

# FANGARY LAW GROUP

## ATTORNEYS AT LAW

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### **VIA Electronic Mail**

Mayor Michael Detoy  
Councilmember-elect Dean Francois  
Councilmember-elect Rob Saemann

**Re:** *Improving Litigation Management and Improving Transparency*

Dear Messrs.: Detoy, Francois and Saeman:

First, Councilmembers-elect Francois and Saeman, congratulations and thank you for electing to serve the City of Hermosa Beach and its constituents.

As you may know, I served on the City of Hermosa Beach City Council for seven years, until I moved to Manhattan Beach in 2021. Since then, I had very little involvement with City issues. Frankly, prior to the recent election, I did not believe that any input from me will be taken seriously by the City Council. However, with the results of the recent election resulting in two new councilmembers elected to the City Council, I thought, and hope, that the addition of the two new councilmembers will have an impact on improving the City's operations and services to City constituents.

Litigation management is one issue that, in my opinion, demands the Council's attention. I wanted to alert you to a pending issue in a litigation matter I am currently involved in, Fangary v. City of Hermosa Beach. In that case, the City's attorneys, Best Best & Krieger ("BB&K") has been attempting to take a deposition since June 2022, but mysteriously have refused to take the deposition via Zoom or other online platform. As you know, the City, and perhaps all California cities, have shifted to virtual participation in City Council meetings and many other City matters. This has been going on for nearly three years, and it is my understanding that the California legislature is considering legislation that would provide cities and other governmental agencies with more flexibility to permit virtual participation in meetings virtually.

Yet, BB&K has refused to take a deposition via Zoom and, as a result, the deposition has not taken place yet, and BB&K has filed a court motion seeking a court order requiring the deposition to be in-person. BB&K's decision to seek a court order demanding an in-person

deposition will likely cost the City nearly \$10,000. This issue is currently scheduled for a court hearing on December 2, 2022. Incidentally, all court hearing in this matter have been conducted virtually since March 2020.

During a court hearing on October 24, 2022, the judge informed BB&K that in matters pending in his courtroom, all depositions have been conducted via Zoom or other similar platforms since the start of the pandemic. Further, I have been involved in a complex multi-party environmental litigation matter pending in Federal Court for the past four years which involved significant monetary claims of approximately \$10 million. In that case, the parties conducted about 20 depositions, including seven expert depositions, and every single deposition was taken via Zoom. In fact, not a single party or law firm ever sought to conduct a single in-person deposition since the start of the pandemic.

The world has changed as a result of the pandemic, and in my opinion, things will never return to pre-2022 conditions. Most, if not all, depositions, court hearings and other litigation activities are now mainly conducted via Zoom. Yet, BB&K for some reason believes that they are justified in spending nearly \$10,000 in tax-payer funds to take a single deposition in-person rather than via Zoom.

This case has cost the city approximately \$400,000 to date, and the trial is scheduled for March 2, 2023. Therefore, it is likely the City costs in this matter alone will exceed \$500,000. As you probably know, the litigation with CrossFit gym cost the City in excess of \$1 million. I believe the City also settled another matter related to pickle ball for more than \$4 million, which means after adding the City's own litigation costs, this case probably cost the City more than \$5 million. In my opinion, these costs could have been avoided, or minimized, with improved litigation management and engagement with the City's outside counsel.

In summary, I urge the newly elected councilmembers to work with Mayor Michael Deto to improve various City operations, including litigation management, and other matters mentioned below. In my opinion, the three of you can now have a meaningful impact on directing City operations.

### **Clarifying False Statements**

I moved to Manhattan Beach in early 2020, resigned from the City Council at that time, and I have remained mainly removed from City related issues. Although I intended to remain removed from City related issues, it is my understanding that Justin and Ray have made disparaging, untruthful remarks about me during recent City Council meetings. Therefore, I feel compelled to correct these false assertions.

It was clear to me after Suja has been in the job for a few months that she intended to advance the "there is a new sheriff in town" mindset and essentially entirely alter the roles of the City Council and City Manager. As you may know, the City Council Members probably spent more than 100 hours each from 2014-2017, and the City spent close to \$100,000, to establish the City's Strategic Plan. The Strategic Plan was intended to guide the City Council's operations through 2030 and beyond. However, one of the first things Suja did when she arrived to the City

was to remove all the information about the City's Strategic Plan, and the City's organization chart, from the walls of the City Council chambers and replace them with paintings provide by Mary's husband. It is unclear to me why Suja believed that including Mary's husband's painting on the walls of City Hall was more helpful to City residents than the City's organization chart.

I believe that dealing with the Covid-19 pandemic was the most challenging issue the City had to deal with during my tenure, and perhaps ever. During the pandemic, Suja refused to keep the councilmembers informed of relevant issues relating to the pandemic. At the early stages of the pandemic, I asked her if any of the City employees tested positive for Covid-19, and she simply refused to answer the question. I believe that was a relevant issue that the City Council should have been informed about, and engaged in making the relevant decisions for the protection of City employees and constituents. Instead, Suja decided that it was her job to essentially make the relevant decisions regarding the pandemic and refused to keep the City Council informed with relevant facts relating to the pandemic.

While I was serving on the Council, I requested documents the City received regarding one of the claims against the City, which resulted in a law suit and, again, inexplicably Suja refused to provide the documents. At the time, I thought it was relevant for councilmembers to be fully informed about claims pending against the City to facilitate resolution of such claims and prevention of similar future claims. However, Suja did not believe that keeping the councilmembers informed about claims pending against the City is relevant or warranted.

Transparency was one of the most relevant reasons I elected to run for the City Council, and I have advocated for increased transparency and notifications to constituents on a regular basis. Prior to Suja's arrival to the City, I repeatedly advocated for providing more information to constituents and more notice of pending agenda items so that the Council would allow all constituents, including businesses that may be impacted with the Council's decisions, an opportunity to evaluate the issues and provide their input to Council.

One of the tools the City used to increase transparency and constituent engagement was including on each agenda a "Future Agenda Items" chart that informed the councilmembers and the public of upcoming future agenda items at future City Council meetings. However, I noticed that since Suja's arrival, less information was included in the future agenda items chart, which led to less transparency and councilmembers and the public often being surprised by agenda items that no one expected to be on the agenda.

Prior to Suja's arrival, the City Council Agenda was almost always posted on Thursdays around 6 pm. Having the City Council agenda posted on Thursdays often permitted councilmembers and the public adequate time to review agenda items and provide input regarding same prior to the City Council meeting. However, I have been told that City Council agendas are now often posted on Fridays or Saturdays. Although it is not clear to me if the repeated late postings of the City Council agendas are intentional or not, I believe that posting the agendas on Fridays or Saturdays results in reduced constituent engagement because people get busy with their weekend plans, and have very limited time to review and address agenda items prior to the City Council meeting.

There are numerous other issues that about Suja's management of the City which I will not go in detail here, and I do not mean to include the information above to disparage Suja in any way. I merely intended to respond to a comment Justin recently made at a City Council meeting referring to a parking lot issue. Justin knew, because I spoke to him often about the various issues I disagreed with Suja about, that my concerns about Suja's management decisions were not about a parking spot.


To be clear, in addition to my disagreement with Suja about numerous issues, some of which are included above, I also had a disagreement with Suja about her refusal to give councilmembers – all councilmembers, not just me – a code that would allow councilmembers to park in the City's parking lot behind City Hall where other City employees park, including Suja. Although that was a point of disagreement with Suja, it was just one of many other issues that I had with her management decisions.

It appears that I am not the only one that disagreed with Suja's management skills. It is my understanding that, since Suja's arrival, 4 out of 6 City directors left the City, as well as the City Clerk and Suja's assistant City Manager, and many other employees. It is my understanding that since Suja's arrival, the directors of the following departments left the City: 1) Public Works; 2) Community Development; 3) Community Resources and 4) the Police Chief. It is also my understanding that two of these directors were hired by Suja not long ago, but elected to leave the City. Suja also hired the former City Clerk who also left the City in less than one year.

Although I have moved on and am no longer engaged in City issues, in my opinion the City Council should be alarmed by the number of senior City employees, including four directors, the Assistant City Manager and the City Clerk all electing to leave the City during Suja's tenure.

Sincerely,

FANGARY LAW GROUP

By:   
Hany S. Fangary