

Good morning Dan,

As you asked, here is a summary of our conversations on Monday, March 6, 2017. We understand that the Trinidad City Council passed a Short Term Rental Ordinance subject to certification by the California Coastal Commission. The Mayor then helped organize a letter and petition to the Coastal Commission staff requesting that the Commission expedite review and certification. The City Council did not direct the Mayor to organize the petition, although it is consistent with the direction the Council gave to City staff. The Mayor and other Councilmembers signed the petition identifying their official City capacities. Another councilmember and some community members expressed concern this violated the Brown Act and constituted an “abuse of power.”

We reviewed two issues:

1. Did the petition constitute a “meeting” subject to Brown Act requirements; and
2. Was the use of City official titles an abuse of power by the Mayor and other Council members.

Issue 1: As we discussed, we do not have enough information to determine whether the signing of the petition by a majority of Councilmembers qualified as a “meeting” subject to the Brown Act. That depends on the facts of how the petition was circulated. Generally, a “meeting” under the Brown Act is a congregation of a majority of the members of the legislative body to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the body or the local agency. Attached is a section of the Liebert Cassidy Whitmore workbook regarding the Brown Act. The materials provide examples of meetings covered by the Act, including serial meetings.

Issue 2: The use of official titles does not constitute an abuse of power. Elected officials do not give up their First Amendment rights to speak out on public issues upon being elected to office. (*City of Fairfield v Superior Court of Solano County* (1975) 14 Cal.3d 768,780-782.) We discussed an opinion letter issued by the Fair Political Practices Commission which upheld the right of a city council member to sign campaign literature opposing a ballot measure using the member’s official title. The FPPC opinion provided that the Fair Political Practices Act does not prohibit the member from signing campaign literature opposing a ballot measure using the title of council member, where the campaign literature was paid for by a political committee opposing the measure and was not printed on city stationery or at city expense. Here the petition does not appear on City letterhead and we have no reason to believe it was financed with City resources.

If you have any questions, please do not hesitate to contact me. Thank you for allowing us to be of service to you and the City of Trinidad.

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