



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: August 7, 2012
To: Honorable Mayor & City Council
From: Lolly Enriquez, Assistant City Attorney
Subject: Suspension of Certain Provisions of the Brown Act

INTRODUCTION

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. The City Manager and the City Attorney's office recommend that the City continue to comply with the suspended provisions of the Brown Act and staff will continue to do so absent different direction from the City Council.

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)(l)-(4), (6); 54957.7 (b).)
- Provide copies to the public of certain closed session documents. (See Gov. Code Section 54957.1 (b)-(c).)

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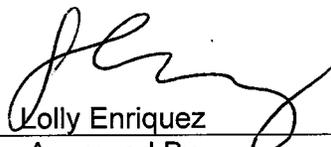
Our conclusion is based on an express reference in AB 1464 to two prior decisions of the Commission on State Mandates in which the Commission determined that these requirements of the Brown Act impose reimbursable mandates on local governments. By referencing the Commission's decisions, the Legislature 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 generally 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 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. 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 Manager and the City Attorney's office recommend that the City continue to comply with all requirements of the Brown Act and staff will continue to do so absent different direction from the City Council.

FISCAL IMPACT

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


Lolly Enriquez
Approved By