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BLC File(s): 2060.99

4 November 2022

Mayor and City Council
c/o City Clerk Elizabeth Maland
City of San Diego
202 "C" Street, 2nd Floor
San Diego, CA 92101

Via Facsimile Only to 619-533-4045

Re: Request to Cease and Desist from, and to Cure and Correct, Violations of Ralph M. Brown Act, San Diego Municipal Code, and Constitutional Rights; Notice of Intent to Sue

Dear Mayor and City Council:

On behalf of my client, Project for Open Government, I am writing to request that the City Council and all committees of the Council cease and desist from all future, and to cure and correct all past, violations of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*), the San Diego Municipal Code ("SDMC"), and the public's federal and state free-speech and government-petitioning rights that have been committed by the Council and its committees within the last 30 days.

Under the Brown Act, the City Council and its committees "shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3"; in this regard, "[e]very agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body. . . ." GOV'T CODE § 54953(e)(2)(B), § 54954.3(a).

Locally, the Rules of Council provide that "[e]very agenda for a regular Council meeting shall provide a period on the agenda for members of the public to address the Council on items of interest to the public that are not on the agenda but are within the jurisdiction of the Council"; and require the same public-comment opportunities at committee meetings. SDMC § 2.6.1, § 6.3.3.

The public also has the right to address and petition government officials without restraints on the content of the public's speech (as long as it does not incite imminent violence or criminal activity). At the federal level, these rights are found in the First Amendment to the U.S. Constitution. At the state level, Section 2(a) of the California Constitution provides that "[e]very person may speak freely," while Section 3(a) thereof codifies the right of all members of the public "to instruct their representatives [and] petition government for redress of grievances."

The City Council and its committees are violating the Brown Act, the SDMC, and the public's constitutional rights. For example, on October 27, 2022, Lori Saldaña was addressing the City Council's COVID-19 Response and Recovery Committee during non-agenda public comment.



While Ms. Saldaña was civilly criticizing the job performance of Councilmember Jennifer Campbell (who happens to be up for re-election next week) on a COVID-related matter, Committee Chair Marni von Wolpert interrupted and ordered that Ms. Saldaña's comments be muted on the grounds that "political speech" is not allowed during non-agenda public comment. Chair von Wolpert added that Ms. Saldaña could continue speaking if she did "not wish to advocate for a political candidate" and concluded with the admonishment that "we will not allow any political election speech here." The interruption and the basis given for it were both illegal.

As another example, during non-agenda public comment to the City Council on November 1, 2022, Ms. Saldaña offered polite criticism about "pay to play politics" involving a former chairman of the San Diego Ethics Commission *cum* lobbyist for business interests supporting Measure C on next week's ballot, which the Council put there. Council President Sean Elo-Rivera immediately responded by stating that "we will abide by providing folks an opportunity to speak to issues that do not relate to campaigning, but I also will draw lines when those lines are crossed, uh, just for future reference." Disallowing public comments related to a pending ballot measure put to the voters – especially one put to them by the Council – is illegal.

Also posted in the City Council chambers is a notice advising members of the public desiring to make comments to "curtail your comments to abide by this Council Policy [700-37] while addressing the Council during these proceedings that are being televised on City TV." In light of language in the Policy stating that "[t]he Government Access Channel shall not be used for the promotion of any political candidacy or for the promotion of any ballot measure," the notice is an obvious tactic to intimidate or discourage members of the public against criticizing any member of the Council who happens to be running for re-election based on his or her poor job performance and/or any matters that the Council has asked voters to consider just because the meeting is being televised. Even if the Policy were applicable to the public during non-agenda comments – which is not the case – it would not trump the SDMC, state law, or federal law.

For these reasons, my client requests that the City Council and its committees provide an unconditional written commitment to cease, desist from, cure, correct, and not repeat the past actions and threatened future actions that violate the Brown Act, the SDMC, and the public's constitutional rights. At a minimum, this requires the City to commit to stop the past actions and threatened future actions that my client is challenging: interruption or other interference with any member of the public who is (i) addressing the City Council or any of its committees during non-agenda public comment and (ii) expressing viewpoints concerning the character, conduct, or competency of any public official and/or concerning any aspect of any subject matter presented to the voters. In the absence of such an unconditional written commitment, my client will have no choice but to seek judicial recourse.

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

