
Special Council Meeting Agenda

Wednesday, November 2, 2016

4:00 PM

Indian Wells Council Chamber/Executive Conference
Room



The Indian Wells City Council welcomes and encourages participation at City Council meetings. The Council requests speakers present their remarks in a respectful manner, within the 3 minute time limit, and focus on issues which directly affect the City or which are within the subject jurisdiction of the City. Please fill out a blue Speaker Request form and give it to the City Clerk, preferably before the start of the meeting.

Any public records, relating to an open session agenda item, that is distributed within 72 hours of the meeting is available for public inspection at City Hall reception, 44-950 Eldorado Drive, Indian Wells during normal business hours.

1. CONVENE THE CITY COUNCIL, PLEDGE OF ALLEGIANCE AND ROLL CALL

MAYOR DANA REED
MAYOR PRO TEM RICHARD BALOCCO
COUNCIL MEMBER DOUGLAS HANSON
COUNCIL MEMBER TED MERTENS
COUNCIL MEMBER TY PEABODY

2. APPROVAL OF THE FINAL AGENDA

3. PUBLIC COMMENTS

The Council requests speakers present their remarks in a respectful manner, within the 3 minutes time limit, and focus on issues which directly affect the City or which are within the subject jurisdiction of the City. The Mayor will call upon the members of the public to address the Council. When you're called please come forward to the podium, and state your name for the record.

The Brown Act, with certain exceptions, does not permit the Council to discuss or take action on issues not listed on the agenda. The Council may respond briefly to statements made or questions posed, request clarification, or refer the item to Staff.

A. PUBLIC COMMENTS

B. RESPONSE TO PRIOR PUBLIC COMMENTS

4. CLOSED SESSION

Once the closed session has ended, the City Attorney or presiding officer will make any announcement required by the Brown Act relative to reportable actions taken during the closed session.

- A. [1543-16](#) **Conference with Legal Counsel Regarding Anticipated Litigation. Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2). Number of Potential Cases: 1.**

5. GENERAL BUSINESS

The Mayor will call upon the members of the public to address the Council regarding the agenda item being considered. After the public has provided comment, the item is closed to further comment and brought to the Council for discussion and action. Public comments are limited to 3 minutes per speaker, please state your name for the record.

- A. [1544-16](#) **Direction to City Attorney to Respond to October 13, 2016 Correspondence from Desert Recreation District Alleging Brown Act Violation at September 15, 2016 City Council Meeting**

RECOMMENDED ACTIONS:

Council **CONSIDERS** the DRAFT responsive letter to the Desert Recreation District and makes any **AMENDMENTS** to the letter; and

AUTHORIZES and **DIRECTS** the Mayor to sign, and staff to send to the Desert Recreation District, a letter responding to the District's October 13, 2016 letter to the Mayor, which was copied to Council Members, alleging a "potential" Brown Act violation at the September 15, 2016 City Council meeting.

Attachments: [October 13, 2016 Desert Recreation District Letter](#)
[Draft Responsive Letter](#)

6. ADJOURNMENT

To a regularly scheduled meeting of the City Council to be held at 1:30 p.m. on November 17, 2016 in the City Hall Council Chambers.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Chief Deputy City Clerk at (760) 346-2489. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. 128 CFR 35.102.35.104 ADA Title III

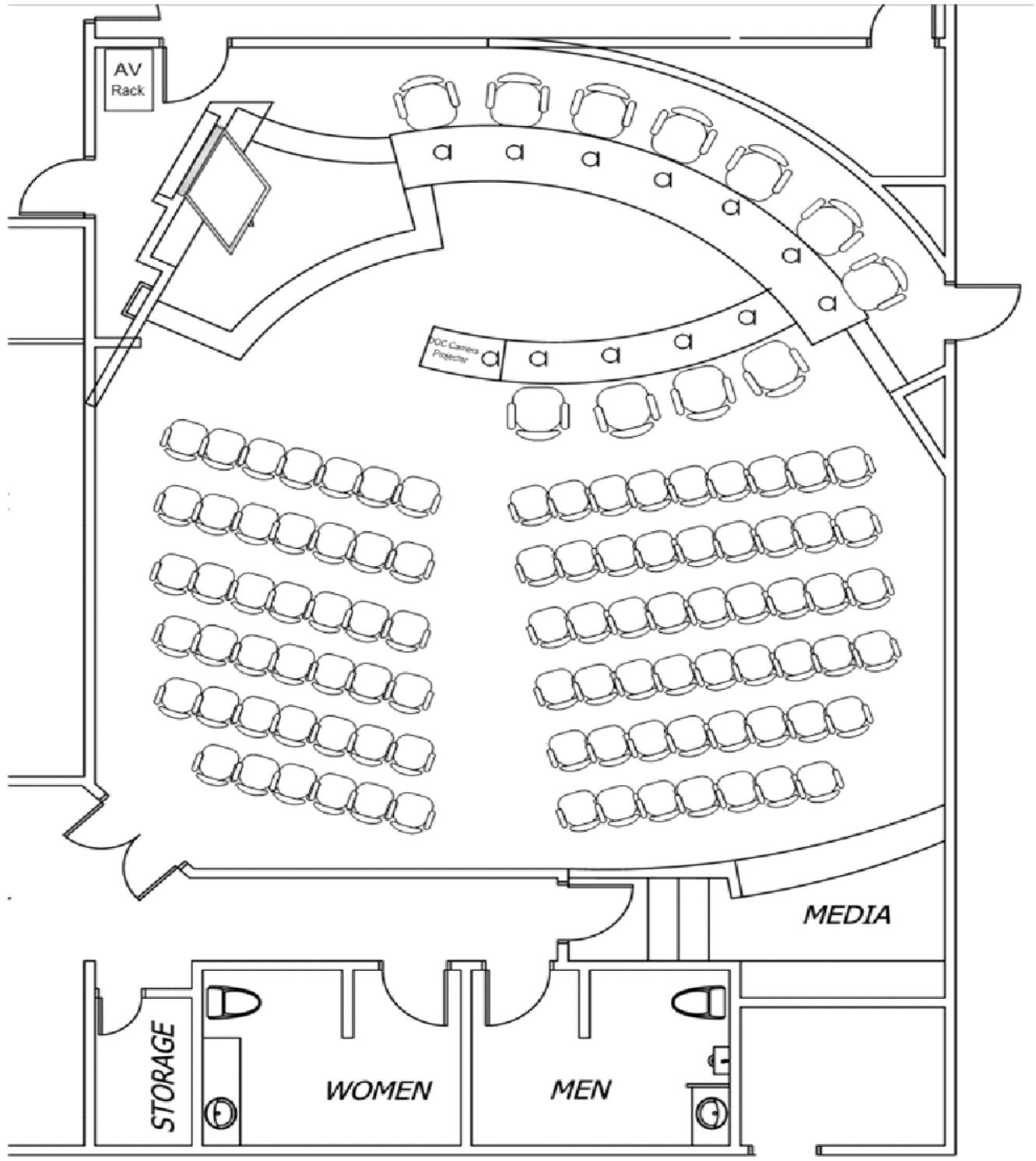
Affidavit of Posting and Notice

I, Anna Grandys, certify that on October 28, 2016, I caused to be posted and served upon all members of the City Council, a notice of a City Council Special Meeting to be held on November 2, 2016 at 4:00 p.m. in the City Hall Council Chambers/Executive Conference Room.

Notices were posted at Indian Wells Civic Center, Village I [Ralph's], and Indian Wells Plaza [Indian Wells Chamber of Commerce], and were delivered to all City Council members.



Anna Grandys
City Clerk





City of Indian Wells

44-950 Eldorado Drive,
Indian Wells

11/2/2016

File #: 1543-16 **Item #:** A.

Conference with Legal Counsel Regarding Anticipated Litigation. Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2). Number of Potential Cases: 1.



11/2/2016

File #: 1544-16 Item #: A.

Indian Wells City Council ***Staff Report - City Attorney***

Direction to City Attorney to Respond to October 13, 2016 Correspondence from Desert Recreation District Alleging Brown Act Violation at September 15, 2016 City Council Meeting

RECOMMENDED ACTIONS:

Council **CONSIDERS** the DRAFT responsive letter to the Desert Recreation District and makes any **AMENDMENTS** to the letter; and

AUTHORIZES and **DIRECTS** the Mayor to sign, and staff to send to the Desert Recreation District, a letter responding to the District's October 13, 2016 letter to the Mayor, which was copied to Council Members, alleging a "potential" Brown Act violation at the September 15, 2016 City Council meeting.

DISCUSSION:

The City received a letter from Kevin Kalman, General Manager of the Desert Recreation District ("DRD") dated October 13, 2016 (the "Letter"), in which Mr. Kalman alleges a "potential" violation of the Ralph M. Brown Act at the September 15, 2016 City Council meeting (the "Meeting"). The DRD alleges the City Council "apparently" took action concerning commencement of proceedings to have the City detach from the DRD, or perhaps at least took some other unspecified action concerning such detachment. The DRD asserts that any such action violated the Brown Act, because the posted agenda for the Meeting did not list such possible action.

The City Attorney and staff have reviewed the videotape of the Meeting, and have determined the City Council took no action, by motion or otherwise, to commence detachment proceedings pertaining to the DRD. At most, there was a brief mention in a staff report concerning Item 7.B. "Strategic Planning Session to Provide Direction to Staff Relating to Pavilion Improvements, Entertainment Additions, and Resident Amenities at the Indian Wells Golf Resort," and in passing and brief discussion by the City Council for that item, with respect to possible detachment as a strategy to raise future revenue for the City. Although not referenced in the Letter, there was brief and passing Council discussion of possible detachment from the DRD under Item 9.A. "Indian Wells Golf Resort 10-Year Fund Review" on the agenda for the Meeting.

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The Brown Act and, in particular, Government Code Section 54960, et seq., provides that any interested person may commence an action in court alleging a Brown Act violation. The complaining party must first send a letter to the allegedly offending public entity demanding a cure of the alleged violation. The public body must cure any violation within 30 days and so inform the complaining party, or else inform that party of its intention not to cure. If the latter, the complaining party then has 15 days to file a challenge in court.

Since the City Council took no action at the Meeting concerning a possible detachment from the DRD, there was no violation of the Brown Act and no need to cure any action allegedly taken. Furthermore, the description of items to be considered at the Meeting met the requirements of the Brown Act for posting of agendas, and the City Council took no action beyond what was described in the agenda and the agenda packet made available to the public.

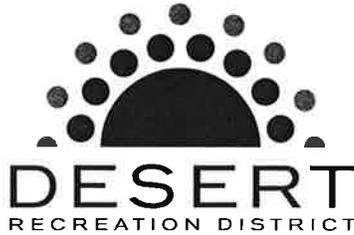
The City Attorney has prepared a DRAFT responsive letter to the DRD for Council's consideration and approval. Under the Brown Act, the letter must be sent by the City Council, and thus it is appropriate for Mayor Reed to sign it if authorized and directed by the Council.

FISCAL IMPACT:

There is no anticipated fiscal impact by merely dispatching the proposed responsive letter to the DRD. If the DRD files a complaint in court and prevails, the City might by order of the court be liable for payment of its own attorney fees and costs, plus those of the DRD. On the other hand, if the City prevails, the court could similarly order the DRD to reimburse the City for its fees and costs if the court determines that the DRD's complaint was frivolous or without merit.

ATTACHMENTS:

1. October 13, 2016 letter from DRD to Mayor Reed alleging "potential" Brown Act violation
2. DRAFT letter from Mayor to DRD responding to October 13, 2016 letter



October 13, 2016

Mayor Reed
 City of Indian Wells
 44-950 El Dorado Drive
 Indian Wells, CA 92210-7497

Re: Indian Wells Potential Violation of the Ralph M. Brown Act

Dear Mayor Reed and Council Members:

This letter calls to your attention a potential violation of a key provision of the Ralph M. Brown Act. At its September 15, 2016 meeting, the City apparently approved an action to begin detachment from the Desert Recreation District ("DRD"). That action was not shown on the agenda and not communicated to DRD, which had no knowledge of the discussion of that action. Council member Hanson and Indian Wells staff have been on notice since late spring that DRD is opposed to this action because it harms recreation and park services throughout the Valley, including those provided to Indian Wells residents. Equally importantly, members of the public had no notice of that action and thus could not comment on the item.

DRD discovered this potential violation when your consultant contacted the County of Riverside to "initiate" the detachment process. Since the minutes for the September 15, 2016 meeting are not available, and you have cancelled your regular October 20, meeting, we base this letter on the statement in the September 15, 2016 agenda description and staff report: *The item was entitled "(See Indian Wells City Council Staff Report, September 15, 2016, Strategic Planning Session to Provide Direction to Staff Relating to Pavilion Improvements, Entertainment Additions, and Resident Amenity Scenario at the Indian Wells Golf Resort: The third consideration was detachment from Desert Recreation District. This option allows the City to target locally generated resources to existing and new recreation services and opportunities including the IWGR. The City has retained Urban Futures Inc. to develop the necessary plans and reports to process with the LAFCO (Local Agency Formation Commission) process to detach from DRD."*

Attachment #1

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DRD knows that action was taken on this specific "third consideration" because your consultant called Tina Grande at the County to "initiate" the detachment process. As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon. The City certainly is aware of how to clearly describe a agenda item, as can be seen from the resolution to increase the City Manager's base salary that also appears on the September 15, 2016 agenda, which contains a clear description of the action to be taken. Reluctantly, we have reached the conclusion that the City intentionally was avoiding DRD's and the public's input.

The Brown creates a legal remedy for illegally taken actions. This letter is the first step in that legal remedy. Therefore, pursuant to Government Code Section 54960.1, we demand that the City either drop the action completely or cure and correct the illegally taken action by formally and explicitly withdrawing from any commitment made, and disclosing publicly at subsequent meeting why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by DRD and members of the public at the same meeting, notice of which is properly included on the posted agenda for an open session. We have notified the County and LAFCO that the action alleged to have been taken legally was flawed and with that they should not proceed.

At the same time, despite what we believe are representations to the contrary, DRD strongly opposes this action and will act accordingly. You recently received a letter from DRD to your Mayor; that letter was provided to all Council members and clearly states DRD's position. We hope that this matter will end now.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform us of your decision not to do so.

Sincerely,


Kevin Kalman, General Manager

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| Cc: | Ty Peabody, Council Member | Wade McKinney, City Manager |
| | Doug Hanson, Council Member | John Benoit, 4rth District Supervisor |
| | Ted Mertens, Council Member | George Spiliotis, Executive Director (LAFCO) |
| | Richard Balocco, Council Member | Tina Grande, Principal Management Analyst (RivCo) |

DRAFT FOR DISCUSSION PURPOSES

CITY OF INDIAN WELLS

November 2, 2016

Mr. Kevin Kalman
General Manager
Desert Recreation District
45-305 Oasis Street
Indio, CA 92201

Re: October 13, 2016 letter concerning alleged “potential” violation of Ralph M. Brown Act (the “Letter”)

Dear Mr. Kalman:

The City of Indian Wells (the “City”) has received your Letter, described above. In particular, you indicated in the Letter that you were calling to the City’s attention “a potential violation” of a key provision of the Brown Act. You further indicated that at the City Council meeting on September 15, 2016 (the “Meeting”), the City Council “apparently approved an action to begin detachment from the Desert Recreation District (“DRD”) (the “Alleged Action”). You then indicated that in violation of the Brown Act, the Alleged Action was not shown on the posted agenda of the Meeting.

Please be advised that contrary to your assertions in the Letter, the City Council of the City has not violated the Brown Act. In particular, the City Council took no action at the Meeting to authorize and direct either the City Attorney, City staff or any City consultant to commence detachment proceedings pertaining to the DRD. Nor has the City, or its City Council, made any decision as of now to detach from the DRD. As such, your assertion in the Letter of a “potential violation (emphasis added)” whereby the City “apparently approved (emphasis added)” of the Action has no basis in fact.

Any fair review of the videotape of the Meeting clearly indicates that there was at most a brief discussion of possible detachment by the City from the DRD as part of a broader general discussion about strategies for the City to raise future revenue to deal with future City financial obligations. One strategy mentioned in a written staff report presented at the Meeting generally alluded to earlier retention by the City of a consultant to research and analyze possible detachment from the DRD. However, a description in a staff report of the “development of plans and reports to process with the LAFCO” does not mean that such plans and reports have even been prepared, let alone that the City has directed that any such plans and reports be filed with LAFCO for purposes of a detachment application.

DRAFT FOR DISCUSSION PURPOSES

In light of the foregoing, it is not surprising your Letter describes this matter as merely a “potential” violation of the Brown Act, and one where the City Council merely “apparently approved” the Action – week terms and descriptions which by their nature evidence the fundamental speculation and resulting inaccuracy of your allegation of a Brown Act violation. Its mere brief reference in a staff report and passing discussion at the Meeting do not rise to the level of any requirement to list detachment from the DRD as an action item on the posted agenda of the Meeting, especially when no action was requested of or taken by the City Council concerning such detachment. To require such detailed agenda descriptions would mean that posted agendas be voluminous treatises listing every issue set forth in a written staff report and which might be discussed spontaneously by legislative body members at a meeting. The Brown Act does not call for such oppressive, inefficient and counterproductive measures in posting agendas. Instead, as set forth in Government Code Section 54954.2 a legislative body is only required to “post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting.... A brief general description of an item generally need not exceed 20 words.” Such descriptions were accurately posted on the agenda for the Meeting as follows: “Item 7.B. Strategic Planning Session to Provide Direction to Staff Relating to Pavilion Improvements, Entertainment Additions, and Resident Amenities at the Indian Wells Golf Resort,” and “Item 9.A. Indian Wells Golf Resort 10-Year Fund Review.”

In any event, no matter how you view the staff report or how the agenda for the Meeting was posted, there clearly was absolutely no motion made or other type of action taken by the City Council to commence proceedings or make any filing with LAFCO for detachment by the City from the DRD. In fact, if there was arguably any general consensus of the City Council without action, it was at most to have staff continue to analyze and strategize the possibility of such detachment, along with other possible strategies for the City to raise revenues in the future.

This correspondence is intended to constitute the City’s response to your Letter, as provided in Government Code Section 54960 et seq. The City calls to your attention Government Code Section 54960.5, which first provides that a court may award court costs and reasonable attorney fees to a plaintiff who prevails in a court proceeding alleging a Brown Act violation, but also provides, in pertinent part, that “A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.”

In light of the foregoing, neither an admission by the City of a Brown Act violation nor a proposed cure of any violation is in order, and neither is forthcoming.

Very truly yours,

Dana Reed, Mayor
City of Indian Wells