



JEFFREY LEWIS

ATTORNEY AT LAW

October 24, 2017

VIA E-MAIL (daleshire@awattorneys.com, cityclerk@rpvca.gov) AND U.S. MAIL

Dave Aleshire, Esq.
Aleshire & Wynder
2361 Rosecrans Avenue
El Segundo, CA 90245

Emily Colborn, City Clerk
City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

RE: *Brown Act Violation*

Dear Mr. Aleshire and Ms. Colborn,

This firm represents a group of Palos Verdes Peninsula residents who are concerned about the Rancho Palos Verdes City Council's adherence to the Brown Act. Pursuant to Government Code section¹ 54960.2, subdivision (a)(1), this office hereby submits this cease and desist letter to the City of Rancho Palos Verdes ("City") through Ms. Colborn, its clerk. I am writing to you concerning a Brown Act violation that occurred at the October 17, 2017 City Council meeting. The City may respond within 30 days of receiving the letter² or "elect[] to respond to [this] cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action[s] that [are] alleged to [have] violate[d] this chapter."³ The unconditional commitment must be approved by the City in open session at a regular or special meeting as a separate item of business.⁴ The City need not admit that a violation occurred, and providing an "unconditional commitment shall not be construed or admissible as evidence of a violation."⁵

¹ All further statutory references herein are to the California Government Code.

² § 54960.2, subd. (b).

³ § 54960.2, subd. (c)(1). The format for such a commitment is laid out in section 54960.2, subdivision (c)(1).

⁴ § 54960.2, subd. (c)(2).

⁵ § 54960.2, subds. (c)(1) and (4).



Background Principles of Law Concerning the Brown Act

The Brown Act reflects a heavy presumption in favor of transparent government and public meetings:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. 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.⁶

(Gov. Code, § 54950)

California courts have enforced the Brown Act strictly against public agencies:

“Open government is a constructive value in our democratic society.” (Citation.) The Brown Act (§ 54950 et seq.), adopted in 1953 and since amended, is intended to ensure the public's right to attend the meetings of public agencies. (Citation.) To achieve this aim, the Act requires, *inter alia*, that an agenda be posted at least 72 hours before a regular meeting, and it forbids action on any item not on that agenda. (Citations.) The Act thus facilitates public participation in all phases of local government decision making and curbs misuse of the democratic process by secret legislation by public bodies. (Citation.) The Brown Act dictates that “[a]ll meetings of the legislative body of a 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.” (Citation).⁷

Violation of the Brown Act may result in criminal penalties⁸ and civil relief. Civil remedies include declaratory relief, injunctive relief and requiring the Board to record closed session meetings.

⁶ § 54950.

⁷ *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1203.

⁸ § 54959 [declaring that violations of the Act are a misdemeanor]; § 54960, subd.(a) [authorizing civil action for declaratory and injunctive relief.]



Violation No. 1 – The Lack of Disclosure of the Closed Session Meeting about Michael Huang’s Threats of Litigation

At the beginning of the City Council meeting, the council announced it was going into closed session to discuss claims asserted by Mike Doddy. That was entirely appropriate. Mr. Doddy’s dispute with the City was fully and adequately disclosed on the agenda.⁹ The City Council also announced that it would be discussing a second matter pertaining to potential litigation. As to this second matter, we understand that the issue involves a dispute between City resident Michael Huang and Mayor Brian Campbell. In preparing to go into closed session, the City Council disclosed that there was potential litigation but did not disclose the facts and circumstances that caused the City Council to believe there was a potential for litigation to be filed against the City. For example, the City Council could have disclosed:

Potential Litigation against the City: GC 54956.9(d)(2) and (e)(3)

A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency, based on an e-mail to the City of Rancho Palos Verdes dated October 9, 2017, from Michael Huang. A copy of the e-mail is on file in the City Clerk’s Office.

Instead, the City Council simply disclosed that there was potential litigation without disclosing any of the facts and circumstances underlying the potential litigation. Although in rare instances, the City may withhold those facts and circumstances from the public, this is not such an instance. Section 54956.9, subdivision (e) provides:

(e) For purposes of paragraphs (2) and (3) of subdivision (d), “existing facts and circumstances” shall consist only of one of the following:

(1) Facts and circumstances that might result in litigation against the local agency **but which the local agency believes are not yet known to a potential plaintiff or plaintiffs**, which facts and circumstances need not be disclosed.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and **that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced...**

(Emphasis added).

⁹ In litigation against other jurisdictions alleging Brown Act violations, I have described Rancho Palos Verdes as having the “gold standard” of disclosure and transparency. The disclosure of the Doddy’ discussion on the agenda met that standard. The disclosure as to Michael Huang fell well below that standard.



It is beyond Cavil that by October 9, 2017, Michael Huang knew of the facts and circumstances that caused the City to conclude that litigation was possible. Michael Huang himself alerted the City to those facts and circumstances on October 9, 2017. Therefore, it was not lawful for the City to convene a closed session and conceal from the public the facts and circumstances described in Michael Huang's letter.

Violation No. 2 - The City Could not Hold a Closed Session to Discuss a Matter not on the Agenda

The City did not state on the agenda that it would be discussing the Michael Huang dispute. The City is not allowed to meet in closed session to discuss matters unless they are included in the agenda or unless an emergency situation exists excusing the failure to agendaize. (§54954.2, subd.(b)). There was no "crippling disaster, mass destruction, terrorist act, or threatened terrorist activity" in the City on October 17, 2017. (§ 54956.5). Nor was there any urgent need to act between the date the City Council Meeting agenda was published and the October 17, 2017 meeting.

Impact of the Violation

Following the Closed Session, the Council announced that it had voted 5-0 to send a letter addressing the potential litigation. This action is null and void due to the violation of the Brown Act.

Motivations for Closed Session

The City's intent and motivation is irrelevant for purposes of judicial determinations of Brown Act violations. Nonetheless, a review of the recording of the meeting demonstrates that with Mayor Campbell's absence, the remaining council members, led by Councilmember Brooks, eagerly and clumsily sought to have a secret discussion about Mayor Campbell outside of the public's view. That is not permitted. It is the role of the City Attorney to advise Councilmembers in the heat of discussions that their actions are outside the Brown Act. My clients are disappointed that the City Attorney did not counsel the participants in the meeting that their proposed actions would violate the law.

Conclusion and Request

As was shown above, there were at least two violations of the Brown Act. By this letter, this office respectfully requests that the City provide a response as required by Section 54960.2, subdivision (b).

I am available to discuss these issues at your convenience. Such a discussion, however, would be a supplement and not a substitute for the City's formal obligation to respond under Section 54960.2, subdivision (b). In the event the City does not satisfactorily address



these issues, my clients are prepared to initiate a civil action to enforce the **Brown Act**. We would prefer that the City voluntarily and publicly acknowledge its transgressions and commit to compliance in the future.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey Lewis", positioned below the closing text.

Jeffrey Lewis

cc: Clients
David Demerjian, Public Integrity Unit, LA District Attorney's Office
Cynthia Washicko, Daily Breeze
Ed Pilolla, Peninsula News