



Council Agenda Report

From: Elizabeth Wagner Hull, City Attorney
Ty Lewis, City Manager

Subject: Report to Council regarding a Cease and Desist Letter Sent by Mr. Gary Lehrer; Request to Authorize Mayor to Execute and Send Response Letter to Mr. Lehrer

CEQA Determination: The City finds that this action is not a project under the California Environmental Quality Act pursuant to State Guidelines Section State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3), 15378.

Date: February 20, 2024

Facts

1. At the January 16, 2024 City Council meeting, a member of the public submitted, via hard copy handed to the City Clerk, a "Cease and Desist Letter to the City of Paso Robles Regarding Vote on Parking Fees on November 21, 2023." Additional details regarding the history of the City's actions on the parking program are set forth in the staff report accompanying the item for introduction of an ordinance amending PRMC Chapter 12.42, which is also agendaized for discussion at this February 20, 2024 meeting.
2. The Cease and Desist Letter alleges that the City's action on November 21, 2023 to modify parking rates in the downtown district violated the Brown Act because, in Mr. Lehrer's opinion, the agenda item did not meet the Brown Act's mandate that there be a "brief general description of each item to be transacted or discussed" at the meeting.
3. The manner in which the Cease and Desist Letter was submitted was procedurally deficient under the governing statute, which requires such a letter to be submitted "by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation" (not handed to the Clerk in person).
4. Despite this procedural deficiency and in furtherance of the City's commitment to transparency, the City may take action in open session to unconditionally commit to ceasing and desisting from the challenged action, and to not repeat that action in the future without admitting a violation of the Brown Act. Such an action by the Council prevents the complainant from being able to file a court action against the City under the Brown Act.

Options

1. Take no action;
2. Acknowledge receipt of the procedurally deficient Cease and Desist Letter, and, to reflect the City's commitment to transparency, authorize the Mayor to execute and send a response letter (in substantially the same form attached hereto as Exhibit B) making an unconditional commitment to "continue to describe agenda items in a manner that is compliant with the Brown Act, and provide sufficient notice to the public of the items of business that are to be discussed or transacted, in order to avoid unnecessary litigation, but without admitting any violation of the Ralph M. Brown Act in connection with the challenged action."

3. Provide alternative direction to staff.

Analysis and Conclusions

The Brown Act provides a mechanism, under Government Code section 54960.2, for a member of the public to file an action to determine an agency's past compliance with the Brown Act by first submitting – within nine months of an alleged Brown Act violation – a clear description of the alleged violation. Submission of such a letter is known as a “Cease and Desist” request, and no legal action may be filed by any person to challenge an action taken by the City Council on Brown Act grounds unless and until this letter has been properly submitted, *and* the agency has not timely responded with an unconditional commitment to cease and desist from the challenged conduct. Importantly, the statute expressly requires that the Cease and Desist request be submitted **“by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation.”** (Gov. Code § 54960.2.) If a procedurally compliant Cease and Desist request is filed, the City may take action in open session to unconditionally commit to ceasing and desisting from the challenged action, and to not repeat that action in the future. Doing so within 30 days of receiving the letter prevents the complainant from being able to file any court action against the City for the alleged violation, and precludes recovery of any court costs or attorney's fees associated with such a legal action.

Although the Cease and Desist Letter handed in-person to the City Clerk at the meeting on January 16, 2024 is procedurally deficient, and did not trigger the 30 day response window, the City nonetheless wishes to take proactive steps in response to the letter for two reasons. First, Mr. Lehrer's window for filing a Cease and Desist request is nine months from the alleged violation, so he could re-submit a request that *is* compliant in the coming months, and the City would then have to re-analyze this issue and determine what steps to take in response. Second, although the letter was procedurally deficient and the City does not agree with Mr. Lehrer's allegation that its action on November 21, 2023 violated the Brown Act, the City can view this as an opportunity to emphasize and restate its ongoing commitment to transparency, and to ensuring agenda items are described in the manner required by the Brown Act so as to give the public a fair chance to participate in matters of City business. This restated commitment to transparency and accurate agenda descriptions does *not* require the City to acknowledge or admit that there has been any violation of the Brown Act, and cannot be construed or admitted as evidence for any alleged violation at a later time.

Fiscal Impact

There is no direct fiscal impact anticipated as a result of this item, although providing a proactive response to Mr. Lehrer's procedurally deficient Cease and Desist Letter will reduce the City's potential financial liability for any associated legal action, as an unconditional commitment in response to a Cease and Desist request prevents the filing of a subsequent lawsuit and the collection of related court costs and attorney's fees by the litigant.

CEQA

The City finds that this action is not a project under the California Environmental Quality Act pursuant to State Guidelines Section State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3), 15378.

Recommendation (Option 2)

Acknowledge receipt of the procedurally deficient Cease and Desist Letter, and, to reflect the City's commitment to transparency, authorize the Mayor to execute and send a response letter (in substantially the same form attached hereto as Exhibit B) making an unconditional commitment to “continue to describe agenda items in a manner that is compliant with the Brown Act, and provide sufficient notice to

the public of the items of business that are to be discussed or transacted, in order to avoid unnecessary litigation, but without admitting any violation of the Ralph M. Brown Act in connection with the challenged action.”

Attachments

1. Copy of Cease and Desist Letter Submitted by Mr. Lehrer on Nov. 21, 2023
2. Draft Response Letter to Mr. Lehrer’s Cease and Desist Request