



CITY OF COSTA MESA

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FROM THE OFFICE OF THE INTERIM DIRECTOR OF COMMUNICATIONS

PRESS RELEASE

May 11, 2011

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City of Costa Mesa to respond to concerns raised by Californians Aware

COSTA MESA, CALIF.—The Costa Mesa City Attorney's Office is reviewing legal issues raised in a May 10 letter (attached below) from [Californians Aware](#) about the City's ad hoc council working groups and their compliance with the Brown Act, and will have a response by Monday, May 16, 2011.

Four of the five council working groups (Economic Development; Sports and Recreation; Policies, Procedures and General Plan; and Motel Issues) are not currently meeting and have not planned future meetings because of more pressing City priorities. Each of those committees had met once, with the exception of the Motel Issues Working Group, which hasn't met.

The Budget and Capital Improvements Working Group has convened 12 times since January 2011, concentrating on outsourcing issues. With the City's preliminary 2011-2012 budget scheduled to be delivered to the City Council and public on May 17, the committee's work has been completed, and the Budget Working Group's final oral report will be made at the same council meeting.

The working groups were initiated early this year to review specific "ideas and concepts along with staff in a more preliminary and informal manner before an idea or topic is presented to the full City Council at either a Study Session or regular City Council meeting," according to a Jan. 13, 2011 staff report.

May 10, 2011

SENT BY ELECTRONIC AND POSTAL MAIL

RE: Working Groups and the Brown Act

Honorable Gary Monahan, Mayor
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Mayor Monahan,

This letter is to caution you that the Working Groups created by the Council at its January 18, 2011 meeting are legislative bodies required to comply with the Ralph M. Brown Act (Government Code Section 54950 *et seq.*). The Act in Section 54952 states:

*As used in this chapter, "legislative body" means: ******

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. . . advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

The working groups are plainly standing committees, having been given, by title and staff description as presented for approval, distinct and continuing areas of subject matter jurisdiction.

The titles assigned to the five "working groups" are Economic Development; Sports and Recreation; Policies, Procedures and General Plan; Budget and Capital Improvements; and Motel Issues. The Agenda Report supporting the staff recommendation to create these groups presented the same rationale for doing so as applies to questions of efficiency in any legislative body—namely, a division of labor at the preliminary level of deliberation to present the full body with refined recommendations developed by committees comprising members with particular expertise, interest or both in defined areas or recurring policy or administrative concern.

All governing bodies in all organizations of any size or complexity, up to and including state legislatures and the Congress, have proceeded by subject matter committee to screen proposals for consideration by the full body. Calling such bodies "working groups" or "*ad hoc*" collectives—neither of which expressions appears in the Brown Act—results in no distinction that would dispense with application of that statute. "*Ad hoc*" is particularly misapplied and misleading in that it suggests a focus on a particular, well-defined problem the resolution of which will terminate the committee's reason for being and will thus discharge it. In the California Legislature, for example, the *ad hoc* approach is taken via "select" committees, which study particular issues, hold hearings and typically produce final reports, but do not hear legislative proposals, which are instead channeled through one or more of the standing committees.

The staff's Agenda Report repeatedly emphasizes the advantages of "informality" in the proposed Working Group approach. It should be noted that there is no necessary conflict between compliance with the Brown Act and the kind of informality encouraging the exploration of issues and proposals at the committee level. The entire Council can call a special meeting on any topic for any reason at any time upon 24 hours notice posted in one public location in the city, and can deal with the announced issue as informally as it cares to, so long as the public is permitted to attend (unless the discussion is lawfully closed) and is given a reasonable opportunity to address the Council on the announced topic(s) of the meeting. The Working Groups have the same flexibility.

If by "informality" the value being emphasized is freedom from public observation and comment, then that freedom has long been recognized as alien to the Brown Act. As noted in an early leading case interpreting the Act,

In this area of regulation, as well as others, a statute may push beyond debatable limits in order to block evasive techniques. An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent.

Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, 263 Cal. App. 2d 41, 50 (1968).

While the Working Groups are intended to report their recommendations to the full Council in open session, and while Working Group members are apparently being advised not to communicate with non-members on the matters under study, the fact remains that if the group's meetings are private, the public will have no sense (unless it is told) of just what avenues were explored, what options were examined and discounted or discarded, or who met with the group in guiding its inquiries or formulating its proposals. The public will be presented with a package to react to, and one with weeks or months of momentum behind it by the time it reaches the Council, needing only one of three votes to be approved.

Please take the necessary steps to see that the Working Groups begin immediately to comply with the Brown Act. And please consider that the Council's failure to do so will result in my recommendation to our Litigation Committee that we seek the appropriate court order(s) to ensure such compliance.

Cordially,



Terry Francke
General Counsel

cc: Mayor Pro Tem Jim Righeimer
Council Member Eric Bever
Council Member Wendy Leece
Council Member Stephen Mensinger
City Manager Tom Hatch
City Attorney Kimberly Hall Barlow