

DISTRICT COURT, ARAPAHOE COUNTY,
STATE OF COLORADO
7325 South Potomac Street
Centennial, Colorado 80112

DATE FILED: September 22, 2022 11:14 AM
CASE NUMBER: 2022CV30927

Plaintiff: THE SENTINEL COLORADO

v.

Defendant: KADEE RODRIGUEZ, in official capacity
as Records Custodian for City of Aurora

▲ COURT USE ONLY ▲

Case Number: 2022CV30927
Div. 202

**ORDER RE DEFENDANT'S MOTION REQUESTING RECONSIDERATION
OF THE COURT'S ORDER RELEASING THE
MARCH 14, 2022 EXECUTIVE SESSION RECORDING**

THIS MATTER comes before the Court on motion of Defendant Kadie Rodriguez, City Clerk, in her official capacity as records custodian of the City of Aurora (the “City”), seeking reconsideration of this Court’s prior Order releasing minutes or recordings of a March 14, 2022 executive session of the Aurora City Council. The Court, having considered the pleadings, file and applicable law finds that the motion is GRANTED.

BACKGROUND

1. This litigation was commenced with the filing of a complaint by Plaintiff, The Sentinel Colorado (the “Sentinel”) seeking the “release [of] the entirety of the March 14 [2022] Recording...” of an executive session asserting a violation of the Colorado Open Meetings Law (“COML”). Cmpl ¶2. The Sentinel asserted that during the Executive Session, which was held for the stated purpose of obtaining “legal advice,” the Council took a “roll call vote ... to end the censure proceedings pending against Councilwoman Jurinsky...” and this “formal action” in the form of a roll call vote violated

the COML. Cmpl ¶s 5, 8 and 17. Additionally, the Sentinel asserted that the notice the Council gave for convening the executive session was insufficient under the law because it simply stated, “legal advice” and did not otherwise provide the particular topic of discussion. The Sentinel sought release of the video of the executive session or in the alternative *in camera* review by the Court.

2. On July 14, 2022 the Court issued its order granting *in camera* review, based primarily on the inadequate notice given for the executive session. Ord 7/14/22, 6 (“The fact that the Agenda does not comply with the law is sufficient alone to warrant at least an *in camera* review of the meeting.”)

3. On July 26, 2014, following the *in camera* review, the Court issued an Order finding that “the subject of the Executive Session was to receive information from legal counsel on the process to be followed in addressing a censure complaint.” Ord 7/26/22, ¶5. Additionally, the review revealed that the Council “did not ‘vote’ on ending the censure action” but there was a roll-call taken as to the direction to be given to legal council, concerning the investigation. Ord 7/26/22, ¶5. The Court found that “the announcement of the Executive Session [did] not appear to comply with the requirements of the applicable statutes.” Ord 7/26/22, ¶5; §24-6-402(4), C.R.S. The Court stated that it was inclined to release the recording of the session on this basis and provided the City an opportunity to respond in light of the Court’s acknowledgment that the recording at least implicated the attorney-client privilege.

4. The City filed the within motion for reconsideration seeking to preclude release of the March 14, 2022 session recording, on the basis of attorney-client privilege arguing, in part, that “the deficient announcement of the executive session was

substantially cured by addressing and discussing the subject matter and content of the executive session during the City's subsequent City Council meeting." Mtn, 3. The City provided the Agenda for a March 28, 2022 public meeting which references "Motion to Approve the Stipulation and a Request for Payment of Attorney Fees." Mtn, Ex.A, 3/28/22 Agenda, Item 19(f). Additionally, the City attached a copy of the "packet" of information for this Agenda Item 19(f). The packet (Exhibit B) included a letter from legal counsel specifically referencing the March 14, 2022 executive session stating, in relevant part:

... on March 14, 2022 the Council directed and instructed special legal counsel to end the investigation prior to any public hearing and enter into a stipulation with Council Member Jurinsky to dismiss the charges brought against her.

Mtn, Ex.B, Agenda Packet, Burns, Figa & Will 3/24/22 letter, ¶2.

It appears undisputed that at the March 28, 2022 Council meeting, which was open to the public, the "Council discussed whether to end Ms. Jurinsky's censure on the record before taking action." Rply, 9.

5. The Sentinel objects to the City's motion, arguing that the attorney-client privilege does not apply and asserting that the City "did not 'cure' the announcement/notice violation ... because the Council merely 'rubber stamped' its formal action..." Rsp, 3.

ANALYSIS AND RULING

"Generally, motions for reconsideration are discouraged ... [and in particular] motions to reconsider interlocutory orders of the court, meaning motions to reconsider other than those governed by C.R.C.P. 59 and 60 are disfavored." *Gold Hill*

Development Company, L.P. v. TSG Sky & Golf, LLC, 378 P3d 816, 830 (Colo. App. 2015). However, in this case the Court invited the parties to file such motions because the Court recognized that the executive session involved attorney-client issues.

The Court's ruling regarding the March 14, 2022 executive session meeting was entirely focused on a violation of the OML in the form of an inadequate notice to the public regarding the subject matter of the executive session. In its July 26 Order the Court did not consider whether the City had taken any steps to cure the violation. While much of the City's motion for reconsideration was focused on further establishing the attorney-client nature of the discussion during the executive session, the motion also addressed steps taken to cure any deficient notice of the executive meeting by the subsequent March 28, 2022 public meeting. In responding to the motion for reconsideration, the Sentinel does not dispute that an OML violation can be cured by subsequent action, rather Plaintiff asserts that the subsequent March 28, 2022 meeting was a mere "rubber stamping" of the action taken in the executive session and therefore does not overcome the violation.

"[A] public body [can] cure an improperly convened executive session by holding a subsequent meeting that [is] open to the public to consider the matters discussed in the executive session. *Bjornsen v. Bd of Cty Comm'rs of Boulder County*, 487 P3d 1015, 1022 (Colo. App. 2019). However, "retroactive notice [alone] does not cure an improperly convened executive session." *Id.*

[T]he purpose of the OML is to require open decision-making, not to permanently condemn a decision made in violation of the statute. Because the focus of the OML is on the process of governmental decision making, not on the substance of the decision themselves, it follows that the OML would permit ratification of a prior invalid action,

provided the ratification complied with the OML and was not a mere ‘rubber stamping’ of an earlier decision made in violation of the act.

Colorado Off-Highway Vehicle Coalition v. Colorado Bd. Of Parks and Outdoor Recreation, 292 P3d 1132, 1137 (Colo. App. 2012).

Where the record demonstrates that at the subsequent public meeting “the Board heard additional comment from several ‘key players,’ … heard public comment from many interested parties, and engaged in renewed deliberations before announcing its ultimate decision” this is sufficient to overcome a charge that the subsequent meeting was a mere “rubber stamping” of the prior decision. *Off-Highway, Id.* at 1138.

Here, it appears clear to the Court that the March 28, 2022 public meeting of the Council clearly identified what took place at the March 14, 2022 executive session and that the Council publicly considered the proposed action to adopt a stipulation to terminate any further investigation into Council Member Jurinsky’s conduct. The Court is satisfied that the March 28, 2022 open meeting cured any OML defect in the intended executive session. The City’s motion is GRANTED and the Court will not release the recording of the March 14, 2022 executive session

SO ORDERED THIS September 22, 2022.

BY THE COURT:



Elizabeth Beebe Volz
District Court Judge