

A Public Agency Meeting Agenda Must Identify a Project's CEQA Exemption Under the Brown Act

10.27.2022

ATTORNEYS

Nicholas R. Ghirelli

The Brown Act requires that a public agency meeting agenda include a "brief general description of each item of business to be transacted or discussed at the meeting . . ." An agency's adoption of an environmental document under the California Environmental Quality Act (CEQA), such as an environmental impact report or negative declaration, is a distinct item of business that must be disclosed on the agenda, even if the environmental document is one component of a larger project. In *G.I. Industries v. City of Thousand Oaks*, the court of appeal extended this Brown Act requirement to CEQA findings of exemption.

In *G.I. Industries*, the City of Thousand Oaks considered the award of a franchise agreement to a waste hauler. The posted agenda omitted any reference to the city finding the agreement exempt from CEQA. On the day of the meeting, following the 72-hour agenda posting deadline, the city supplemented the agenda with a staff recommendation that the city council find the franchise agreement exempt from CEQA for several reasons. Later that day, the city council approved the franchise agreement and found the agreement exempt from CEQA.

The court of appeal concluded that the posted agenda violated the Brown Act by omitting the city council's CEQA finding—a distinct item of business transacted at the meeting. The Brown Act applies even though CEQA does not require a formal public hearing for an exemption. The court rejected the suggestion that city staff had already made the CEQA determination long before the meeting because, the court said, the city council makes the ultimate decision on whether a CEQA exemption applies. Even where staff makes such a determination, the agenda must give notice of the CEQA exemption. The court declared the City's CEQA exemption void and remanded the case back to the trial court to evaluate whether the agreement itself is void.

The court noted that its "decision will not unduly burden local public agencies" as most city activities do not qualify as "projects" under CEQA because they have no potential environmental effect. Based on this case, public agencies should identify the CEQA determination on all items of business that potentially

qualify as a “project” under CEQA.

If you have any questions, or would like more information about the Brown Act, please contact **Nicholas Ghirelli** or any other attorney in our **Public Law Department**.