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City Manager and City Council

Re: Brown Act Issues/ Letter to Coastal
Commission signed by Council Members.

Note that this is a legal opinion that may be kept confidential, but the City Council is free to share it with the public if the Council chooses to do so.

I am writing to render a more formal opinion as to the propriety of a Petition signed by four City of Trinidad Council Members in support of a letter sent to the Coastal Commission by Richard Bruce wherein he urged the Coastal Commission to speedily approve the new Short-Term Rental Ordinance. I have previously opined no Brown Act violation occurred.

As I understand the situation, Mr. Bruce, on his own initiative, sent a letter to the Coastal Commission and then numerous citizens of the City of Trinidad signed a Petition supporting his letter that was sent to the Coastal Commission wherein the first line stated: "We, the undersigned, are residents or homeowners of the city of Trinidad." Many of the signatories then added by their signature titles such as "City Council Member" or "Former City Councilor" or "Planning Commissioner" or similar such designations.

A significant uproar has occurred including a front page newspaper article with claims that a Brown Act violation has occurred. I have, therefore, reconsidered this matter carefully. Let me express my opinion as clearly and concisely as I can be and then I will explain my opinion. ***It is impossible for the foregoing situation to constitute a Brown Act Violation.***

There are several reasons for my opinion. The first is that the Petition is signed by numerous people only some of whom are City Council or Planning Commission Members. Thirty-Nine signers of the Petition do not list ANY current City position at all. The Petition also starts out noting that it is sent by "residents" or "homeowners" of the City. By its face, the Petition could never reasonably be construed as an act of the City. Even if it could be, it merely urges approval of what the City has officially voted to pass and forward to the Coastal Commission for approval.

The Brown Act does not apply to this situation at all. City Council Members are entitled to petition the government. They are not required to indicate that they are doing so as private citizens as the Petition does not purport to be anything other than

a petition from residents and homeowners. Moreover, since no City action was involved, there is no potential City action to be set aside.

I would agree that if four City Council Members are to sign a document not in their capacity as Council Members that it is a good idea to indicate they are not doing so as an act of the City, but only as citizens. But even at that, this Petition does so from the reverse angle in that it bluntly states it is being sent by “residents” and “homeowners.” The Petition does not purport to be an act of the City nor could anyone so reasonably construe it as such given the nature of the document. The City does not have 39 private citizens sign its official acts.

Candidly, this is so far from a Brown Act violation with zero possible negative consequences that I am mystified as to how it became such a political issue.

Finally, not only is there no violation of the Brown Act, but no state can lawfully prevent its officials from writing or signing such a Petition as it would violate Federal Constitutional rights that supersede state law. In the United States, the right to petition the government is guaranteed by the First Amendment to the United States Constitution.

The right to free speech includes the right to not speak. Hence, Council Members cannot be compelled to write a disclaimer on their writings or petitions that are not undertaken as part of their duties to indicate that they are not acting in an official capacity. The City could require them to indicate when they are acting in a City capacity which usually happens as a matter of course anyway. The City could adopt a voluntary “ethics” guideline should it chose to do so suggesting that in the future on such petitions that Council Members indicate they are not acting in an official capacity, but it would just be a suggestion. I doubt it could be enforced.

Cordially,

Andrew Strich