

*STAFF REPORT**CITY OF OCEANSIDE*

---

DATE: January 16, 2013

TO: Honorable Mayor and City Council

FROM: John P. Mullen, City Attorney

SUBJECT: **ADOPTION OF ORDINANCE AMENDING CHAPTER 2, SECTION 2.1.64(g) OF THE OCEANSIDE CITY CODE MODIFYING THE APPOINTMENT PROCESS FOR REGIONAL BOARDS AND COMMISSIONS**

**BACKGROUND**

The City has received correspondence dated December 21, 2012, from Attorney Corey Briggs, on behalf of his client San Diegans for Open Government, asserting alleged violations of the Brown Act in connection with the City Council's action on December 5, 2012, amending the Council's regular meeting schedule to add a regular meeting for December 12, 2012. Mr. Briggs claims: (1) the City did not provide the required twenty-four hour notice for the December 5 meeting; and (2) the meeting was not called to order until over an hour after the time noticed for the special meeting. Because of these alleged Brown Act violations, Mr. Briggs claims the actions taken on December 5 must be rescinded.

Mr. Briggs also asserts Brown Act violations in connection with the meeting on December 12. Specifically, Mr. Briggs claims the City did not post the agenda for the entire seventy-two hour period that preceded the meeting on its website. In addition, Mr. Briggs alleges the December 12 regular meeting was scheduled in violation of Oceanside City Code section 2.1(a) as no council resolution was formally adopted to amend the meeting schedule.

The City has also received correspondence dated December 21, 2012, from attorney Maria Severson, on behalf of Mayor Wood, alleging violations of the Brown Act in connection with the decision by three members of the council to call a special meeting for December 5, 2012, for the purpose of amending the regular meeting calendar. Ms. Severson claims that the December 12 meeting was in fact a special meeting not a regular meeting. She further alleges the action taken to amend the meeting schedule without adoption of a formal resolution violated section 2.1(a) of the City Code.



## ANALYSIS

Government Code section 54960.1 permits interested parties with standing to file lawsuits to determine if the local legislative body has complied with specified Brown Act statutes. To state a cause of action, a complaint must allege: (1) that a legislative body of local agency violated one or more enumerated Brown Act statutes; (2) there was action taken by the local legislative body in connection with the alleged violation; and (3) that before commencing the action, plaintiff made a timely demand of the legislative body to cure or correct the action alleged to have been taken in violation of the enumerated statutes and the legislative body did not cure or correct the challenge action with the required time period. *Boyle v City of Redondo Beach* (1999) 70 Cal. App. 4<sup>th</sup> 1109, 1116-1117. If the legislative body cures or corrects the alleged violation, the Brown Act lawsuit is required to be dismissed and such cure or correction shall not be construed as evidence of a violation of a Brown Act.

By re-adopting the proposed ordinance at a regular council meeting on January 16, 2013, the City Council has the ability to foreclose the two potential Brown Act lawsuits identified above. The City Attorney's Office has reviewed all notices for meetings in question. This Office believes the notices for the two meetings in question met the requirements of the Brown Act. Nevertheless, if the City Council re-adopts the challenged ordinance, the two threatened Brown Act suits cannot proceed in court and the City will avoid the cost of defending unnecessary litigation. In addition, by re-adopting the ordinance, the City Council will render any claim for violation of City Code section 2.1(a) moot. Therefore, it is recommended that Council re-adopt the ordinance amending section 2.1.64(g) of the Oceanside City Code modifying the appointment process for regional boards and commissions.

### PREPARED AND SUBMITTED BY:

  
John P. Mullen  
City Attorney

### REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager







1 next year no later than the first city council meeting in December. During years when there is  
2 no municipal election in November, the mayor shall present his or her nominations for all  
3 regional boards and commissions for the next year no later than the second city council meeting  
4 in December. The mayor's nominations shall be subject to confirmation by majority vote of the  
5 entire city council, including the mayor. If the mayor's nominee to a regional board or  
6 commission is rejected by majority vote of the entire city council or if the mayor does not  
7 submit nominations in the times prescribed in this section, any council member may thereafter  
8 present a nomination for appointment to a regional board or commission at a properly noticed  
9 meeting, subject to confirmation by majority vote of the entire city council, including the  
10 mayor. The City's representative to a regional board or commission may be recalled by  
11 majority vote of the entire city council, including the mayor, for any reason at a properly noticed  
12 city council meeting. Vacancies on a regional board or commission created by the recall of the  
13 City's representative may be filled by nomination of the mayor or any council member, subject  
14 to confirmation by majority vote of the entire city council, including the mayor.

15 SECTION 2. The city clerk of the City of Oceanside is hereby directed to publish this  
16 ordinance once within fifteen (15) days after its passage in the North County Times, a  
17 newspaper of general circulation published in the City of Oceanside.

18 SECTION 3. This ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day  
19 from and after its final passage.

20 SECTION 4. Severability.

21 If any section, sentence, clause or phrase of this Ordinance is for any reason held to be  
22 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision  
23 shall not affect the validity of the remaining portions of this Ordinance. The city council hereby  
24 declares that it would have passed this ordinance and adopted this Ordinance and each

25 ///  
26 ///  
27 ///  
28 ///

1 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections,  
2 subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

3 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
4 California, held on the Fifth day of December, 2012, and, thereafter,

5 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
6 Oceanside California, held on the \_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

7 AYES:

8 NAYS:

9 ABSENT:

10 ABSTAIN:

11 MAYOR OF THE CITY OF OCEANSIDE

12  
13 ATTEST:

APPROVED AS TO FORM:

14  
15 \_\_\_\_\_  
16 CITY CLERK

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
\_\_\_\_\_  
CITY ATTORNEY

AN ORDINANCE OF THE CITY OF OCEANSIDE AMENDING CHAPTER  
2, SECTION 2.1.64 OF THE OCEANSIDE CITY CODE MODIFYING THE  
APPOINTMENT PROCESS FOR REGIONAL BOARDS AND  
COMMISSIONS

