



Staff Report

File #: REPORT 20-0516, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of August 11, 2020

**BROWN ACT DEMAND FILED BY CAMERON
SAMIMI PERTAINING TO BEACH VOLLEYBALL POLES**
(City Attorney Michael Jenkins)

Recommendation:

Staff recommends that the City Council:

1. Receive and file report; and
2. Direct the City Attorney to send a letter pursuant to Government Code §54960.1(c)(2) communicating the City Council's determination that no Brown Act violation occurred, and therefore that the City Council will not take further action.

Executive Summary

A letter to the City Manager and to the City Council was received by email dated July 20, 2020 alleging violations of the Brown Act. The Brown Act provides that any person may challenge an action taken by the City Council by filing a written demand to cure or correct the action alleged to have been taken in violation of the Brown Act. This written demand must be filed within a certain time period, in this instance, within 90 days of the alleged violation (Gov't Code Section 54960.1(c)(1).) The complaint was filed within the required timeframe. This report will address the substantive allegations and conclude they are meritless.

Background:

A. The Brown Act

The purpose of the Brown Act (which is found at Government Code section 54950, *et seq.*) is to ensure that the deliberations of local governmental bodies are conducted publicly, and their actions are taken openly. The City Council is subject to the Brown Act, and all City Council deliberations and actions, therefore, must be made in public. All meetings must be open, except for properly noticed "closed sessions" as allowed by the Brown Act. However, the Brown Act does not regulate the conduct of City employees, like the City Manager, who are not elected members of a local governmental body.

Under the Brown Act, a meeting is broadly defined as "any congregation of a majority of members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is

within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.” At least 72 hours prior to a regular meeting, the City must post a meeting agenda. The meeting agenda must specify the time and location of the meeting as well as a “brief general description” of each item of business to be transacted or discussed including items to be discussed in closed session. (Gov. Code § 54954.2(a)(1).) If the “meeting” has not been properly noticed, the Councilmembers will be in violation of the Brown Act.

B. Samimi’s Demand for A Cure

Cameron Samimi delivered a letter to the City Manager and to the City Council by email dated July 20, 2020 alleging violations of the Brown Act. The Brown Act provides that any person may challenge an action taken by the City Council by filing a written demand to cure or correct the action alleged to have been taken in violation of the Brown Act. This written demand must be filed within a certain time period, in this instance, within 90 days of the alleged violation (Gov’t Code Section 54960.1(c)(1).) Mr. Samimi’s complaint was filed within the required timeframe. This report will address the substantive allegations and conclude they are meritless.

Under the Brown Act, the City Council must determine within 30 days of receipt of demand whether it will cure or correct the challenged action. If the City Council does not act within 30 days, it is deemed to have determined not to take any corrective action. Tonight’s meeting is within the 30-day period for response. Pursuant to Government Code Section 54960.1(b), the Council may consider whether a violation occurred and, either way, whether to take corrective action regarding the alleged violation.

A copy of Mr. Samimi’s letter is attached (**Attachment 1**). It asserts two (2) violations of the Brown Act:

- 1) That the City Manager violated the Brown Act by removing volleyball poles from the City’s beaches because she acted solely and independently of the City Council’s direction.
- 2) That, on July 14, 2020, the City Council discussed the decision to remove the volleyball poles in closed session without including the required information on the closed session agenda.

Analysis of the allegations:

Allegation #1:

Mr. Samimi’s demand letter arises from his belief that the City Manager removed volleyball poles from the City’s beach. As a preliminary matter, no volleyball poles have been removed. Nevertheless, Mr. Samimi’s letter begins by characterizing the alleged Brown Act violation as follows:

“The City Manager has acted solely or without voting on the matter or hearing any

comments from the members of the community. At no time was removal of the Volleyball poles which are privately owned in the city by residents ever voted on or brought to a vote. In fact no resident was made aware ahead of time of such vote and no vote took place within the city council.”

Although, the poles have not been removed, if the City Manager does decide to remove them, she is authorized to do so in her capacity as Director of Emergency Services, under the authority granted to her by Municipal Code sections 2.56 *et seq.* If she were to take this action, as a City employee she also would not be subject to the Brown Act. Put simply, though she has not yet done so, the City Manager has the authority to remove the volleyball poles without adhering to the Brown Act’s open meeting requirements.

The Brown Act regulates only meetings of and actions taken by “legislative bodies.” The City Manager is not subject to the Brown Act. Her actions on her own authority cannot constitute a violation of the Act.

Allegation #2:

Mr. Samimi’s second allegation asserts that the City Council or the City Manager violated the Brown Act’s agenda requirements for closed session meetings. In this section of his complaint, Mr. Samimi alleges the following:

“The action occurred as the culmination of a discussion in closed session of a matter which the Act does not permit to be discussed in closed session (and/or) there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and there was no finding of fact made by the Hermosa Beach City Council that urgent action was necessary on a matter unforeseen at the time the agenda was posted.”

His claim that the removal of volleyball poles was discussed during closed session is factually untrue.

Mr. Samimi is correct that the “Brown Act creates specific agenda obligations for notifying the public with a ‘brief description’ of each item to be discussed or acted upon.” The City Council is mindful of these requirements, and the July 14, 2020 closed session meeting agenda did include the following descriptions of each and every item discussed on that date:

1. 20-0399 MINUTES: Approval of minutes of Closed Session held on June 23, 2020.
2. 20-0428 CONFERENCE WITH LEGAL COUNSEL: Pending Litigation Government Code Section 54956.9(d)(1). The City finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.

a) Michael Frilot v. City of Hermosa Beach, et al. Los Angeles County Superior Court, Case Number: 20TRCV00045

b) Michael Frilot, Workers Compensation Case number ADJ11107965 and AdminSure Claim number 20-148189

c) Pamela Sargent, Workers Compensation Case number ADJ11290398 and ADJ13054828

3. 20-0440 CONFERENCE WITH LEGAL COUNSEL: Anticipated Litigation Government Code Section 54956.9(d)(2) and (e)(3). The City finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.

One Matter: Claim of Richard Taylor, Workers Compensation, AdminSure Claim #19-143843

ADJOURNMENT OF CLOSED SESSION

These are the only items that the Council discussed in closed session on that date. The City Council never discussed or planned on discussing the removal of the volleyball poles during its July 14, 2020 closed session. For this reason, the City Council did not and was not required to place a brief description of the item on the closed session agenda.

Mr. Samimi offers no facts to support his second allegation that an improperly noticed discussion took place during closed session on July 14, 2020. Rather he merely concludes without any explanation that such a discussion took place. This speculation is not a reasonable basis on which to allege a Brown Act violation.

Mr. Samimi's second allegation is also without merit.

Conclusion

Based on the foregoing, Mr. Samimi has not stated a Brown Act violation. Furthermore, no volleyball poles have to date been removed. No violation of the Brown Act occurred and no cure is required. Accordingly, I recommend that the Council receive and file this report and direct me to send the letter attached to this staff report (**Attachment 2**) to Mr. Samimi.

Attachments:

1. Complaint dated July 20, 2020 from Mr. Cameron Samimi

2. Proposed letter to Mr. Samimi

Respectfully Submitted by: Michael Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager