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March 27, 2019

VIA U.S. MAIL & EMAIL
Anthony Higgins
2705 Morningside Drive,
Hermosa Beach, CA 90254
Email: Tony.Higgins123@Gmail.com

Dear Mr. Higgins:

This letter responds on behalf of the City Council of the City of Hermosa Beach ("Council") to your "Brown Act Cure and Correct Demand Letter" dated February 25, 2019. The Council considered your demand letter at its regular meeting of March 26, 2019 and directed me to transmit this response.

Your letter alleges that the following past actions of the Council violated the Ralph M. Brown Act ("Brown Act" or "Act") during the February 12, 2019 Council Meeting:

(1) The Council denied you the right to publicly comment on the City Manager's Report regarding the Hermosa Avenue and Strand Improvement Project.

(2) The Council has imposed administrative procedures that have the effect of limiting the right of the public to speak on only one agenda item.

(3) The Council has denied the public's right to ask questions to the Council on agenda items, and the City Clerk should inform the public of its right to ask Councilmembers questions.

I address each of your allegations in turn:

(1) You Were Provided The Right To Publicly Comment

In "Item 1" of your letter, you claim that you were not given the opportunity to speak before or during the presentation of the City Manager's Report. You further claim that an email you sent to the Council was not addressed. You demand that "members of the public be consistently given an opportunity to speak to any and all city council agenda items for at least 2 minutes per agenda item."

The Council's policy and practice is to allow public comment on each agenda item as it comes up, with the exception of comments on "Miscellaneous Items and Meeting Attendance Reports –

City Council" and "Other Matters – City Council," as to which public comments must be made under Oral Communications. This policy is stated expressly on the agenda. Hence, the City's policy and practice is entirely consistent with Government Code section 54954.3, which requires in relevant part that "[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." Hence, there is nothing to cure or correct.

The speaker card you completed and submitted to the City Clerk at the outset of the February 25, 2019 meeting stated in your handwriting that you wished to speak during the "Public Participation Topic" regarding the "Hermosa Avenue Project Truck Route." The speaker card specifically does not state that you wished to speak during the City Manager's Report. Consequently, it was entirely reasonable for the City Clerk and the Mayor to interpret your speaker card to mean that you wished to speak during Oral Communications; and in fact, you were called upon to speak (for not more than three minutes) during Oral Communications and did so on the subject of the Hermosa Avenue Project Truck Route. Had your speaker card clearly stated that you wished to speak during the City Manager's Report agenda item, you would have been called when that item was taken up.

I would like to make three other observations. First, the City Manager's Report is a unilateral and purely informational report that engenders no action by the Council. Second, had you spoken up in some manner at the conclusion of the City Manager's Report to indicate that you wished to speak during that agenda item, you would have been allowed to do so. And third, when you did speak during Oral Communications immediately following the City Manager's report, you did not raise any concerns about not being given an opportunity to speak <u>during</u> the City Manager's Report.

In your letter, you also allege Brown Act violations because the Council did not immediately act upon your demands and instruct staff to "follow-up" on your questions. As you observe, there is nothing in the Brown Act that requires the Council to act upon a resident's demands or to answer questions. Hence, the Council did not violate the Act for failure to take action on your issues.

In summary, your letter's first Item does not disclose a violation of the Act. Hence, there is nothing to cure or correct.

(2) The Council Does Not Limit The Right Of The Public To Speak On Only One Agenda Item Per Session

"Item 2" of your letter suggests that the Council has "imposed administrative procedures" that limit public comment to one agenda item per meeting. You demand that "the city correct any administrative procedures that would have tend to have the effect of limiting a citizen's

opportunity to speak on more than one agenda item per Open session of the City Council unless there is a legal basis and a compelling reason to do so."

This assertion is patently untrue as evidenced by the Council's actual practice (witness the Granicus recording of any Council meeting to see members of the public speaking on multiple agenda items) and the procedure set forth on the face of the Council agenda, which provides the following times during which members of the public may speak:

(1) During the time allotted to address the City Council on any items within the Council's jurisdiction not on this agenda, on items on this agenda as to which public comment will not be taken, or to request a removal of an item from the consent calendar;

(2) During discussions of items removed from the consent calendar;

(3) During Public Hearings; and,

(4) During discussion of items appearing under Municipal Matters.

In short, there is no procedure that limits public comment to just one agenda item per meeting. Consequently, there is no need for the Council to cure or correct any practice.

(3) The City Clerk Does Not Need To Announce That The Brown Act Permits Questions To Councilmembers

"Item 3" of your letter does not claim the Council violated the Brown Act. Rather, you demand "the city clerk, when announcing the restrictions on questions to council members for NON-agenda items; the city clerk must balance this by informing the public clearly and unambiguously that the Brown Act does not prohibit questions to council members when an agenda-item is being considered."

The Brown Act does not require the City Clerk to make any announcements regarding the content of public speech. And, except to the extent that public speech be relevant to the subject matter of the agenda item and within the jurisdiction of the Council, neither does the Brown Act address whether public speakers make affirmative statements or ask questions. And, finally, the Act does not require Councilmembers to answer questions raised by public comments. In short, it is not the City Clerk's role to inform the public how to make presentations to the Council.

Consequently, there is no need to cure or correct any practice identified in your Item 3.

The City Council takes the Brown Act seriously and that is why it has given substantial consideration to your concerns. The Council's goal is to ensure that the public is given a full

opportunity to participate during meetings. The Council is committed to transparency, good governance and compliance with the Brown Act.

Very truly yours,

Michael Jenkins
City Attorney
City of Hermosa Beach