



# CITY OF POMONA COUNCIL REPORT

---

June 17, 2019

To: Honorable Mayor and Members of the City Council

From: Christi Hogin, Interim City Attorney

Subject: **ALLEGATION OF BROWN ACT VIOLATION BY HISTORIC PRESERVATION COMMISSION**

---

## **RECOMMENDATION:**

It is recommended that the City Council take the following actions:

- 1) Admonish the members of the Historic Preservation Commission to only discuss Commission business during properly noticed meetings and specifically to refrain from using Nextdoor or any social media to discuss matters within the Commission's subject matter jurisdiction; and
- 2) Direct the City Clerk to provide a copy of "Guidelines to Prevent Serial Meetings" (Attachment A) to each member of a City commission or committee subject to the Brown Act.

## **EXECUTIVE SUMMARY:**

California's open meeting law (aka the Brown Act) requires that all discussion of the business of City commissions be done in properly noticed public meetings. Social media presents a new challenge for City officials. While social media platforms offer opportunities to broaden their interaction with the public, it violates the Brown Act for a majority of members of a commission to discuss commission business outside of a commission meeting, including indirectly through social media. Pomona resident Jacqueline Elizalde presented to the City Council at its last meeting a printout<sup>1</sup> from the website Nextdoor of an exchange of facts and opinions among Historic Preservation Commissioners Tomkins, Gonzalez, Gallivan, and Kercheval. This exchange is an example of a prohibited serial meeting. No action was taken by the commissioners outside the meeting and their intent appears to have been an effort to spread the word about the fate of the Pomona Stables and the City Council's June 4, 2019, related agenda item. No action needs to be

---

<sup>1</sup>For the purposes of this action, the authenticity of the printout is presumed. I did not independently verify it. The Commissioners were present at the Council meeting and did not contest the document.

June 17, 2019

Response to allegation of Brown Act violation

Page 2 of 3

undone to cure the violation, but an admonition is warranted.

## **DISCUSSION:**

Pomona resident Jacqueline Elizalde submitted to the City Council a printout from the website Nextdoor that consisted of a transcript of an exchange of facts and opinions among several people, including Historic Preservation Commissioners Tomkins, Gonzalez, Gallivan, and Kercheval. She alleged that this evidenced a violation of the Brown Act and made an oral demand that the City “cure and correct” the violation.

The purpose of the Brown Act is to have the City Council and its appointed commissions conduct their deliberations and take their actions openly. The law was designed to facilitate public participation in local governmental decisions and to curb misuse of the democratic process by secret legislation. Open meetings provide the public an opportunity to participate in city government and protect the public’s right to attend meetings.

The Brown Act governs the procedures by which the City Council and commissions conduct business. Violations of the Brown Act can occur inadvertently and the law is designed to create opportunities to cure violations. Before pursuing a lawsuit to challenge an action as a violation of the Brown Act, an interested party must first demand the body cure or correct its mistake. When the City receives a timely written demand, it triggers a 30 day time period to respond and establishes a statute of limitation for any lawsuit to be filed to enforce the Brown Act. Even though Ms. Elizalde did not make a written demand, she raised a valid point that warrants a response. Such a response is not only consistent with the spirit of the Brown Act but also with Pomona’s core value of clear and open communication.

The Brown Act’s definition of meeting is broad and includes any congregation of a majority of the members of the Council or a commission “to hear, discuss, deliberate, or take action on any item that is within [their] subject matter jurisdiction.” This means that a majority of the members of the Historic Preservation Commission cannot discuss city historic preservation matters outside a properly noticed meeting. In other words, if it is a subject that might be acted on by the Historic Preservation Commission, then the commissioners may only discuss it at a properly noticed public meeting.

In fact, the Brown Act explicitly prohibits a majority of the members of the Council or a city commission from using “a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within [their] subject matter jurisdiction” outside of a noticed meeting. These types of communications among a majority of members of a Brown Act body (made through intermediaries or technology and not while congregated in one place) are called “serial meetings.”

The Nextdoor posts brought to the City Council’s attention occurred between May 21 and May 27 and were related to the proposed adaptive re-use of the Pomona Stables. The Commission had already made its recommendation in an open and public Commission meeting by the time this Nextdoor discussion occurred. There is no indication that the Nextdoor discussion led to any action by the Commission. Accordingly, while a serial meeting, there was no action taken that would have to be “undone” in order to cure the violation. Moreover, the public was afforded a full opportunity to participate in the Council item at the June 3, 2019, City Council meeting, including a full airing of

June 17, 2019

Response to allegation of Brown Act violation

Page 3 of 3

the HPC's views by virtue of an extended presentation by the HPC prior to public participation on the item. The Council engaged in a robust discussion and gave direction to staff that will create further opportunities for the public to participate in the discourse over the fate of the Pomona Stables.

The subsequent open and public meetings offer a cure for the slight dealt the public by the Nextdoor conversation. In addition, Ms. Elizalde's submittal of the transcript into the public record aids shining light on the content of the otherwise private and unpermitted discussion. This too contributes toward curing any effect of the violation.

The City Clerk's office recently offered Brown Act training to all commissioners and Pomona encourages a culture of compliance with all ethics and government transparency laws. In order to emphasize this commitment and reinforce the rules with respect to public officials' use of social media, the interim city attorney recommends that by receipt of this report the Council admonish the members of the Historic Preservation Commission to only discuss Commission business during properly noticed meetings and specifically to refrain from using Nextdoor or any social media to discuss matters within the Commission's subject matter jurisdiction. In addition, because social media is so prevalent, to reinforce the rules with all those subject to the Brown Act, the Council should direct the City Clerk to provide a copy of "Guidelines to Prevent Serial Meetings" (Attachment A) to each member of a City commission or committee subject to the Brown Act.

#### **ATTACHMENT:**

Attachment No. 1 – Guidelines to Prevent Serial Meetings