



City of Patterson

1 Plaza
P.O. Box 667
Patterson, California 95363
Phone (209) 895-8000

Received and
Reviewed 9-26-14
Judge Begen

September 18, 2014

RECEIVED

OCT 01 2014

Civil Grand Jury

The Honorable Loretta Murphy Begen, Presiding Judge
Stanislaus County Superior Court
P.O. Box 3488
Modesto, California 95353

Re: Response to 2013-2014 Stanislaus County Civil Grand Jury Report #14-06C

Dear Judge Begen:

We are writing on behalf of the City of Patterson (the "City") with regards to the 2013-2014 Stanislaus County Civil Grand Jury report on Case #14-06C, involving the City ("Report"). The City thanks the Stanislaus County Civil Grand Jury ("Grand Jury") for the time and effort it dedicated to investigating and reporting on these issues. While we do not agree with every finding and recommendation made by the Grand Jury, we understand that the Grand Jury serves an important purpose in ensuring that local governments within Stanislaus County are operating in an open, fair and efficient manner. We appreciate this opportunity to respond and welcome and additional questions that could help to clarify these matters. Please find our responses to the individual findings and recommendations of the Report below.

I. Finding F1 and Recommendation R1.

A. Finding.

"The City Council violated the Brown Act by not listing street addresses that were available, and not listing names of negotiators."

B. Recommendation.

"The City Council, as required by the Brown Act, should list the street address as well as

the APN's of properties being considered for sale or purchase. When negotiating for the sale or purchase of property, negotiator(s) and legal entities involved should be disclosed."

C. Response.

The City wholly disagrees with the finding. The City acknowledges that it described real property under negotiation by its Assessor Parcel Number ("APN") rather than its street address in closed session descriptions on seventeen (17) agendas between May 2012 and September 2013. However, the City disagrees that this is a violation of the Ralph M. Brown Act (the "Brown Act"). Government Code Section 54954.5 provides safe harbor language that may be used to describe closed session items on the agenda. The beginning of Government Code Section 54954.5 states:

For purposes of describing closed session items...the agenda *may* describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in *substantial compliance* with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

The model language provided in this code section is not mandatory. Further, the code expressly states that the City will not be in violation of the Brown Act if it substantially complies with the model description. (Government Code Section 54954.5). The model language for describing real property negotiations is as follows:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

Because the Report does not mention specific dates for the alleged violations, it is difficult for the City analyze the agendas of concern for compliance. The City reviewed all of its

agendas during the relevant time period (May 2012 to September 2013) and made the following findings:

Meeting Date	Method of Property Description	Were Negotiators Listed?
September 17, 2013	NO REAL PROPERTY CLOSED SESSION	
September 9, 2013	NO REAL PROPERTY CLOSED SESSION	
September 3, 2013	APN	Yes
August 20, 2013	NO REAL PROPERTY CLOSED SESSION	
July 23, 2013	NO REAL PROPERTY CLOSED SESSION	
July 23, 2013	NO REAL PROPERTY CLOSED SESSION	
July 22, 2013	NO REAL PROPERTY CLOSED SESSION	
July 16, 2013	NO REAL PROPERTY CLOSED SESSION	
July 16, 2013	NO REAL PROPERTY CLOSED SESSION	
July 9, 2013	NO REAL PROPERTY CLOSED SESSION	
July 9, 2013	NO REAL PROPERTY CLOSED SESSION	
July 2, 2013	APN	Yes
June 25, 2013	NO REAL PROPERTY CLOSED SESSION	
June 18, 2013	NO REAL PROPERTY CLOSED SESSION	
June 11, 2013	NO REAL PROPERTY CLOSED SESSION	
June 4, 2013	NO REAL PROPERTY CLOSED SESSION	
May 23, 2013	NO REAL PROPERTY CLOSED SESSION	
May 21, 2013*	APN	Yes
May 7, 2013	APN	Yes
April 16, 2013	APN	Yes
April 2, 2013	APN	Yes
March 19, 2013	APN	Yes
March 5, 2013	APN	Yes
February 19, 2013	APN	Yes
February 12, 2013	APN	Yes
February 5, 2013	NO REAL PROPERTY CLOSED SESSION	
January 22, 2013	APN	Yes
January 15, 2013	APN	Yes
December 18, 2012	NO REAL PROPERTY CLOSED SESSION	
December 4, 2012	NO REAL PROPERTY CLOSED SESSION	
November 29, 2012	NO REAL PROPERTY CLOSED SESSION	
November 20, 2012	APN	Yes
November 13, 2012**	APN	Yes

October 16, 2012**	NO REAL PROPERTY CLOSED SESSION	
October 2, 2012*	APN	Yes
September 18, 2012	APN	Yes
September 4, 2012	NO REAL PROPERTY CLOSED SESSION	
August 21, 2012	NO REAL PROPERTY CLOSED SESSION	
August 21, 2012	NO REAL PROPERTY CLOSED SESSION	
August 14, 2012	NO REAL PROPERTY CLOSED SESSION	
July 30, 2012	NO REAL PROPERTY CLOSED SESSION	
July 24, 2012	NO REAL PROPERTY CLOSED SESSION	
July 17, 2012	NO REAL PROPERTY CLOSED SESSION	
July 10, 2012	NO REAL PROPERTY CLOSED SESSION	
June 19, 2012	NO REAL PROPERTY CLOSED SESSION	
June 12, 2012	NO REAL PROPERTY CLOSED SESSION	
June 5, 2012	NO REAL PROPERTY CLOSED SESSION	
May 15, 2012	NO REAL PROPERTY CLOSED SESSION	
May 3, 2012	NO REAL PROPERTY CLOSED SESSION	
May 1, 2012	APN	Yes

*Two properties listed

** Meeting Cancelled

During the relevant time period, real property negotiations appeared on the closed session agenda seventeen (17) times. For every time real property negotiations appeared on the closed session agenda: (1) the property was described by its APN; and (2) the negotiators were listed.

While the model language recommends describing property by its street address, it also mentions that an APN is an acceptable alternative. The City is not required to mimic the model language exactly and, by listing the applicable APNs, the City was in substantial compliance with the Brown Act.

The Brown Act model language also recommends agencies name the agency negotiator and the negotiating party. In all seventeen (17) instances the agenda description listed the City Manager as the agency negotiator and listed the other negotiating party. As such, the descriptions substantially complied with the Brown Act requirement.

Lastly, it should be noted that the City Council could in no way be found to have violated the Brown Act since staff, and not the Council, is responsible for preparing the agendas. Again though, City also disagrees that staff violated the Brown Act for the reasons set forth above.

While it is not included in the Report finding, the Report also voiced concerns about oral reports prior to adjournment into closed sessions, which the City would like to address. In order to discuss real property negotiations in closed session, the City must meet its notice requirements under the Brown Act. Aside from the agenda requirements noted above, the City must hold a public session prior to closed session where the real property and negotiator are identified. *Kleitman v. Superior Court*, (1999) 74 Cal.App.4th 324 at 331.

As shown on the City's agenda, the City holds open session meetings prior to its closed session meetings. Prior to adjourning into closed session, the City's Mayor reads the closed session items appearing on the agenda. These agenda descriptions include the real property of interest and the negotiators. Further, the Brown Act requirement that the City orally announce the items to be discussed in closed session can be satisfied by "merely referring to the relevant portion of the written agenda for the meeting." California Attorney General's Office, *The Brown Act: Open Meetings for Local Legislative Bodies*, 4th Ed. (2003) p. 23. The City Council has met its reporting requirements by reading agenda items prior to adjournment.

D. Implementation.

The City has implemented Recommendation R1. Going forward, the City will list the street address of a property that is subject to a closed session meeting on real property negotiations, when a street address is available. Additionally, to the extent the City will continue to disclose negotiators on the agenda for closed session real property negotiation discussions.

II. Finding F2 and Recommendation R2.

A. Finding.

"The City Council has not shown a sense of urgency in approving minutes of council meetings. City Administration acknowledged the lack of attention to publishing City Council meeting minutes in a timely manner."

B. Recommendation.

"The City Council should approve previous meeting minutes at the beginning of each City Council meeting. The City Administration should follow up to see if improvements in reporting and information access have been made."

C. Response.

The City wholly disagrees with Finding F2. There is no legal requirement regarding when and how City Council minutes must be published or approved. The City clerk is only required to "keep a correct record of its proceedings." Government Code Section 36914. Roberts Rules of Order is not binding upon the City but can be a good resource for determining traditional meeting procedure. With regards to approving minutes, Roberts Rules of Order simply states, that, if minutes are not normally approved at the next meeting, the secretary should note the date that the minutes were approved at the end of the minutes. Roberts Rules of Order Revised, 4th, Article X, Section 60. Robert's Rules of Order does not require or suggest that meeting minutes should be approved at the next meeting.

The City is committed to creating an accurate and informative record of the City's business. As a result, City staff must dedicate considerable time to drafting, reviewing and revising minutes. As such, City Council minutes may not be finalized immediately following a meeting. Additionally, the City Council must thoroughly review minutes to ensure their accuracy. This review also requires dedication of time. To avoid inaccuracies in the minutes, the approval process is not as fast as would be ideal. However, limited City resources curtail the City's ability to dedicate as much resources to the creation of the minutes as the City would like. Still, the City is committed to approving minutes as swiftly as possible. The fact that City Administration has had limited resources to dedicate to publishing minutes does not mean the City is not publishing and approving minutes as quickly as it is capable.

D. Implementation.

The City will partially implement Recommendation R2. As discussed above, the City has limited resources to dedicate to drafting accurate and informative minutes quickly. The City will continue to endeavor towards improving and streamlining this process. Additionally, the City will follow up to see if improvements to information access have been made as discussed in greater detail in Finding F4.

III. Finding F3 and Recommendation R3.

A. Finding.

"Videos of City Council meetings have not been available in a timely manner."

B. Recommendation.

"Videos of City Council meetings should appear within two business days, similar to the reporting procedures of other cities in the region."

C. Response.

The City wholly disagrees with Finding F3. There is no requirement in the Brown Act, or in any other state law, that the City post video recording of its City Council meetings online. The Brown Act does state that any audio or video recording that the City makes of an open public meeting is subject to disclosure under the California Public Records Act.

The California Public Records Act does not require a City to create a record that does not exist. The CPRA only requires the City to make records available to the public, it does not require that the records be available online. There are no state laws which state that a recording of a meeting must be posted within two (2) business days of a meeting. Further, the City has contracted with an independent third party, Greg Barbosa, to provide video recordings of the City Council meetings. Mr. Barbosa records each meeting, broadcasts it on a local cable channel, and posts the video online. In the experience of City staff, Mr. Barbosa generally posts such videos within one (1) day of the City Council meeting. However, because Mr. Barbosa is an independent contractor, the City has little oversight regarding when the videos are posted.

D. Implementation.

The City will not implement the recommendation because it is not required by law or within the control of the City. However, the City will contact Mr. Barbosa and inform him of the recommendation contained in the Report and shall discuss ways to ensure that videos are consistently posted in a timely manner.

IV. Finding F4 and Recommendation R4.

A. Finding.

"City Administration acknowledged the lack of attention to publishing City Council meeting minutes in a timely manner."

B. Recommendation.

"The City Administration should follow up to see if improvements in reporting and information access have been made."

C. Response.

The City partially disagrees with this finding. As stated above, the City has no legal requirement regarding when and how City Council minutes must be published or approved. However, the City recognizes that there have been large time gaps between the occurrence of a meeting and the approval of minutes for the meeting. As such, the City intends to monitor the situation and look for ways to streamline the minute approval process.

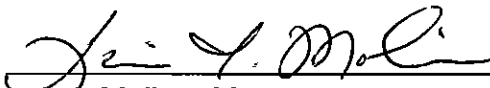
D. Implementation.

The City staff will chart the time it takes for City Council to approve minutes for each meeting occurring in the year following the date the Report was issued and shall report such data to the City Council after the tracking period has ceased.

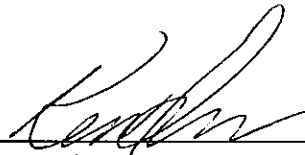
On behalf of the City, we would like to express our thanks to the Grand Jury. Please feel free to contact with of us should you have any further questions or any concerns.

Very truly yours,

Very truly yours,



Luis I. Molina, Mayor
(209) 895-8005



Kenneth Irwin, Interim City Manager
(209) 895-8015