

CLIENT NEWS BRIEF

Letter Saves City From Potential Brown Act Violations

Sometimes public entities stumble despite their best efforts to dutifully comply with the Brown Act. Fortunately, the Brown Act allows these entities to fix certain violations by identifying the problem and promising never to do it again.

Public entities faced with allegations of Brown Act violations can look to *TransparentGov Novato v. City of Novato* as a guide to avoid ensuing litigation.

TransparentGov Novato v. City of Novato

In *TransparentGov Novato*, a group of city residents filed a lawsuit against the City of Novato. Before filing suit, the group had sent a letter to the City alleging a Brown Act violation after councilmembers discussed a controversial project *which was not on the agenda*, and subsequently voted to establish a subcommittee to consider the project at a future meeting. In a responding letter, the City promised that going forward it would only create subcommittees if the item is on an agenda. The City also amended its own policy manual requiring all requests for future agenda items to be in writing. *TransparentGov Novato* filed suit after the City issued the letter and amended its policy.

In affirming the trial court's decision in favor of the City, the Court of Appeal found that the underlying basis for the lawsuit had been resolved because the City had amended its policy and "provided an 'unconditional commitment to cease, desist from, and not repeat the [allegedly wrongful] past action.'" The court was persuaded by the unequivocal nature of the City's new policy to support its conclusion that there was "no reasonable basis to believe that [the] past action would be repeated." The court acknowledged that while policy changes do not automatically invalidate pending Brown Act litigation, the policy change in this case was adopted *before* *TransparentGov Novato* filed suit. The timing of the adoption convinced the court that it was less likely that the City would repeat the alleged violation. The court affirmed the trial court's judgment and awarded the City of Novato its costs on appeal.

Takeaways

The *TransparentGov Novato* case emphasizes the fact that the Brown Act requires courts to dismiss lawsuits alleging Brown Act violations when public entities provide an "unconditional commitment" to stop and not repeat the allegedly wrongful past action. (Gov. Code, § 54960.2, subs. (c)(1) & (3).) A letter by itself does not necessarily guarantee that a court will determine that the public entity provided an "unconditional commitment." Actions speak louder than words, and courts will take the public entity's other actions into consideration before making a determination.

Public entities already facing viable allegations of Brown Act violations may want to consider adopting or changing their policies in a manner that unequivocally negates the prospect that the alleged violation will reoccur. If

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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the public entity determines that a particular allegation is viable and decides to amend or adopt its policy, it should do so before a lawsuit is filed, if possible.

If you have any questions about *TransparentGov Novato v. City of Novato*, or the Brown Act in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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