



Honorable Mayor and Members of the Hermosa Beach City Council

REPORT TO COUNCIL REGARDING AN ANONYMOUS CURE AND CORRECT LETTER

CEQA: The City finds that this action is not a project under the California Environmental Quality Act pursuant to Public Resource Code § 21065 and State Guidelines Section §§ 15061(b) & 15378.

(City Attorney Patrick Donegan)

Recommended Action:

Staff recommends City Council:

1. Receive a report on the anonymous “cure and correct” letter sent to the City and direct the City Attorney to send a response letter pursuant to Government Code section 54960.1(c)(2) informing the anonymous drafter that the City Council determined that the “cure and correct” letter asserts Brown Act violations where no violations occurred and that the City Council will not cure and correct the challenged action; or
2. Provide alternative direction.

Executive Summary:

On April 9, 2025, the City received an anonymous “cure and correct” letter under Government Code 54960.1 of the Brown Act (“Anonymous Letter”) (**Attachment 1**). This Anonymous Letter, signed only by a “Concerned Hermosa Beach Property Owner” alleges various Brown Act violations related to the City’s March 25, 2025 meeting. Specifically, a report on the City’s short-term vacation rental (“STVR”) regulations and the City Council’s motion to receive and file of this report (*i.e.*, the City Council took no legislative action to change anything and the City’s STVR regulations remained unchanged).

Background:

At its March 25, 2025 meeting, City Council received a report on the City’s current STVR regulations. At the end of this item, City Council moved to receive and file the item and did not provide direction to City staff to bring back or explore any modifications to the City’s STVR ordinance. Two weeks later, the City received an anonymous “cure and correct” letter under the Brown Act alleging various Brown Act violations related to the City’s March 25, 2025 STVR item. The only information that is known about the drafter of the letter is that they are allegedly a “Concerned Hermosa Beach Property Owner” with

the email address of HermosaBeachPropertyOwner@proton.me. Because the City does not have a physical address, the only way to send any response letter would be by e-mail only. Further, and somewhat surprisingly, the drafter of this letter added a disclaimer to the Anonymous Letter (which references Frank Angel multiple times and asserts details about Frank Angel’s previous correspondence with the City) that states:

“I am not affiliated with or represented by Frank Angel, Angel Law, or any other law firm, and this letter is submitted independently or any pending or potential lawsuit, in the public interest.”

The Brown Act allows interested persons to “demand” the City cure or correct an action alleged to have been taken without complying with the Brown Act. This procedure allows the City to account for its actions or take corrective action, as appropriate.

Written demands must be filed within 90 days from the date the action was taken or within 30 days if the action was taken at a public meeting on a non-agenda item. The Brown Act requires that the City Council determine whether it will cure or correct the challenged action within 30 days from when it received a timely demand. (Government Code section 54960.1(b)). No lawsuit may be filed until after the City has a chance to respond to a demand to cure or correct an action.

Past Council Actions

Meeting Date	Description
March 25, 2025	City Council received and filed a report on the City’s STVR regulations.

Discussion:

The City seriously considers every alleged violation of the Brown Act. The Anonymous Letter is timely (*i.e.*, within 90 days) and is included as **Attachment 1**. To assist the Council in evaluating the claims and determining a course of action, this staff report first describes the legal framework dealing with “cure and correct” letters and then analyzes the allegations and legal contentions set forth in the Anonymous Letter and then suggests a course of action.

Government Code section 54960.1 posits the process and requirements for the submittal and consideration of a “cure and correct” letter under the Brown Act. In short, prior to commencing an action to declare an action by a legislative body as null and void, the legislative body must be sent a letter describing the alleged violation and given a chance to “cure or correct” an alleged violation within the stated timeframe. The cure and correct demand letter must be sent within 90 days and the legislative body then has 30 days to respond. The person who sends the cure and correct letter has 15 days from receipt of the legislative body to commence an action and if the legislative body takes no action, then this 15-day period to file an action commences after the 30-day period expires.

Pertinent to the discussion before the City Council tonight is subsection (b) of section 54960.1 which posits what alleged violations of the Brown Act are subject to this cure and correct process. In other words, not all alleged Brown Act violations are subject to this process, only violations of sections 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 of the Brown Act are subject to the cure and correct procedures.

The anonymous April 9, 2025 “cure and correct” letter alleges three things violated various provisions of the Brown Act. As explained below, the alleged violations of the Brown Act did not occur or the alleged violations are not subject to the Brown Act’s cure and correct provisions.

Cure and Correct Letter Allegation #1

“Reading of Undisclosed Material Not in the Agenda Packet”

The Anonymous Letter asserts that Councilmember Ray Jackson read aloud a previously undisclosed letter from Mr. Higgins to California Department of Housing and Community Development (HCD) during the Short-term Vacation Rental (STVR) discussion. Further, the Anonymous Letter alleges this constitutes a violation of Government Code section 54954.2(a)(1) (requires all items and materials to be identified and made public before discussion)¹ and section 54957.5 (requires that materials distributed to the Council also be made simultaneously available to the public).

As an initial matter, an alleged violation of Government Code section 54957.5 is not subject to the cure and correct process listed in section 54960.1. Further, the anonymous drafter of the letter makes no allegation that Mr. Higgins’ letter to HCD was distributed to all or a majority of the City Council. Thus, no facts or allegations are alleged that even constitute a violation of 54957.5.

As to the alleged violation of 54954.2(a)(1)—which is subject to the cure and correct procedures—this section requires that the City Council, at least 72 hours before a meeting post “an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency’s internet website, if the local agency has one.” This section does not require that the City post a letter from a resident to a separate State agency on an item related to City business. No allegation is submitted that the City’s agenda was somehow deficient in its description of the STVR item.

¹ The descriptive parentheticals are taken verbatim from the cure and correct letter so that the City Council can see the alleged violations unedited. The City does not agree that the descriptive parentheticals found in the letter are necessarily accurate full and complete explanations of the law.

Cure and Correct Letter Allegation #2

Suppression of Timely Written Public Comments

The Anonymous Letter alleges that written comments by Attorney Frank Angel (who recall, is allegedly not affiliated with the anonymous drafter) was not properly posted to the agenda packet.² The Anonymous Letter alleges that this violates Government Code section 54954.3(a) (requires equal treatment of all viewpoints in public comments) and section 54957.5 (requires all documents submitted to the Council to be made publicly available, not selectively included or omitted).

Neither of these code sections are subject to the Brown Act’s cure and correct process under Government Code section 54960.1. Further, section 54954.3, among other things, requires that the City Council allow members of the public to directly address the legislative body via public comment. The March 25, 2025 meeting had general public comment and then a public comment on each agenda item. Thus, there was no violation.

The allegation under section 54957.5 is addressed in another agenda item and to reiterate, does not allege that materials were not provided to the City’s ultimate City decision-makers, the City Council. Only that these materials were not posted on the agenda or available for public inspection.

Cure and Correct Letter Allegation #3

Improper Denial of Zoom Participation

The Anonymous Letter alleges that at the March 25, 2025 City Council meeting, Frank Angel was improperly disallowed to participate via Zoom. The anonymous drafter states that “Mr. Angel personally confirmed that “he followed all participation instructions and was not on mute.” The Anonymous Letter alleges this violates Government Code section 54953(b)(3) (guarantees the right to participate in teleconferenced meetings) and section 54954.3(a) (protects public comment rights during open sessions).

As explained above, section 54954.3 is not a section subject to the cure and correct procedures. Further, the City Council’s March 25, 2025 meeting was absolutely consistent with the Brown Act’s public comment requirements. In fact, the City Council even went above and beyond by waiting patiently for Frank Angel to figure out the issues with his audio. The City Clerk called on him and he was given ample time to speak. As explained below (and on the agenda), the City Council is not responsible to fix or ensure that virtual commenters do not have technical issues. What is more, the Mayor even offered and

² The third bullet point under this allegation references a written submittal by another resident on April 7, 2025 and then an acknowledgment by the City Attorney at the April 9, 2025 meeting. There was no April 9, 2025 meeting and the City is not aware of what April 7, 2025 written rebuttal this anonymous drafter is referencing.

directed Frank Angel to call in on a different device and if so, the City Council would **reopen** public comment to allow Frank Angel to speak. This did not occur. Far from a Brown Act violation, Frank Angel's technical difficulties and the City Council's delay and offer to allow to call back in on a separate device highlights the City's strong commitment to public comment. Because Frank Angel could not get his audio to work and did not call back in on a separate device as an above and beyond option offered by the City Council, the allegation that the City somehow violated the Brown Act is false.

As to the alleged violation of 54953(b)(3), this Brown Act section is subject to the cure and correct procedure. However, this section lists the requirements for when the City Council uses the formal Brown Act teleconferencing rules. The City Council did not use teleconferencing rules during its March 25, 2025 meeting. In fact, the City Council agenda was crystal clear that, "[p]ublic comment is only guaranteed to be taken in person at City Hall during the meeting or prior to the meeting by submitting an eComment for an item on the agenda." Further, that zoom participation is offered as a courtesy only and that the City does not guarantee these remote options will be technically feasible and that they may be terminated for whatever reason." This agenda language is provided on purpose so that Frank Angel and other public commenters are made aware that the only way to guarantee public comment is to show up in person. Because Frank Angel did not and chose to avail himself to the City's courtesy Zoom feature, this in no way transforms the City's meeting into one using the teleconferencing rules. Thus, no Brown Act violation occurred.

Based on the above, the City Council acted in compliance with the Brown Act during its March 25, 2025 item on the City's STVR regulations and there is no need to cure and correct anything. Further, the "action" taken by the City Council was to receive and file the report. No change or formal legislative action even occurred. Thus, it is unclear what "action taken by the legislative body of a local agency" would be challenged under section 54960.1. Staff seeks City Council action to direct the City Attorney to send a written response via email to the anonymous sender of the letter informing them of the City Council's decision not to cure and correct the challenged action for the above mentioned actions.

However, if the City Council so desires, the STVR report could be put on a future agenda, even though it is not required.

Environmental Review:

This discussion is not a "project" subject to CEQA" because it has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. (State CEQA Guidelines, § 15378(a).) In the alternative, the discussion falls within the "common sense" exemption set forth in State CEQA Guidelines section 15061(b)(3), which exempts activity from CEQA where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

General Plan Consistency:

This report and associated recommendation have been evaluated for their consistency with the City's General Plan. Relevant Policies are listed below:

Governance Element

Goal 1. A high degree of transparency and integrity in the decision-making process.

Policy:

- **1.4 Consensus oriented.** Strive to utilize a consensus-oriented decision-making process.

Goal 2 The community is active and engaged in decision-making processes.

Policy:

- **2.6 Responsive to community needs.** Continue to be responsive to community inquiries, providing public information and recording feedback from community interactions.

Fiscal Impact:

There are no fiscal impacts associated with the recommended actions.

Attachment:

Anonymous April 9, 2025 Cure and Correct Letter

Respectfully Submitted by: Patrick Donegan, City Attorney

Concur: Myra Maravilla, City Clerk

Legal Review: Patrick Donegan, City Attorney

Reviewed By: Angela Crespi, Deputy City Manager

Approved: Suja Lowenthal, City Manager