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October 30, 2018

Mr. Aaron Starr
Via e-mail starrepa@gmail.com

Re: Brown Act Complaint

Dear Mr. Starr:

Thank you for inquiry regarding the Oxnard City Council meeting of October 16, 2018, and whether a Brown Act violation occurred when you were denied an opportunity to speak after council member comments. Thank you also for your clarifying e-mail dated October 20, 2018. The clarification was very helpful to my analysis.

The October 16, 2018, meeting demonstrates the different interests protected by the Brown Act. You are correct that a key component of the Brown Act is to protect public participation in government. Another key component is that members of the public should know in advance when a particular issue is to be discussed in detail. With that knowledge, all interested members of the public can decide for themselves whether to attend a meeting. In the October 16 council meeting, those two Brown Act components intersected.

At the meeting, public comment occurred as scheduled in agenda item F. During subsequent City Council Reports (agenda item H), you asked to respond to council members' comments. Mayor Flynn expressed concern that allowing your discussion may violate the Brown Act's prohibition against extended discussion of non-agenda issues. Mayor Flynn also noted that the District Attorney's Office recently addressed that aspect of the Brown Act with the Oxnard City Council. The City Attorney discussed the predicament, noting that public comment of non-agenda items had already occurred. He also noted that until he had an opportunity to research the issue, the most conservative course would be to allow you to speak. Mayor Flynn ultimately decided against that course, reiterating his concern that granting your request may violate the Brown Act.

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Based on my research, I do not find a Brown Act violation. As mentioned, the Brown Act requires public notice before a city council considers an issue. It also proscribes extended discussion of non-agenda items during council member reports. Thus, opening debate on non-agenda items during council members' reports risks violating the Brown Act. Also, while the Brown Act ensures the public's right to comment before or during consideration of an item, it does not grant a right to respond to council member comments. A city council may impose reasonable restrictions on public comment. As such, the council may require the public to comment before the council members discuss an item, which is a common practice.

I recognize that the public generally cannot predict what council members may mention in their report period. However, council member reports on non-agenda items must be brief and the Brown Act does not require an opportunity for public rebuttal to such reports. While it may seem less than ideal, the public commentary period at a subsequent meeting is available to rebut council member reports.

You also raised a concern that you were denied the opportunity to discuss these issues during your commentary on another matter, agenda item L-1. The Brown Act permits a legislative body to confine discussion of an agenda item to that item alone. Thus, Mayor Flynn properly asked you to limit your discussion to the agenda item under consideration.

Thank you for raising these issues.

Very truly yours,



CHUCK HUGHES
Chief Deputy District Attorney

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