

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: December 12, 2022
Reviewed by: NA

SUBJECT: Consider Brown Act Demand Letter to Cure Alleged Violations and Revoke Certain Actions Related to Sunsetting Advisory Committees from the December 5, 2022 City Council Meeting

REPORT BY: Mala Subramanian, City Attorney

SUMMARY

This report addresses a demand letter (“Demand Letter”) filed with the City from Julie Ann Winkelstein, Margie Marks, and David Danby on December 7, 2022 by email asserting a Brown Act violation pertaining to the December 5th City Council meeting.

STAFF RECOMMENDATION

That the Council direct the City Attorney to send a response letter pursuant to Government Code section 54960.1(c)(2), of the City Council’s determination that the Demand Letter incorrectly asserts Brown Act violations where no violations occurred, and as such, the City Council need not cure or correct the challenged action.

BACKGROUND

To promote transparency and to comply with the Brown Act, City Council meetings are open and public. All business items to be addressed by the City Council generally must be included on a publicly posted agenda with a brief general description of each item of business to be discussed at the meeting, generally not exceeding 20 words. To further promote the goal of accountable government, the statute allows interested persons to “demand” the City cure or correct an action alleged to have been taken without complying with the Brown Act. This procedure allows the City to account for its actions or take corrective action, as appropriate.

Written demands must be filed within 90 days from the date the action was taken or within 30 days if the action was taken at a public meeting on a non-agenda item. The Brown Act requires that the City Council determine whether it will cure or correct the challenged action within 30 days from when it received a timely demand. (Government Code § 54960.1(b)). No lawsuit may be filed until after the City has a chance to respond to a demand to cure or correct an action.

DISCUSSION

To assist the Council in evaluating the claims and determining a course of action, this staff report first analyzes the allegations and legal contentions set forth in the Demand Letter and then suggests a course of action. This has been brought to the currently seated City Council's attention to take action, given their familiarity with the recent discussions and actions taken.

The City seriously considers every alleged violation of the Brown Act. The Demand Letter is timely and is attached to the staff report. The Demand Letter contends that the agenda description for the November 7, 2022 meeting was vague and at that meeting the Council discussed the sunsetting of City advisory bodies and then used that conversation as a basis for the sunsetting of "four City advisory bodies at the December 5, 2022 City Council meeting" violated the "spirit of the Brown Act".

The Demand Letter states "the Spirit of the Brown Act is to make sure the public is notified in advance about actions that will take place at a public government meeting, such as the Albany City Council. Whether the vagueness of the description of this item leaves it open to this kind of misleading interpretation, there was clearly a violation of the spirit of the Brown Act."

The agenda description from the November 7, 2022 meeting is as follows:

"11-1. Advisory Body Work Plan Status Reports

Staff recommendation: that the Council review the Work Plan Status Reports from City Council Advisory Bodies and provide direction to staff on any next steps"

The Demand Letter demands that the City Council cure and correct the "illegally taken action as follows: Revoke the votes to sunset the four advisory bodies as voted on at the December 5, 2022 Council meeting and allow the new Council to properly and legally discuss the potential sunsetting of these bodies, giving due and clear advance notice, in compliance with the Brown Act, to the public and the member of the affected bodies, thereby allowing them to offer their own comments and opinions."

The contentions do not amount to a Brown Act violation. The Brown Act requires that at least 72 hours in advance of a regular meeting that the City post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, with some exceptions. The brief general description generally does not need to exceed 20 words. This was done for both the November 7th and December 5th City Council meetings.

The agenda description at December 5, 2022 City Council meeting is as follows:

"10-1. Changes to Advisory Bodies to the City Council

That the Council consider adoption of the following resolutions regarding Advisory Bodies to the City Council:

1. Resolution No. 2022-131, directing the Social & Economic Justice Commission to focus on serving as advisory to the City Council regarding implementation of the City's Housing Element
2. Resolution No. 2022-132, sunsetting the City's Charter Review Committee
3. Resolution No. 2022-133, sunsetting the City's Community Media Access Committee
4. Resolution No. 2022-134, sunsetting the City's Economic Development Committee
5. Resolution No. 2022-136, revising the meeting frequency of the City's Financial Advisory Committee"

At its November 7th meeting, the City Council considered the work plan status reports from the various advisory bodies, which also included per the agenda description providing direction to staff on any next steps. Based on this description, it is reasonable to assume that the Council may not want to continue with a work plan for an advisory body that should be sunsetted. The November 7th agenda description allowed for the Council to discuss next steps on these work plans, but not take any action to sunset an advisory committee, which is what occurred. At the November 7th meeting, the Council expressed interest in sunsetting three committees.

The actions to sunset these advisory committees was agendaized for the December 5th City Council meeting. The agenda description clearly states which advisory committees are being considered by the City Council to sunset. Based on this description, some Advisory Committee members gave public comment on their individual thoughts regarding sunsetting of their Committee. After taking public comment, including the public comment of several of the Demand Letter authors, who also had an opportunity to give their thoughts on sunsetting of these three Committees, the Council adopted Resolution Nos. 2022-132, 133, and 134. Therefore, the Council has acted in compliance with the Brown Act and there is no need to cure or correct its December 5th actions.

Attachment

1. Demand Letter (email received 12/7/2022)

Anne Hsu

From: [REDACTED]
Sent: Wednesday, December 7, 2022 4:26 PM
To: citycouncil
Cc: [REDACTED]
Subject: Violation of Brown Act

Mayor Jordan

December 7, 2022

Vice-Mayor Tiedemann

Albany City Council

Albany, CA 94706

Dear City Council,

This letter is to call your attention to what we believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Albany City Council on December 5, 2022.

In its meeting of November 7, 2022, the Albany City Council discussed the sunseting of City advisory bodies. Framed as a way to “generate thoughts” (Mayor Jordan) – and although described by Council member Nason as offering recommendations for the new Council but not “making decisions for them” – Council used that conversation as a basis for the sunseting of four City advisory bodies at the December 5, 2022 City Council meeting.

The November 7, 2022 agenda described Item 11-1 as:

“Advisory Body Work Plan Status Reports

Staff recommendation: that the Council review the Work Plan Status Reports from City Council Advisory Bodies and provide direction to staff on any next steps”.

In Attachment 11-1, this status report is described as follows:

“Per City Council approved work plan template, ‘advisory bodies shall review their work plans at the end of the two year term and create a status report of their work, including what was completed; what should continue; and what should be dropped. ...This summary document will assist the bodies newly appointed at the beginning of the odd calendar year understand their role and enable them to develop their own plan going forward.”

Any member of the public reading this would assume that it was exactly what it says: a review of the work plans that will assist newly appointed advisory body members in understanding their roles and helping them develop their own plans. No

one reading this would read it as: “This will lead to the sunseting of some of these advisory bodies.” The exchange of “thoughts” at the November 7, 2022 was led by Mayor Jordan, who frankly described his opinion that there were too many advisory bodies – as he put it: “I certainly have in mind that there’s too many, that’s my bias, that’s kind of why I brought this forward. So I wanted to review so we could think about if there are any we could think about sunseting.” Nowhere in the agenda is there a mention of this sunseting or a discussion about the possibility.

At the December 5, 2022 City Council meeting, two members of the public questioned the legality of sunseting these advisory bodies, actions that were based on the November 7, 2022 Council meeting, stating that this seemed like a violation of the Brown Act from the November 7, 2022 meeting. Mayor Jordan asked City Attorney Malathy Subramanian whether or not it was a violation of the Brown Act and she responded that it was not, because the description of agenda item 11-1 at the November 7 meeting, could be interpreted as removing items from a work plan, “including removing all items from a work plan which would be to functionally sunset the committee.” This interpretation is specious and seems to be offered to justify an illegal action. No reasonable person would read the item this way. The spirit of the Brown Act is to make sure the public is notified in advance about actions that will take place at a public government meeting, such as the Albany City Council. Whether the vagueness of the description of this item leaves it open to this kind of misleading interpretation, there was clearly a violation of the spirit of the Brown Act.

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a “brief description” of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions — namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), we demand that the Albany City Council cure and correct the illegally taken action as follows: Revoke the votes to sunset the four advisory bodies as voted on at the December 5, 2022 Council meeting and allow the new Council to properly and legally discuss the potential sunseting of these bodies, giving due and clear advance notice, in compliance with the Brown Act, to the public and the members of the affected bodies, thereby allowing them to offer their own comments and opinions.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform us of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave us with no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case we would also ask the court to order you to pay our court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,

Julie Ann Winkelstein

Margie Marks

David Danby