



STAFF REPORT

City Council

Meeting Date: 8/28/2018
Staff Report Number: 18-172-CC

Informational Item: **Disclosure of Brown Act violation - rescheduling next steps for Library System Improvement Project**

Recommendation

Staff recommends that the City Council reschedule next steps for Library System Improvement Project and incorporate information regarding the inadvertent Brown Act violation into the agenda materials for the rescheduled meeting.

Policy Issues

The Belle Have branch library improvements and the main library improvements are part of the City Council's work plan approved February 6, 2018.

Background

This matter was originally scheduled for City Council direction August 21, 2018. Shortly before that meeting it came to the city manager and city attorney's attention that there may have been an inadvertent serial discussion between City Councilmembers on this action. Following a brief investigation, the city manager and city attorney concluded that the August 21 meeting should be canceled to allow the city attorney to complete his investigation and, if warranted, a public disclosure of any private conversations to cure any such potential serial meeting violation.

In response to requests from City Councilmembers, the city attorney performed a preliminary investigation of the alleged Brown Act violations by interviewing Mayor Ohtaki and City Councilmembers Keith and Mueller to determine what contacts, conversations and communications took place directly between any of them regarding the library improvement project. Based upon those interviews, it appears that there was a violation of the Brown Act through serial communications by City Councilmember Keith with two Mayor Ohtaki and City Councilmember Cline. Since City Councilmembers Keith and Cline serve on the City Council subcommittee for the library system improvements, they have had communications/discussions regarding the library system improvements. At the Downtown block party last Thursday, City Councilmember Keith ran into Mayor Ohtaki. During their brief conversation on other topics not at issue, City Councilmember Keith made a comment to Mayor Ohtaki that she hoped he would support moving forward with the library system improvement projects. Mayor Ohtaki responded in a non-committal manner, stating that he was not sure how he would vote Tuesday. The investigation did not uncover any agreements or understanding between a majority of the City Council to vote in a certain manner, nor any information to indicate that Mayor Ohtaki was aware that City Councilmember Keith had communications directly with any other member of the City Council or any potential Brown Act violation nor was there sharing of any substantive information between Mayor Ohtaki and City Councilmember Keith. The above communications were brought to the city attorney's attention after City Councilmember Mueller had contacted Mayor Ohtaki for the purpose of discussing the library system improvement project and Mayor Ohtaki indicated that he

could not discuss the matter with City Councilmember Mueller because he had already discussed the matter with City Councilmember Keith. Mayor Ohtaki then contacted the city attorney to bring this matter to his attention.

Analysis

It is a violation of the Brown Act for a majority of members of a legislative body to “use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”¹ The Brown Act provides that the district attorney or any interested person may bring legal action against a city to invalidate certain actions on the ground that they violate the Brown Act. As a prerequisite of bringing such an action, the district attorney or the interested person is required to make a demand on the legislative body to cure or correct the action challenged as a result of the Brown Act violation. To minimize Brown Act litigation, courts have ruled that the district attorney or other interested party cannot bring an invalidation action if the Brown Act violation only involves deliberations without any formal action.²

A violation of the Brown Act may also give rise to a criminal complaint. To constitute a criminal violation, two elements must be present: some action must have been taken (deliberations without formal action are not actionable) and that action is taken with the intent of a member “to deprive the public of information to which the member knows or has reason to know the public is entitled” by the Brown Act.”³

Based on the investigation above, while it appears there was an unintentional serial meeting before the originally scheduled August 21 City Council hearing, there was no action taken nor any collective decision, commitment or promise by a majority of the City Council to make a positive or negative decision regarding the library improvements and therefore nothing to be cured and no criminal violation. The city attorney concluded that the Brown Act violation must be disclosed to allow the public to be aware of it. The city attorney conferred with assistant district attorney Albert Serrato, who handles these types of matters for the district attorney’s office. He also concurs that neither an invalidation or criminal action would be warranted under these facts. The district attorney’s concern when a Brown Act violation has occurred is that there is public disclosure of the violation for transparency purposes. To ensure complete transparency, the city attorney determined that this report should be issued and available to the public before the rescheduled meeting regarding the library improvements.

In conferring with the city manager regarding the upcoming City Council calendar, the city attorney and the city manager recommend that this matter be re-agendized for the beginning of the year. This schedule is based on the current staff vacancies (including both of the assistant public works director positions and the library director), the limited number of remaining meetings this calendar year and the benefit of having the new City Council weigh in on this policy decision once seated. Unless directed otherwise by the City Council, the matter will rescheduled for early 2019.

Impact on City Resources

The library is requesting funds for the main library building schematic design and funds for the Belle Haven branch library space needs study. These funds would draw from funds previously approved and allocated to the library system improvements fund.

¹ Government Code Section 54952.2 (b)(1).

² *Boyle v. City of Redondo Beach* (1999) 70 Cal. App. 4th 1109.

³ Government Code Section 54959.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it proposes an organizational structure change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Report prepared by:
William L. McClure, City Attorney