

## BUSINESS & FACILITIES UPDATE

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### **Individual Had Valid Brown Act Claim After He Was Denied Opportunity to Comment at a Special Meeting.**

On December 15, 2015, the Los Angeles City Council’s Planning and Land Use Management Committee held an open meeting. At the meeting, the committee listened to comment from members of the public, including Eric Preven, regarding a proposed real estate development project near Preven’s residence. The committee voted unanimously to make a recommendation of approval for the project to the full city council.

On December 16, 2015, the full city council held a special meeting to decide, among other things, whether to approve the recommendation of the Planning and Land Use Management Committee. A special meeting is a meeting called by a legislative body to handle an urgent matter. In contrast, a regular meeting is a meeting that occurs on a regular basis. Preven also attended the December 16th special meeting and requested the opportunity to address the full city council. However, the city council rejected his request because he had the opportunity to comment on the real estate development project at the committee meeting the previous day.

Preven then claimed that the City violated the Brown Act, which guarantees the public’s right to attend and participate in meetings of local legislative bodies, by preventing him from speaking at the December 16, 2015 meeting. He also claimed that the City had engaged in similar improper conduct at special city council meetings in May and June 2016. Additionally, Preven asserted a second claim against the City based on the California Public Records Act (“CPRA”).

The Court of Appeal found that the Brown Act does not permit limiting comment at special city council meetings on the basis that an individual has already commented on the issue at a prior, distinct committee meeting. First, the court noted that the so-called “committee exception” of the Brown Act did not apply to special meetings. Under the committee exception, a legislative body does not need to provide an opportunity for public comment if a committee of legislative body members has previously considered the item at a meeting where interested members of the public had the opportunity to comment. Using methods of statutory interpretation, the court concluded that the committee exception applied only to regular meetings, not special meetings. Second, the court noted that the provision of the Brown Act giving the public the right to address a special meeting “before or during the legislative body’s consideration” of the item did not restrict comment based on a prior, distinct meeting. The court relied on the legislative history of the Brown Act to conclude that the “before or during” language concerns only the timing of comments within a particular meeting. Accordingly, Preven alleged a valid claim under the Brown Act.

However, the court dismissed Preven’s CPRA claim. Preven conceded that he was not suing to enforce the CPRA claim and that he did not make a request for records pursuant to the statute. Accordingly, the court concluded he failed to state a claim under the CPRA.

*Preven v. City of Los Angeles* (2019) \_\_ Cal.App.5th \_\_ [2019 WL 1012134].

**NOTE:**

*LCW attorneys can help ensure that agencies are following the public comment requirements of the Brown Act.*

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