



Legislation Text

File #: 16-0019, **Version:** 1

Recommendation to rescind and reconsider an Amended and Restated Lease and Operations Agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC, previously approved by the City Council on November 17, 2015; and

Authorize City Manager, or designee, to execute any and all documents necessary for an Amended and Restated Lease and Operations Agreement No. 22697 for the Queen Mary and adjacent properties, and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC. (District 2)

On November 17, 2015, the City Council approved an Amended and Restated Lease and Operations Agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC.

On December 16, 2015, the City received a letter (Attachment "A") alleging

that such action was a violation of the Ralph M. Brown Act ("Brown Act") as follows:

On or about November 17, 2015 the City Council considered a recommendation to adopt an amended and restated lease and operations agreement and concurrent assignment with regard to the Queen Mary, a City-owned asset. The agenda item was identified on the November 17, 2015 as Item No. 14. The specific description given to this item is as follows: "Recommendation to authorize City Manager, or designee, to execute any and all documents necessary for an amended and restated lease and operations agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as successor lessee to Garrison Investment Group, LLC (District 2)." Significantly, no reference was made in the agenda description to the Queen Mary.

While the City Attorney does not believe the City Council's action violates the Brown Act as discussed below, to conserve public resources and avoid unnecessary litigation, the City Attorney recommends reconsidering the item by first rescinding the November 17, 2015 action approving an Amended and Restated Lease and Operations Agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC, and then considering the request for a new approval pursuant to this revised agenda description that specifically references the "Queen Mary".

It is the City Attorney's opinion that this item was sufficiently identified on the November 17, 2015 meeting agenda. Government Code section 54954.2 states:

(a)(1) 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.

We believe the description of the item in this case meets the statutory mandate of the Brown Act to include a "brief general description" of the matter, such that a member of the public could attend if he or she desired to observe or comment upon the matter before action was taken.

The Brown Act allows, after receipt of a written demand to cure, the City Council to reconsider the challenged item and cure the alleged defect. Importantly, doing so is specifically not an admission of wrongdoing by the public agency. (Government Code section 54960.1 (f) states: "The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter").

Thus, to avoid the possibility of unnecessary litigation, the City Council may first rescind the prior action taken on November 17, 2015 and then consider the item anew, with the revised agenda description specifically referencing the "Queen Mary".

Rather than restating the prior staff discussion, if the City Council rescinds the prior action, the November 17, 2015 Staff Report is attached (Attachment "B") for reference in considering the newly revised request.

Approve recommendation.

CHARLES PARKIN
CITY ATTORNEY