

LEDDED LAW OFFICE

US Bank Tower
633 W 5th St, 57th Floor, Suite 5710
Los Angeles, CA 90071
Telephone: (213) 700 2063 Email: justin@leddenlaw.com

December 19, 2019

VIA Electronic Mail

mcampbell@hermosabch.org

Mayor Mary Campbell
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

Michael.Jenkins@bbklaw.com

Michael Jenkins
Best, Best & Kreiger
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266

Re: Notice of Demand to Cure and Correct

Dear Mayor Campbell,

This letter is a follow-up to previous correspondence regarding alleged violations of the Ralph M. Brown Act (“Act” or “Brown Act”) by the City of Hermosa Beach (“City”), certain city council members of the City, and the City Attorney Michael Jenkins (“Jenkins”), previously sent to the City by Anthony Higgins, and by City council member Hany Fangary via email and letter.

These violations, and the City’s failure to properly cure, has led to the filing of the Los Angeles Superior Court action *Fangary v. City of Hermosa Beach, et al.*, LASC Case No. 19STCP05134 (the “Action”). At this time, we provide notice of further allegations of multiple additional violations of the Act and demand that the City take action to cure and correct said violations as required by the Act.

As you are aware, our client, Dina Fangary, has alleged in the Action that the City violated the Act by failing to properly notice and allow the public to provide comments in connection with the November 21, 2019 nomination and appointment of Justin Massey as the Mayor pro tempore of the City. Mr. Higgins raised similar concerns in his correspondence to the City regarding the November 21, 2019 meeting. In response, it appears that the City Council agreed with the concerns raised by Mr. Higgins, and Ms. Fangary regarding Brown Act violations, as it took steps to rescind Mr. Massey’s November 21, 2019 nomination at its December 4, 2019 meeting. The City Council must then also concur that the nomination and appointment of Mary Campbell as Mayor of the City during the November 21, 2019 City Council meeting was similarly in violation of the Act, for the same reasons, and for other reasons pointed out below.

The November 21, 2019 meeting was scheduled to be a Ceremonial meeting, not a regularly scheduled public meeting. As it was understood prior to that meeting, nominations and appointments would take place pursuant to the City's current rotation schedule for Mayor and Mayor pro tempore appointments, which were previously announced by the City Clerk during the December 7, 2017 City Council meeting. As previously noted, the agenda confirmed that appointments would take place pursuant to the current rotation schedule, which is laid out in an attachment to the City's Staff Report 17-0730, entitled "Mayoral Terms of Office (Worksheet)." As such, no public participation was expected or required. However, based on the conduct of the Council, it is clear that the current rotation schedule was not followed and appropriate notice and public participation was required for the appointment of, not only the Mayor pro tempore, but the Mayor as well. No such notice or public participation occurred in connection with Campbell's November 21, 2019 appointment as Mayor of the City. As such, the City council's failure to properly notice a public meeting and allow public participation prior to the nomination and appointment of the Mayor is a violation of both the Act's notice requirements and public participation requirements included in Government Code section 54954.3(a).

Additional concerns regarding the City's violations of the Act have already been communicated to you in correspondence from Hany Fangary dated December 3, 2019 and December 4, 2019, and are incorporated herein by reference. If you do not have these letters and would like me to forward copies to you, please let me know.

In addition to the notice and public participation violations listed above, it is clear from the conduct of certain City council members that further violations of the Brown Act occurred. Specifically, the conduct of Mary Campbell, Stacey Armato, and Justin Massey at and after the November 21, 2019, meeting provide evidence, or at least give the perception, that these council members met prior to the November 21, 2019 meeting to discuss the plan to circumvent the current rotation schedule and nominate and vote for Massey over Fangary. There had been no discussion at any prior public or closed meetings on this course of action, yet at the November 21, 2019, meeting, Campbell, Armato and Massey acted in unison to nominate and appoint Massey as Mayor pro tempore without any discussion, in literally less than 15 seconds. A City tradition of more than 40 years simply erased in less than 15 seconds, without a single comment from any of the three councilmembers listed above. It simply defies logic, and common sense, that all three councilmembers were in unison to overrule the City's tradition of 40 years, and all acted to do so in less than 15 seconds, yet they have never once discussed it before the November 21, 2019 meeting.

Further, at the December 4, 2019, meeting, Council member Armato stated that she was prepared to support Campbell's motion to appoint Massey at the November 21, 2019 meeting, implying that she had forehand knowledge that the nomination was to occur. As no discussions had ever been held in public or closed sessions, this knowledge must have come from a communication not at a public meeting.

If such communications took place between more than two members of the City Council, that is clearly a violation of the Brown Act.

Evidence, or at least strong perception, of the fact that more than two councilmembers discussed this issue in violation of the Act is further provided by information former Councilmember Jeff Duclos posted on social media after the November 21, 2019 meeting. In response to concerns raised by the community about the Council's actions during the November 21, 2019 meeting, which as you know took place after Councilmember Duclos' term ended a few days earlier on November 18, 2019, he posted the following:

It is an unfortunate situation to be sure and I feel bad for Hany, but is a situation entirely of his making. . . . he left the City Council with little choice.

The above statement evidences, or at least strongly implies, that the City Council made that choice while Councilmember Duclos was serving on the Council prior to November 18, 2019.

The Brown Act allows the legal remedy of judicial invalidation of illegally taken action, pursuant to Government Code Section 54960.1. We demand on behalf of our client that the City cure or correct the illegally taken actions as follows: The appointment of Mary Campbell as Mayor must be rescinded and a properly noticed public meeting with appropriate public participation must take place prior to the nomination and appointment of a new Mayor.

As for the asserted violation relating to council members communicating in private to discuss the issue of the Mayor Pro Tem appointment, we demand that Councilmembers Mary Campbell, Stacey Armato, Justin Massey and Jeff Duclos, provide signed affidavits swearing under penalty of perjury that they did not participate in any outside communications in connection with the November 21, 2019 appointment of the Mayor Pro Tem, through serial meetings or otherwise, or any plan to ignore and circumvent the City's Mayor and Mayor pro tempore rotation schedule.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged violations listed above, or inform me of your decision not to do so. If you fail to cure or correct as demanded, my client will take appropriate action.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JL' with a long horizontal stroke extending to the right.

Justin Ledden