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## City of Lafayette pays legal fees award following Brown Act violation

By Jennifer Wake

Following a Dec. 4, 2020 order by Contra Costa Superior Court Judge Edward Weil, the city of Lafayette on April 5 paid an award of attorneys fees totaling \$113,118 (minus credit for costs) to a group of seven Lafayette residents who challenged three closed sessions of the City Council in 2016 involving a land use application for a tennis court cabana on Las Trampas Road.

Last March, the First Appellate District ruled the city council violated the Brown Act Open Meeting Law by holding closed sessions before three public hearings without identifying the matter and disclosing information on the agenda. The applicant's attorney had told city planning department staff that he would sue the city if the city continued its refusal to allow the cabana project to move forward. The city planner alerted the city attorney, who discussed the litigation threat with the council in closed session on July 25, 2016, but did not provide the council with the city planner's note of the communicated threat, and the note wasn't placed in the meeting agenda packet.

The Court of Appeal agreed with the plaintiffs that the city violated the Brown Act and ruled the city was not allowed "to thwart its duty of public disclosure in this manner." The Court held that a record of a litigation threat to be discussed in closed session must be included in the agenda packet made available to the public before a meeting.

The Brown Act generally requires that governing bodies, such as a city council, conduct their business in open session allowing for public participation, according to an April 2020 client brief written about the case by Lozano Smith Attorneys at Law. "Under certain exceptions, governing boards may conduct business in 'closed session,' out of the view and participation of the public," it stated. "One such exception allows governing boards to discuss pending or threatened litigation in closed session, provided that the closed session discussion is properly noticed and any action taken during closed session is 'reported out' once the board returns to open session."

While the court upheld the issue that a record of a litigation threat should have been included in the agenda packet, the court rejected the plaintiff's argument that the cabana project was null and void under Government Code 54960.1, which authorizes a court to find null and void an action taken in violation of the Brown Act.

The League of California Cities sought to depublish the opinion on the grounds that "the standard practice of public agencies statewide does not conform to the Court of Appeal's opinion."

Had the opinion been unpublished, Weil wrote, "the Court would find this a case in which a fee award would be unjust," but the award is appropriate since published opinion require changes in the operating procedures of local state governments.

Reach the reporter at: [jennifer@lamorindaweekly.com](mailto:jennifer@lamorindaweekly.com)

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