

CITY OF OAKLAND



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Honorable President Ignacio De La Fuente and
Members of the City Council
City Hall
Oakland, California

Re: Brown Act – Court Okays Staff Communications with/Briefings of a Quorum of the Council So Long as the Staff Do NOT Advise Councilmembers of Other Councilmembers’ Views

Dear President De La Fuente and Members of the City Council:

A recent California Court of Appeal case allows, under certain conditions, staff to brief a quorum of the City Council without violating the Brown Act.

Summary

- Staff MAY brief a quorum of Councilmembers. Such briefing may include conveying information or making arguments for or against a proposal. **NOTE: The City Charter’s non interference clause prohibits the Council and individual Councilmembers from giving direction to staff.**
- Staff MAY NOT make Councilmembers aware of the views of the other Councilmembers
- City Councilmembers MAY NOT discuss an issue, either simultaneously or by a series of communications, with a quorum of Council, or share the views of a quorum of the Council outside a noticed meeting.
- City Councilmembers MAY NOT meet privately to discuss and develop concurrence on an item.

Recommendations/Caveats

To avoid a violation of the Brown Act and the City Charter’s non interference clause, (1) Councilmembers should be careful not give staff direction during any

briefings or at any other time (The City Charter’s non-interference clause permits only “inquiries” of staff who work under the jurisdiction of the City Administrator, City Attorney, Mayor or City Auditor.¹) and (2) Councilmembers should not ask staff the views/positions of other Councilmembers during the briefings. Caveat: Although a request during a briefing may be an “inquiry” that would not violate the City Charter’s non interference clause, Councilmembers should be mindful that in some circumstances a request may go beyond inquiry and constitute direction to staff. For example, if a Councilmember states that s/he wants to see the design of particular project before it is finalized, depending upon the circumstances, the request could be interpreted as direction to provide the information to the Councilmember before issuance of the document.

Facts of the Case and the Court’s Ruling

In *Wolfe v. City of Fremont*, a police department adopted a new policy on responding to home alarms. A resident sued, alleging the City Manager met individually with council members to explain the new policy, garner their support, and secure their agreement to take no action on the policy. The complaint also alleged that the council members discussed the policy privately among themselves and developed a concurrence not to take action.

The court provided some helpful guidance about what does *not* constitute a violation of the Brown Act.

First the court expressly reaffirmed that a staff member’s transmission of information to individual council members, is not, by itself a Brown Act violation.

Second, the court concluded that even serial *discussions* between staff and all of the Councilmembers, without more, do not violate the Brown Act. The Brown Act is violated by serial meetings only if: (1) someone acts as a “personal intermediary” for council members and (2) the serial meetings are used by a majority to develop a “collective concurrence.”

Third, the court explained that conveying information, opinions or even arguments to Councilmembers is not sufficient to make someone a “personal intermediary.” The City Manager would have to have acted as a personal go-between among council members, a role that would require him “at a minimum, to make the council members aware of each other’s views.” Therefore, a staff member does not violate the Brown Act by attempting to persuade all of the Councilmembers of his own views. To trigger a violation; the staff member must act as a go-between by passing information or views from one councilmember to another.

¹ City Charter section 218, entitled “Non-Interference in Administrative Affairs.”

By contrast, the plaintiffs' claim that council members discussed the issue privately among themselves was sufficient to allege a violation.

The case supports staff members' and others' ability to communicate with council members – and even advocate positions – both orally and in writing outside of public meetings. Staff who participate in serial briefings should refrain from communicating to one member of a legislative body the views of another councilmember.

Conclusion

If you have any questions about this advice, please call me or Barbara Parker. Also, we urge you to continue to contact our office in advance of any communications with staff or other Councilmembers, if you have any questions or concerns about the Brown Act, Sunshine Ordinance, non interference clause or any other matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Russo", written in a cursive style.

John A. Russo
City Attorney