

Brief City Council Discussion About Whether to Place Matter on a Future Agenda Is Not a Violation of the Brown Act

08.17.2016

ATTORNEYS

Peter M. Thorson

A city council's six minute discussion about whether to place an item on a future agenda did not violate the Brown Act, and public agencies may use California's anti-SLAPP statute to move to dismiss a case alleging Brown Act violations, according to a new decision from the California Court of Appeal.

In *Cruz v. City of Culver City*, five residents sued the City and its council members after the Council spent six minutes asking questions about a letter it received from a church which sought to change parking restrictions in the Plaintiffs' neighborhood. The Council did not discuss the merits of the parking issues raised in the letter, but did ask questions of the Public Works Director and placed the matter on a future meeting agenda for consideration. Plaintiffs contended that the discussion of the letter as a non-agenda item violated the Brown Act. Plaintiffs also claimed that the Council was barred from considering the requested changes by the City's own procedures that only allowed residents to request changes in the parking ordinance.

In ruling on the City's motion to dismiss under California's rules disfavoring Strategic Lawsuits Against Public Participation ("SLAPP"), the court ruled that Plaintiffs were unlikely to prevail on their claim of violations of the Brown Act. The Court noted that the Council only asked brief questions of the Public Works Director and only discussed the issue of whether to place the matter on a future agenda, both of which are allowed by Government Code Section 54954.2(a)(2). The Court of Appeal also rejected the Plaintiffs' argument that the Council did not have authority to place the proposed changes to the parking ordinance on a future agenda. The Court of Appeal concluded that Brown Act only governs agenda processes to insure public access to meetings and does not address the authority of a city council to take an action.

The City obtained dismissal of Plaintiffs' suit under California's anti-SLAPP statute. This statute protects against lawsuits that chill the constitutional right of freedom of speech and provides a procedure for early dismissal of such

lawsuits. The Court of Appeal rejected Plaintiffs' contention that their suit was exempt from the anti-SLAPP law because it was brought in the "public interest" to remedy the Council's alleged Brown Act violation. The Court of Appeal held that that exemption applies only to suits brought "solely" in the public interest. Because the Plaintiffs' complaint sought personal relief in the form of preventing any changes to the parking restrictions that would affect their neighborhood, the public interest exception did not apply.

If you have any questions, or would like more information about how this case may affect your agency, please contact Peter Thorson, Craig Steele or Isra Shah of the Public Law Department.