



OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

GREGORY D. TOTTEN
District Attorney

CHERYL M. TEMPLE
Chief Assistant District Attorney

MICHAEL K. FRAWLEY
Chief Deputy District Attorney
Administrative Services

R. MILES WEISS
Chief Deputy District Attorney
Criminal Prosecutions

W. CHARLES HUGHES
Chief Deputy District Attorney
Justice Services

MICHAEL R. JUMP
Chief Deputy District Attorney
Victim & Community Services

KEVIN B. DRESCHER
Chief Deputy District Attorney
Special Prosecutions

MICHAEL BARAY
Chief Investigator
Bureau of Investigation

July 28, 2020

The Honorable Tim Flynn, Mayor
Oxnard City Council
300 West Third Street, Third Floor
Oxnard, CA 93030

Re: Violation Letter - Ralph M. Brown Act

Dear Mayor Flynn:

The District Attorney's Office received a complaint that the Oxnard City Council (Council) violated the Ralph M. Brown Act (Brown Act) at its meeting on December 17, 2019, when, prior to public comments, City Manager Alexander Nguyen spoke for approximately nine-and-a-half minutes about the city's closure of the Performing Arts and Convention Center (PACC). This item was not on the agenda. As discussed below, it is my conclusion that the discussion violated the Brown Act and this letter shall serve as a warning to avoid such violations in the future.

Government Code section 54954.2, subdivision (a)(3) states, in part:

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body *or its staff may briefly respond to statements made* or questions posed *by persons exercising their public testimony rights* under section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. (Emphasis added.)

The Honorable Tim Flynn
July 28, 2020
Page 2

The discussion regarding the PACC's closure, lasting nine-and-a-half minutes, was not a "brief announcement" within the meaning of the Brown Act. I understand the PACC was a complex matter of significant public interest and that City Manager Nguyen correctly anticipated lengthy public comment on the matter, even though it was not on the agenda. There is merit to the assertion that comments may be examined in the context in which they occurred. With lengthy commentary from the public, what constitutes a "brief" comment from a city manager may be subject to differing interpretations. However, substantive discussion lasting more than nine minutes well exceeds any appellate definition of brief commentary of which I am aware. Because the item was not on the agenda, the public was not notified the city would present significant discussion of the issue. Though some members of the public addressed the issue, the general public was not on notice the city would do so and a violation of the Brown Act occurred.

In a warning letter dated July 25, 2018, we notified you that a discussion lasting more than seven minutes regarding purchase of a financial software system exceeded a "brief announcement" and constituted a violation of the Brown Act. We advised you, "the Council should not engage in discussion or action that is not on the agenda except for a *brief* response, announcement, or report, as indicated in the Brown Act."

Because the December 17, 2019, council meeting occurred nearly 18 months after our prior letter, I reiterate that neither the council nor city staff should discuss items not on the agenda except for a brief response, announcement, or report, as indicated in the Brown Act. The district attorney has the authority to enforce violations of the Brown Act. (Gov. Code, §§ 54960, 54960.1, 54960.2.) I appreciate your courtesy and cooperation in addressing this matter.

Very truly yours,



CHUCK HUGHES
Chief Deputy District Attorney

cc: Alexander Nguyen, City Manager
Stephen M. Fischer, City Attorney