperson being given the power to determine who can and cannot be on his or her committee?

My only concern with such arrangement would be that a chairperson with a hidden agenda could choose to only allow allies on his/her committee, and exclude all Stakeholders and Board Members who oppose said agenda.

The ability to present a minority report, as allowed in our bylaws, wouldn't make any difference if there wasn't a minority opinion on the committee, correct?

Granted, everything the committee passes must go through the Board of Directors at a Regular Meeting, so perhaps that's why giving a committee chairperson such power isn't a concern. Still, it would give a committee chair the ability to completely control the message being presented to the Board at such meeting.

If we chose #3, would we have to specify that the Board retained the power to add or remove members from committees, even over the committee chairperson's objections? Or is that authority always implied?

Thank you,
Eric Rosenberg, Chairperson
GHNNC Policy & Rules Committee

On 5/7/2009 2:50 PM, "Darren Martinez" <Darren.Martinez@lacity.org> wrote:

Hello Eric,

Your board is free to determine how it establishes its committees.

This doesn't mean there will not be any problems. The committee must still be operated in accordance with all rules. If a committee chair refused to allow competing views on the committee, it could trigger the filing of a grievance with your Neighborhood Council or a complaint with DONE for violating the Plan's requirement that the NC must be diverse, inclusive, and open.

If your board amends its bylaws to allow the committee chairs to name or remove committee members, then the board would not have the authority to name or remove committee members. Presumably you will leave the power to name the committee chair with the board. If the board disagrees with the committee composition, then the board could re-name a different chair and that chair could replace the committee members. Please let me know if you have any further questions.

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"Eric Rosenberg [GHNNC]" <erosenberg@ghnnc.org> 5/8/2009 3:18 PM

Hi, Darren -

If the GHNNC Board doesn't change its Bylaws or Standing Rules as you've suggested below, what procedures to add/remove committee members are currently allowed?

My understanding was that, under our current 2007 Bylaws, only the Board has the authority to add or remove committee members and chairpersons (because procedures and authority aren't specified, so standard practice would dictate that only the Board has such power).

If that interpretation is wrong, and such lack of specificity means that chairpersons can do as they please in this regard, then that would be very helpful to know. (Certain Stakeholders would be thrilled to know that I could just add them to my committee whenever they ask to join!)

Regardless of the answer to the foregoing, am I correct that Stakeholders can't appoint themselves to committees under their own authority?

Thank you,

Eric Rosenberg, *Chairperson*
GHNNC Policy & Rules Committee

On 5/8/2009 4:24 PM, "Darren Martinez" <Darren.Martinez@lacity.org> wrote:

Hello Eric,

I'm assuming that the applicable bylaw provision is: "14.1 Standing Committees: Each Standing Committee may include any interested Stakeholder who wishes to volunteer. The GHNNC Board will encourage full and broad participation in these committees. The committees will meet regularly and report to the GHNNC Board, as necessary, or at the GHNNC Board's request. A minority report may also be presented..."

In the absence of any other provision or standing rule, then I can't tell you how someone is appointed to a committee. I can't tell you if this means that the committee member self-appoints. That is one interpretation of the existing bylaw provision. **The problem is this bylaw provision is vague.** It doesn't state whether the board approves the appointment, whether the President approves the appointment, whether the committee chair approves the appointment, etc. If your board doesn't want to address the matter, then your board could always argue that its custom and practice in the past for interpreting the rule should continue to be followed. What has your board done in the past? **The problem with past practices is that they are easily subject to challenge** because invariably they demand more than what the relevant bylaw language states.

The absence of having a clear process for naming or removing committee members was the basis for my advice to clean up this bylaw provision. **Your board should do a bylaw amendment before this is elevated to a grievance or a complaint.** At a minimum your board could adopt a standing rule regarding the appointment process as long as the standing rule remains entirely consistent with the existing bylaw provision. Your standing rule could then state who and how any committee appointments are made.

At this point, your bylaws don't allow for the removal of committee members (therefore you could not have a standing rule that removes committee members). You must have a bylaw amendment to specify the committee member removal process.

If your board doesn't follow any of these suggestions, then in the event someone is upset that they are not appointed to a committee or believe the incorrect process is followed, they could file a grievance with your Neighborhood Council or a complaint with the Department of Neighborhood Empowerment. Your board will then be required to address the subject. In the event your board tries to remove a committee member, the committee member files a grievance or a complaint, and if I'm asked to provide advice on the subject, I will instruct that the removal was inappropriate and that the person retains all rights and privileges of being a committee member. Again, all these issues are readily cleared up by simply and easily stating in your bylaw provision the process for naming or removing committee members. Please let me know if you have any further questions.

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