

DATE: October 12, 1987

TO: Betsy McCullough, Transportation and Land Use
Committee Consultant, and Anne L. Rast,
Public Facilities and Recreation Committee
Consultant

FROM: City Attorney

SUBJECT: Amendments to the Brown Act

By memorandum to this office dated September 17, 1987, you asked two questions related to the Brown Act (Government Code Section 54950 et seq.). You first asked, if a citizen makes a written communication to a Council committee in advance of the meeting and the communication appears as an item on the regular agenda, is it the committee's or the chairperson's discretion to decide on the disposition of the agenda item?

It is our view that the Council committee must act on a written communication which appears on the regular agenda of the Council committee.

Recent amendments to the Brown Act at Government Code Section 54954.2 imposed a new requirement that:

At least seventy-two (72) hours before a regular meeting the legislative body of the local agency or its designee shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. No action shall be taken on any item not appearing on the proposed agenda. Emphasis added.

This provision clearly contemplates the discussion of items on the agenda by the legislative body and the transaction of business by the legislative body regarding such agenda items. Rule 17c of the Rules of the City Council, provides that a majority of the membership of a Council committee shall

constitute a quorum for the transaction of business. Therefore, when a written communication appears on the regular agenda, it appears there as an item of business for the committee. As such, the chairperson of the committee is without authority to decide upon the disposition of such an item.

Your second question was, does a quorum of a Council committee need to be present to consider public comments as contemplated by the Brown Act?

Section 54954.3 of the Government Code provides under

Subdivision (a), that:

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter of the legislative body provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) of Section 54954.2 Emphasis added.

This provision clearly provides that members of the public are entitled to address the legislative body, not merely the chairperson of a committee constituted of less than a quorum of the legislative body. In the case of a committee of the City Council, that body would be comprised (here again pursuant to Rule 17 of the Rules of the City Council) at a minimum of a majority of the membership of the committee because that is a quorum for the transaction of business. Therefore, in response to your question, we believe a quorum must be present to consider public comment under the public comment portion of the agenda on a committee agenda.

Should you have any questions regarding my responses or care to discuss them in further detail please do not hesitate to contact me.

JOHN W. WITT, City Attorney

By

Thomas F. Steinke

Deputy City Attorney

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