



*City of Arts & Innovation*

# City Council Memorandum

**TO: HONORABLE MAYOR AND CITY COUNCIL** **DATE: MAY 18, 2021**

**FROM: MAYOR PRO TEM JIM PERRY ON** **WARDS: ALL**  
**BEHALF OF THE RIVERSIDE CITY COUNCIL**

**SUBJECT: POSSIBLE DISCLOSURE OF CLOSED SESSION INFORMATION BY COUNCIL MEMBER CHUCK CONDER**

## **ISSUES:**

The issue presented for City Council consideration is a discussion involving Council Member Chuck Conder. This is based upon the possible disclosure of confidential closed session information relating to formal litigation filed against the City of Riverside. This issue is brought forward on behalf of the City Council.

## **RECOMMENDATIONS:**

That the City Council conduct a discussion and consider the totality of facts and any information presented or submitted by Council Member Conder regarding the possible disclosure of closed session discussions, and take whatever action, if any, that the City Council deems appropriate.

## **BACKGROUND:**

The Ralph M. Brown Act located in the California Government Code 54950 was passed in 1953. The Brown Act guarantees the public a right to attend and participate in meetings of local legislative bodies. It solely applies to California city and county agencies, boards, and councils.

A public legislative body may exclude the public from meetings, holding what are called "closed sessions" or "executive sessions" in the following circumstances:

1. To determine whether an applicant for license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license.
2. To its negotiator to grant authority regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property.
3. To confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.
4. To meet with the Attorney General, District Attorney, Agency Counsel, Sheriff, or Chief of Police, or their respective Deputies, or a Security operations manager on matters posing a threat to the security of public services or a threat to the public right of access to public services or public facilities.

5. To consider the appointment, employment, evaluation of performance, discipline, or dismissal of public employee or to hear complaints or charges brought against the employee by another person or employee.
6. To meet with the local agency's designated representative regarding the salaries, salary schedules or fringe benefits of its representation.

The Brown Act expressly authorizes closed sessions to discuss what is considered litigation and pending litigation. That is defined as:

- A. Litigation formally initiated to which the legislative body is party.
- B. A situation where based on the advice of counsel taking into account "existing facts and circumstance" there exists a "significant exposure" to litigation; or
- C. When the agency itself has decided or is deciding whether to initiate litigation.

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interest of the employee.

The Brown Act prohibits the disclosure of confidential information acquired in a closed session by any person present and offers various remedies to address willful breaches of confidentiality. It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. Courts have held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process. Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communication, the entire body is the holder of the privilege and only the entire body can decide to waive the privileges.

## **DISCUSSION:**

During the summer of 2020, it was discovered Icetown remained open to the public during the COVID-19 pandemic in violation of State Law, State Public Health Office, Executive Orders, and CDC Guidelines. All were enacted and aimed to stop the spread of COVID-19. On September 14, 2020, after repeated warnings to close including cease and desist letters, the City of Riverside obtained a court injunction to close Icetown to the public. Attachment A.

On January 12, 2021, the City Council met in closed session to receive a legal update from the City Attorney's Office concerning this injunction. This is agenda item 8b and there was no reportable action by the City Attorney. Attachment B.

On January 13, 2021, the day following the closed session discussion, Dunn Enterprises Inc. DBA Icetown filed a lawsuit against the following: Gavin Newsom, in his capacity as Governor of California; City of Riverside, A California Government Agency; County of Riverside, A California Governmental Agency. This litigation was filed in the United States District Court for the Central District of California for Declaratory Relief, Injunction Relief and Damages. It was received by the Riverside Clerk's Office on January 29, 2021. Attachment C.

As part of this litigation, in connection with Icetown seeking a preliminary injunction, there is a written declaration from Chuck Conder who is identified as a Council Member for the City of Riverside. This declaration was executed on January 25, 2021 at Riverside, California and it has the signature of Chuck Conder. This is 4 days prior to the City receiving a copy of the litigation and 13 days after the Icetown discussion took place in closed session.

On February 12, 2021, the legal matter of Dunn Enterprises, Inc. DBA Icetown was heard in the United States District Court of the Central District of California. The City of Riverside was represented by the City Attorney's Office. At the conclusion of this hearing, Judge John W. Holcomb dismissed the complaint without prejudice and directed the court clerk to close the case. Attachment D.

On March 2, 2021, the City Council, in closed session, received another legal update concerning the injunction and litigation. Based on Council Member Conder's written declaration, he was asked by the interim City Attorney to recuse himself from this discussion. He complied with the request. This is agenda item 15 and there was no reportable action by the City Attorney. Attachment E.

On March 23, 2021, the City Council, in closed session discussed whether to initiate litigation for the possible violation. However, the City Council decided to have an open session discussion on this matter.

The issues involving Icetown were discussed by the City Council a total of two times. They both occurred in closed session on January 12, 2021 and March 2, 2021.

Attached to this report is a copy of the declaration of Chuck Conder for consideration by the members of the City Council.

On April 8, 2021, Mayor Pro Tem Perry contacted Council Member Conder. He requested a meeting between Mayor Lock Dawson, Interim City Attorney Kristi Smith, himself, and Council Member Conder and his Attorney to further discuss this matter.

On April 15, 2021, Mayor Pro Tem Perry asked Council Member Conder if he had spoken with his attorney and this discussion had not taken place.

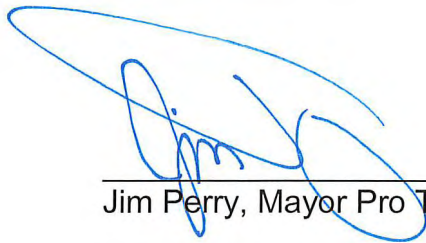
This matter can proceed to an open session discussion without waiving any attorney-client privilege or disclosing what was discussed in closed session. With the agenda and the declaration, it can be stated that the issue was only discussed in closed session. The City Council does not and will not discuss the particulars of what was discussed in closed session; however, any information provided in the declaration could have only been obtained from closed session discussions.

After careful consideration and deliberation concerning the information set forth in this report as well as consideration of any information and/or response provided by Council Member Conder, the City Council must discuss this item and decide how to proceed with this matter.

#### **FISCAL IMPACT:**

There is no fiscal impact associated with this report.

Prepared by:

  
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Jim Perry, Mayor Pro Tem

Attachments:

A. City of Riverside's Ex-Parte Application for Temporary Restraining Order and OSC RE:

Preliminary Injunction

- B. City of Riverside City Council Agenda and meeting minutes for January 12, 2021
- C. Dunn Enterprises, INC. DBA Icetown Complaint for Declaratory Relief, Injunctive Relief and Damages
- D. U.S. District Court Order denying Plaintiff's Ex-Parte Application for Temporary Restraining Order and Order to show Cause Re Issuance of a Preliminary Injunction and Dismissing Case for lack of Jurisdiction
- E. City of Riverside City Council agenda and meeting minutes of March 2, 2021