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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FIRST AMENDMENT COALITION,

Plaintiff and Appellant,

v.

LOS ANGELES CITY COUNCIL,

Defendant and Respondent.

B234049

(Los Angeles County
Super. Ct. No. BC448745)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Soussan G. Bruguera, Judge. Affirmed.

Law Office of Judy Alexander and Judy Alexander for Plaintiff and Appellant.

Carmen A. Trutanich, City Attorney, Laurie Rittenberg, Assistant City Attorney,
Gabriel S. Dermer, Deputy City Attorney, for Defendant and Respondent.

First Amendment Coalition (Coalition) appeals from the stipulated judgment entered after the trial court denied its motion for summary judgment in this action seeking declaratory and injunctive relief against the Los Angeles City Council (Council) under the Ralph M. Brown Act (Brown Act) (Gov. Code, § 54950 et seq.).¹ Coalition contends that the judgment should be reversed and summary judgment entered in its favor because it is entitled to declaratory and injunctive relief based on an item description on the Council’s agenda for a special meeting on February 18, 2010. We disagree and thus affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. Coalition’s Notice of an Alleged Brown Act Violation and the Council’s Response

On March 16, 2010, Coalition sent a letter to the Council demanding that the Council cure or correct an alleged violation of the Brown Act that occurred at its meeting on February 18, 2010, whereby, according to Coalition, the Council “took action to eliminate up to 4,000 city jobs . . . without giving the public, press, or the persons affected the required notice that such action was to be considered.” Coalition maintained that the Council’s notice for the February 18, 2010 meeting provided an insufficient description of the item on the agenda intended to encompass the purported elimination of city jobs. That description stated, “CONSIDERATION, DISCUSSION and POSSIBLE ACTIONS addressing the Fiscal Year 2009-10 and 2010-11 budget deficits, City staff and others to report on budget balancing matters and possible closed executive session as it may relate to bargaining instructions relative to negotiations with employees and employee organizations. [¶] [Council may recess to Closed Session, pursuant to Government Code Section 54957.6, to meet with the City’s labor negotiator(s) relative to the above matter.]” Coalition stated that the agenda description “did not inform the public that the [Council] would consider the elimination of city jobs” and “was clearly intended to conceal the true nature of the matters that the [Council] intended to discuss and act upon.” Coalition demanded that the Council “reconsider[] the topic of

¹ Statutory references are to the Government Code.

eliminating up to 4,000 city jobs at a meeting with a posted agenda that makes clear such job elimination will be considered by the [Council] at the meeting.” Absent such reconsideration, Coalition stated that it would file a lawsuit seeking a declaration that the action taken by the Council on February 18, 2010 was null and void.

The Council sent a letter on April 8, 2010 responding to Coalition. In that letter, the Council asserted that the agenda description satisfied the notice requirement of the Brown Act to encompass the challenged action taken at the February 18, 2010 meeting, which was an amending motion recommending Council take action to “1. REITERATE its commitment to eliminate 1,000 positions and instruct[] the Personnel Department and all Departments and Offices of the City, including elected offices, to eliminate an additional 3,000 position authorities, by any means necessary, including layoffs. 2. INSTRUCT all Departments and offices to ensure that all positions are identified within 45 days and scheduled for elimination as of July 1, 2010. 3. DIRECT the City Attorney to update an emergency fiscal resolution and report back to the Council within one week.” According to the Council, the agenda “adequately described the . . . item [of business] so that an interested member of the public could make a determination whether to monitor or participate in the discussion; and, the amending motion was germane to the subject matter” of the agenda description, namely, action to address the City’s budget deficit. “Moreover, interested members of the public understood that the elimination of positions (or layoffs) would be a possible budget-balancing action as described on the agenda.” The Council opined that no Brown Act violation had occurred and took no further action in response to Coalition.

2. *Coalition’s Complaint for Declaratory and Injunctive Relief*

On April 28, 2010, Coalition filed a complaint for declaratory and injunctive relief against the Council. According to Coalition, the Council’s adoption at its February 18, 2010 meeting of the motion “reiterating its commitment to eliminate 1,000 jobs and instructing City departments and offices to eliminate another 3,000 jobs, all by July 1, 2010” constituted a violation of the Brown Act because the agenda description for the February 18, 2010 meeting was “so broad and vague” that it “failed to

inform interested members of the public that the [C]ouncil was contemplating massive layoffs of City employees to address the budget deficits.” Although in its cure or correct letter, Coalition had stated that it would seek a declaration that the Council’s action on February 18, 2010 was null and void, it did not request such relief in its complaint. Instead, it requested more limited relief, namely, a declaration that the agenda description did not satisfy the Brown Act and a mandatory injunction directing the Council “to place on its agendas in the future only item descriptions sufficient to adequately inform members of the public about the subject matter and potential actions to be considered pursuant to such description, so that members of the public can determine whether to monitor or participate in any particular [Council] meeting”

3. *Coalition’s Summary Judgment Motion and the Trial Court’s Denial*

On September 15, 2010, Coalition filed a motion for summary judgment, arguing that, as matter of law, the agenda description for the February 18, 2010 meeting was too vague to satisfy the notice requirement of the Brown Act. In support of its motion, Coalition presented evidence that: (1) the Council met 72 times, three to five times per week, between February 10, 2010 and July 9, 2010; (2) the allegedly vague description appeared on agendas for 56 of those 72 meetings; (3) the agenda item was discussed at six of those 56 meetings, three times in closed session and three times in open session; (4) at the February 18, 2010 meeting “the Council adopted a motion reiterating [its] commitment to eliminate 1,000 job[] positions and instructing City departments and offices to eliminate an[] additional 3,000 position authorities by any means necessary, including layoffs, all by July 1, 2010”; (5) “no members of the public spoke at [the February 18, 2010] meeting regarding the [agenda item or the Council’s motion], and at least two members of the Council expressed significant concerns that the [m]otion was being considered and voted upon without notice to or input from the public”; and (6) after the February 18, 2010 meeting “approximately 160 speaker cards were submitted by citizens wishing to address the Council regarding the [agenda item and the Council’s motion].” According to Coalition, this evidence demonstrated that the agenda description

failed to inform the public that the Council “might adopt a measure calling for massive job cuts” and thus did not satisfy the Brown Act.

In opposition to summary judgment, the Council argued that the agenda description satisfied the Brown Act because, as required, it provided a brief general description of the item to be addressed, which was “‘the Fiscal Year 2009-10 and 2010-11 budget deficits,’ including possible ‘negotiations with employees and employee organizations’” This description, asserted the Council, encompassed the action taken regarding the potential elimination of City positions and “could not have been ‘specific’ given that the Council sought to explore every conceivable budget reducing option, not simply layoffs[,]” although the need for layoffs had been discussed as early as April and May 2009 when the City adopted its budget for the 2009-2010 fiscal year. According to the Executive Officer of the Office of the City’s Chief Legislative Analyst, the agenda description “appeared on every agenda for which it was possible that [the] Council would discuss the precise issues listed, *i.e.*, the budget deficits and possible ways to balance the budget. Because the topics of discussion and possible actions were so broad, it was not possible to list any budget-balancing method with particularity.”

In addition, the Executive Officer declared that, “[d]uring the[] Council meetings [from February to March 2010], City staff was directed to report on a broad range of budget balancing measures. These included directives to City negotiators to reopen dialogue with labor partners; identifying unused funds for potential reprogramming; pursuing public-private partnerships relative to City assets, enhancing revenues through improved revenue collection and special fund reimbursements; reducing departmental expenditures for expenses and equipment; and looking at opportunities to downsize government while maintaining the City’s core services. Every department manager was instructed to look for creative ways to address the City budget[,]” given that “the City was facing an unprecedented budget crisis. The 2009-10 General Fund deficit was projected at over \$208 million. The 2010-11 General Fund deficit was projected to be \$484 million[,] which represented over 10% of the City’s General Fund revenues. Because of the limitations on local governments to raise revenues, every conceivable

budget reducing action would need to be considered to balance the City budget in accordance with State law.” The Council noted that the motion adopted at the February 18, 2010 meeting related to positions and position authorities, not to specific employees, and represented that, despite adoption of the motion, “no mass layoffs of any sort have occurred. Every effort was made to transfer positions from the General Fund to Special Funded positions in order to generate savings and reduce the need for layoffs. Over 3,000 position authorities were eliminated through the adoption of the 2010-11 Budget. The total authorized number of General Funded positions has been reduced from approximately 26,000 in 2009-2010 to less than 23,000 in 2010-2011. Since March 2010, less than 400 actual layoffs have occurred.”

On February 28, 2011, based on the evidence submitted and the parties’ arguments, the trial court issued an order denying summary judgment. According to the court, Coalition “did not meet its burden of establishing that the [agenda description] at issue failed to satisfy the Brown Act. Although [Coalition] contends that the [a]genda . . . description was inadequate to inform the public that the Council would consider the elimination of a large number of job positions and job position authorities, the cases cited . . . in support of this argument are distinguishable. [Fn. omitted.] [¶] The [agenda description] at issue in this case described that the Council would discuss the budget deficits and budget balancing, with possible closed sessions relating to negotiations with employee unions. Also, the [agenda description] stated that such issues would be the subject of consideration, discussion, and *possible actions*. All that is required under the [Brown Act] is a ‘brief general description of each item of business to be transacted or discussed at the meeting.’ . . . [T]his brief description ‘generally need not exceed 20 words.’ With these requirements in mind, the Court finds that [Coalition] failed to cite to any applicable case law or authority to suggest that . . . [section] 54954.2 [of the Brown Act] required the Council to list every conceivable action that it may or may not have considered in addressing the massive budget deficits.” Alternatively, the court concluded that triable issues of fact regarding compliance with the Brown Act precluded entry of summary judgment in favor of Coalition.

4. *The Stipulation and Entry of Judgment*

After the denial of summary judgment, Coalition and the Council, representing that whether the Council had violated the Brown Act as alleged was a question of law, stipulated to entry of judgment in favor of the Council to facilitate an immediate appeal of the matter. The trial court signed the stipulation on March 28, 2011, and entered judgment in favor of the Council on May 3, 2011. Coalition filed a timely notice of appeal.

DISCUSSION

1. *The Brown Act Facilitates Public Participation in Local Government Decisions and Curbs Misuse of the Democratic Process*

“‘The Brown Act requires that most meetings of a local agency’s legislative body be open to the public for attendance by all.’ [Citation.] Its objectives include facilitating public participation in local government decisions and curbing misuse of the democratic process by secret legislation. [Citation.]” (*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1075.) In enacting the Brown Act, the Legislature found and declared “that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” (§ 54950.)

To implement the Legislature’s intent, “[a]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.” (§ 54953, subd. (a).) In addition, “[n]o legislative body shall take action by secret ballot, whether preliminary or final.” (§ 54953, subd. (c).) “Every agenda for regular meetings shall provide an opportunity for members of the public to directly

address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body" (§ 54954.3, subd. (a).) The same is true for special meetings: "Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item." (*Ibid.*)² "Although a legislative body may reasonably regulate and limit the amount of time allocated to each speaker, it must ensure that the right of public comment is carried out (§ 54954.3, subd. (b)) and may not prohibit public criticism of the policies or actions of the legislative body (§ 54954.3, subd. (c))." (*Galbiso v. Orosi Public Utility Dist.*, *supra*, 167 Cal.App.4th at p. 1076.)

"At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall 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." (§ 54954.2, subd. (a)(1).) In the case of a special meeting, "[t]he notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body." (§ 54956.)

To enforce the Brown Act requirements, "[t]he district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by

² "A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body. . . ." (§ 54956.)

members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body” (§ 54960, subd. (a).) In the case of a violation of section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5, “[t]he district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency . . . is null and void” (§ 54960.1, subd. (a).) Before the district attorney or an interested person commences an action seeking to declare an act null and void, he or she shall make a demand of the legislative body to cure or correct the alleged violation. (§ 54960.1, subd. (b).)

2. *Coalition Is Not Entitled to Summary Judgment to Obtain Declaratory or Injunctive Relief*

As noted, Coalition does not seek a determination under section 54960.1, subdivision (a)(1), that any action taken at the Council’s February 18, 2010 special meeting is null and void. Rather, attempting to use section 54960, subdivision (a), as authority for relief, it seeks a declaration that the agenda description failed to satisfy the notice requirement of the Brown Act and an injunction requiring the Council to comply with the notice requirement on a going forward basis. Section 54960, however, permits an “interested person” to file a lawsuit by mandamus, injunction, or declaratory relief to stop or prevent violations or threatened violations of the Brown Act or to determine the applicability of the Brown Act to actions or threatened future action of a legislative body like the Council.³ (§ 54960, subd. (a).) Coalition does not seek to stop or prevent a violation or threatened violation, nor does it request a declaration regarding the applicability of the Brown Act to any action taken at the February 18, 2010 meeting.⁴

³ The Council is a legislative body subject to the Brown Act. (§§ 54951, 54952, subd. (a).)

⁴ Under the Brown Act, an “action taken” is “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.” (§ 54952.6.)

Indeed, it specifically maintains that it is not concerned with the amending motion adopted at the February 18, 2010 meeting. Although Coalition asserts that it is entitled to an injunction directing the Council to comply with the Brown Act's notice requirements in the future, it presented no evidence suggesting that the Council has threatened to violate those requirements or that injunctive relief is necessary to stop or prevent such a violation from occurring. (See *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 917 ["Brown Act authorizes injunctive relief that is based on . . . a showing of '*past actions and violations that are related to present or future ones*'"].) Thus, Coalition has not demonstrated that it is entitled to declaratory or injunctive relief under section 54960, subdivision (a).

Coalition contends that the agenda description for the February 18, 2010 special meeting and numerous other meetings was insufficient to provide the public with the Brown Act's required notice regarding the "elimination of thousands of city jobs[.]" The agenda description, however, continued to appear on meeting agendas after the February 18, 2010 meeting, and the public gave significant input at other meetings. And the undisputed facts demonstrate that the amending motion never came to fruition. Under those circumstances, Coalition has not established that the public was prevented from commenting on an action taken by the Council in violation of either the letter or the spirit of the Brown Act.

DISPOSITION

The judgment is affirmed. The Council is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.