



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: January 11, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Jovan Grogan, City Manager

PREPARED BY: Pamela Wu, Director

SUBJECT: Approve Letter to Cure Alleged Brown Act Violations Alleged by the San Mateo Union High School District Regarding December 14, 2021 Meeting Agenda Item Related to General Plan Policy OSR-8, Regarding Former Crestmoor High School Site at 300 Piedmont Avenue, San Bruno CA

BACKGROUND:

Park and Recreation Policy OSR-8, contained in the City's General Plan, requires that the approximately 12-acre playing fields on the former Crestmoor High School site be preserved. On December 14, 2021, the City Council, at its regular meeting, adopted a resolution regarding Policy OSR-8. The resolution was listed on the meeting agenda as Consent Calendar Item "n" with the following description: "Adopt Resolution Regarding Open Space and Recreation Policy OSR-8." Prior to the meeting, the San Mateo Union High School District submitted a letter regarding the matter. At the meeting, two individuals representing the San Mateo Union High School District provided public comment on Item "n." Thereafter, the City Council unanimously approved the Consent Calendar, including Item "n."

On December 22, 2021, the City received a letter from the District's legal counsel alleging that the City Council had violated the Ralph M. Brown Act (Government Code section 54950 et seq.) at the December 14 meeting. The District's letter alleged that the following violations of the Brown Act had occurred with respect to Consent Calendar Item "n":

1. The agenda description for Consent Calendar Item "n" failed to adequately describe the action that would be taken by the City Council, in violation of Government Code § 54954.2(a)(1); and
2. The City Council had failed to allow public comment on consent calendar items, including Item "n," in violation of Government Code § 54954.3(a).

The District's letter demanded that the City Council cease and desist from these Brown Act violations and take the following steps to cure the violations: (1) re-agendize Item "n" with a complete description of the subject matter and action to be taken; (2) agendize the item as a regular business item, not a consent calendar item; (3) allow public comment on the item; and (4) separately discuss the item prior to a vote.

Although the City does not agree that any of its actions violated the Brown Act, to avoid the possibility of unnecessary litigation and the associated expenditure of public resources, staff recommends that the City Council move to unconditionally commit to ceasing, desisting and not repeating the actions described in the District's letter.

DISCUSSION:

The Brown Act requires local government business to be conducted at open and public meetings, except in certain limited situations.

Of relevance here, the Brown Act requires that the City post an agenda "containing a brief general description of each item of business to be transacted and discussed at the meeting." The brief description typically need not be more than 20 words. As a general principle, agenda descriptions should provide enough information to permit a member of the public to make an informed decision about whether they want to attend or participate in a discussion on the issue.

The agenda must also provide an opportunity for members of the public to address the legislative body on any item of interest to the public, "before or during the legislative body's consideration of the item."

The video recording of the City Council's December 14 meeting demonstrates that the Mayor twice asked for public comment on the consent calendar, which included the item regarding Policy OSR-8, first at the time general public comment was requested and a second time when the consent calendar was considered. District representatives did in fact speak on the item in response to the Mayor's request. The Brown Act places no limitations on which items of business may be placed on the consent calendar (except that this item may not be placed on consent), nor does it require that each item on consent be separately discussed. The agenda description provided adequate information to permit a member of the public to comment on the item. The City does not believe that any of its actions violated the Brown Act.

Nonetheless, to avoid the potential for unnecessary litigation and the resulting expenditure of public resources, the Brown Act provides an opportunity for the City to cure any alleged violations. Within 30 days after the receipt of a written demand, the City Council may either cure or correct the challenged action and inform the party who filed the demand of its correcting actions or inform the demanding party that it does not intend to cure or correct. If the City Council makes an unconditional commitment within 30 days to cease and desist from, and not repeat the past action that allegedly violated the Brown Act, litigation cannot be sustained, and the complaining party is not entitled to attorneys' fees. The unconditional commitment must be approved by the City Council in open session at a regular or special meeting as a separate item of business not on the consent calendar, and the City must provide a letter in substantially the form set forth by the Brown Act that is signed by the chairperson of the entity

To prevent the further litigation and the unnecessary expenditure of public funds, staff recommends that the City Council, without admitting any violation of the Brown Act, provide the District with a notice of unconditional commitment to cease and desist from, and not repeat, the actions alleged as Brown Act violations in the District's December 22nd letter. The proposed notice, which substantially comports with the form set forth in the Brown Act, is attached to this staff report as Exhibit A.

In the letter, the City has agreed to take the following actions:

1. Re-agendize the item as a separate business item with a description comporting with the requirements of the Brown Act;
2. Take public comment on the item, as it did before; and

3. Separately discuss the item.

The item has been re-agendized for this meeting in conformance with these requirements.

FISCAL IMPACT:

The recommended action will avoid unnecessary litigation and the resulting expenditure of public funds.

ENVIRONMENTAL IMPACT:

Under Public Resources Code Section 21065 and CEQA Guidelines Section 15378, this action does not constitute a "project" within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, in that agreeing to re-agendize an item has no potential for resulting in a physical change in the environment, either directly or indirectly.

RECOMMENDATION:

Approve Letter to Cure Alleged Brown Act Violations Alleged by the San Mateo Union High School District Regarding December 14, 2021 Meeting Agenda Item Related to General Plan Policy OSR-8, Regarding Former Crestmoor High School Site at 300 Piedmont Avenue, San Bruno CA

ALTERNATIVES:

Take no action. The Brown Act would permit the District to file suit against the City for the alleged Brown Act violations should the City choose not to act.

DISTRIBUTION:

1. Kevin Skelly, Superintendent, San Mateo Union High School District
2. Harold Freiman, Lozano Smith Attorneys at Law
3. Elaine Breeze, Senior Vice President of Development, SummerHill Apartment Communities / SummerHill Homes

ATTACHMENTS:

1. Letter to legal counsel for San Mateo Union High School District