



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Mayor Pro Tem Lesser and Council Member Howorth
Open Government Ad Hoc Committee

THROUGH: Quinn Barrow, City Attorney

FROM: Roxanne Diaz, Esq.

DATE: August 30, 2012

SUBJECT: Discussion and Direction Regarding the Suspension of the Brown Act and Reaffirming the City's Commitment to Open Government and the Brown Act

RECOMMENDATION:

It is recommended that the Open Government Ad Hoc Committee discuss the suspension of certain provisions of the Brown Act and reaffirm the City's commitment to open government and continued compliance with the Brown Act.

BACKGROUND:

As part of the 2012-13 State Budget, adopted on June 27, 2012, the Legislature suspended certain state mandates, which include certain provisions of the Brown Act, for fiscal years 2012 —2015. Notwithstanding the suspension, the City has continued to comply with the suspended provisions of the Brown Act.

DISCUSSION:

AB 1464, which was adopted on June 27, 2012 as part of the 2012-13 State Budget, contains a schedule of reimbursable state mandates that are suspended during the 2012-2013 budget year. The Brown Act is included on the schedule of suspended state mandates, but AB 1464 does not explain the nature or the extent of the suspension. In our opinion, the following provisions of the Brown Act are suspended:

- Preparation and posting at least 72 hours before a regular meeting of an agenda that contains a brief general description of each item of business to be transacted or discussed at the meeting. (See Gov. Code Section 54954.2(a).)
- Inclusion on the agenda of a brief general description of all items to be discussed in closed session. (See Gov. Code Section 54954.2(a).)
- Disclosure of each item to be discussed in closed session in an open meeting, prior to any closed session. (See Gov. Code Section 54957.7 (a).)

- Report in open session prior to adjournment on the actions and votes taken in closed session regarding certain subject matters. (See Gov. Code Sections 54957.1 (a)(1)-(4), (6); 54957.7 (b).)
- Provide copies to the public of certain closed session documents. (See Gov. Code Section 54957.1 (b)-(c).)

Our conclusion is based on an express reference in AB 1464 to two prior decisions of the Commission on State Mandates in which the Commission determined that these requirements of the Brown Act impose reimbursable mandates on local governments. By referencing the Commission's decisions, the Legislature appears to have intended to suspend only these same requirements. The remainder of the Brown Act therefore remains in effect and meetings of local legislative bodies must continue to be open and public.

Senate Bill 1006, which was enacted the same day as AB 1464, amended Section 17581 of the Government Code by adding the following language: "All state-mandated local programs suspended in the Budget Act for the 2012-13 fiscal year shall also be suspended in the 2013-14 and 2014-15 fiscal years." The suspension of these certain Brown Act provisions will therefore last 3 years.

This suspension is not unprecedented. These same Brown Act requirements were suspended in 1990, at which time most cities reported they would continue to comply with all requirements of the Brown Act regardless of the suspension. Most cities today are likely to likewise judge that the consequences of non-compliance outweigh any benefits. Recently, the League of California Cities Board of Directors adopted a resolution urging cities to comply with all of the requirements of the Brown Act despite the State's decision, for fiscal reasons, to suspend requirements for certain portions of the Act.

As the Ad Hoc Committee is aware, the suspended provisions are central to the Brown Act and noncompliance with those provisions would unquestionably degrade transparency. Further, notwithstanding the lack of legal consequences, noncompliance may suggest that a city does not prioritize open government. For these reasons, the City of Manhattan Beach has continued to comply with all requirements of the Brown Act and staff will continue to do so in spite of the suspended provisions. Staff also notes that many city councils throughout California are not only continuing their compliance with the Brown Act but are also adopting resolutions affirming their city's commitment to the Brown Act despite the suspended provisions.

There are minor costs associated with complying with the suspended mandates. Also, the City will no longer be eligible for reimbursement for such costs during fiscal years 2012-2015.

CONCLUSION:

It is recommended that the Open Government Ad Hoc Committee discuss and provide direction regarding the suspension of certain provisions of the Brown Act and reaffirm the City's continued compliance with the Brown Act.