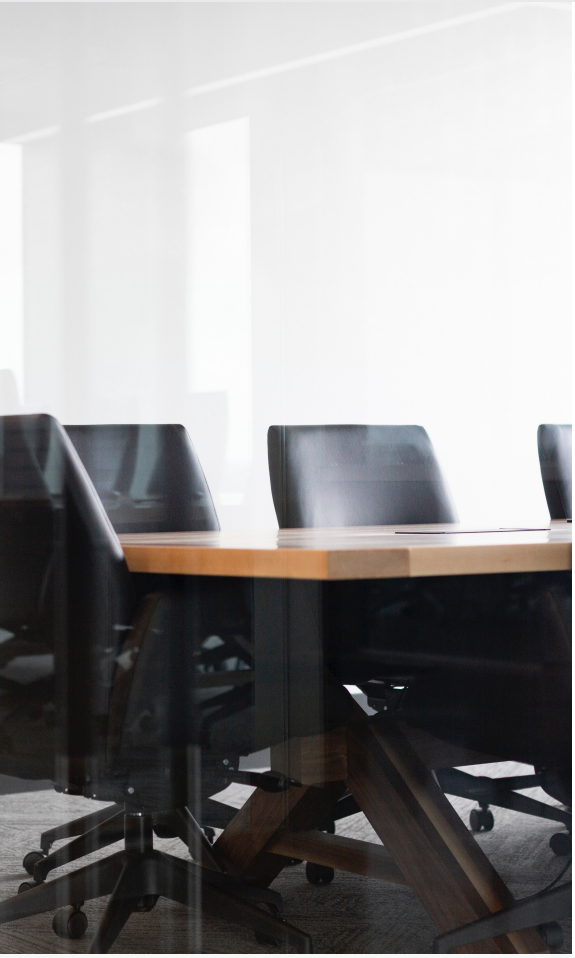

Brown Act: Avoiding Violations by Responding to Cease and Desist Letters

The recently published *TransparentGov Novato v. City of Novato* (2019) decision, provides a great reminder of why it is important for municipalities to appropriately evaluate and respond to cease and desist letters alleging a Brown Act violation and maintain up-to-date policies and procedures. In this case, during the "council-comments" portion of a City of Novato Council meeting, Council members discussed whether a previously approved bus project should be reconsidered and placed on a future agenda. The discussion lasted approximately 12 minutes. During the same portion of the meeting, the Council also discussed placing a solar project on a future agenda. That discussion lasted approximately 11 minutes, and during that time, the Council considered and voted to form a subcommittee to study the solar project.

The Petitioner, TransparentGov, sent a cease and desist letter to the City alleging that the Council had violated the Brown Act by discussing substantive aspects of the bus and solar project, and by acting to establish a subcommittee. The City responded in writing by agreeing that it would not, in the future, establish council subcommittees at a meeting without first placing the issue on the meeting's posted agenda. Thereafter, the City also amended its policies regarding requests for future meetings, requiring those requests be made in writing six days before the meeting at which the request will be considered. Thereafter, Petitioner filed a complaint seeking declaratory relief under Code of Civil Procedure section 1060 and a peremptory writ under section 1085 that the City violated the Brown Act by discussing the substantive issues related to the bus and solar projects and forming the subcommittee.

In outlining the applicable law, the Court of Appeal noted that under the Brown Act, a court must dismiss with prejudice any case seeking relief for any past action if the court concludes that the legislative body has unconditionally committed to "cease, desist from, and not repeat the [allegedly wrongful] past action." (Gov. Code section 54960.2.) Further, to obtain writ relief under section 1085, the petitioner must show the respondent has a duty to act in a particular way and that the petitioner has a clear, present, and beneficial right to performance of that duty. If the respondent is willing to perform without coercion, the writ may be denied as unnecessary; and if the respondent shows actual compliance, the proceeding will be dismissed

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as moot, as no purpose would be served in directing the respondent to do what has already been done. Further, to obtain declaratory relief under section 1060, there must be an "actual controversy" relating to the legal rights and duties of the respective parties.

In its written response to the Petitioner's cease and desist letter, the City "unconditionally" committed to "cease, desist from, and not repeat taking action by consensus decision to establish subcommittees of the City Council without first placing the formation of subcommittees on the posted agenda." In the view of the Court of Appeal, this was precisely the type of "unconditional commitment" under section 54960.2 that protected the legislative body from litigation under the Brown Act. Regarding the Council's substantive discussions of the bus and solar projects, the City argued that the case was moot and that no actual controversy existed since the only violations alleged took place years ago, and the Council had adopted rule changes that provide for agendizing requests to put items on a future agenda. The Court of Appeal agreed with the City that there is no justiciable controversy entitling Petitioner to mandamus or declaratory relief under section 1060 or 1085. Thus, by appropriately evaluating and responding to the cease and desist letter from TransparentGov, and amending its policies and procedures when an issue was discovered, the City of Novato was able to correct a possible Brown Act violation and obtain a judgment in its favor.