

CEQA Categorical Exemption Must Be Agendized under Brown Act

On February 15, 2023, the California Supreme Court issued an order depublishing this decision. While still binding on the parties to the case, the decision can no longer be cited or relied on as authority.

The City of Thousand Oaks violated the Ralph M. Brown Act by adopting a CEQA exemption without having listed the exemption as an item on its agenda for at least 72 hours before the meeting. *G.I. Industries v. City of Thousand Oaks* 84 Cal. App. 5th 814 (2022).



Petitioner challenged a decision by the City to approve an exclusive solid waste franchise agreement with a competing entity. Petitioner asserted that the City violated the Brown Act by approving a Notice of Exemption under CEQA without adequate notice to the public.

The City posted an agenda that included consideration of the proposed franchise agreement, but the agenda made no mention of CEQA. It was not until the day of the City council meeting that a supplemental item was posted

giving notice of the staff's recommendation that the City find the agreement to be categorically exempt from CEQA. At the meeting, the City Council approved the franchise agreement and the CEQA exemption.

The court held that the Brown Act applied to the City's determination that the franchise agreement was categorically exempt under CEQA, and that 72 hours' prior notice was accordingly required. The court reasoned that the City's CEQA determination was an item of business at a regular meeting of a local legislative body and the failure to provide the required notice of this agenda item deprived the public of a meaningful opportunity to be heard.

The court rejected the City's claim that its adoption of the CEQA exemption was a component of the agenda item awarding the franchise agreement, reasoning that the CEQA exemption involved a separate action by the City and concerned discrete, significant issues of CEQA compliance. The court also rejected the City's contention that the Brown Act was inapplicable because CEQA does not require a public hearing for a determination that a project is exempt. The Brown Act is not limited to actions that require a public hearing. The court observed that a finding that a project is exempt from CEQA is not a minor matter as such findings foreclose any analysis of the project's environmental impact. The City's determination regarding the CEQA exemption was "an aspect of the People's business" and had to be appropriately included as an item on the City council agenda.

The City also argued that applying the Brown Act to a CEQA exemption would place an intolerable burden on local agencies, requiring basic administrative decisions such as the purchase of paperclips to be "agendized." The Court dismissed this claim, pointing out that the specific section of the Brown Act at issue applies only to an item of business to be discussed at a regular meeting of the legislative body, and that "the vast majority of the City's day-to-day business is not transacted or discussed at a regular meeting of the legislative body." Moreover, for a categorical exemption to apply, the activity must qualify as a "project" under CEQA and "[m]ost of the City's activities would not qualify as a project because they have no potential environmental effect."

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