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July 22, 2020

VIA EMAIL:

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

Michael Jenkins
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1230 Rosecrans Avenue, Suite 110
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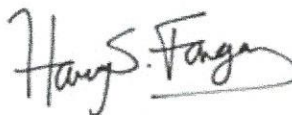
Re: **City of Hermosa Beach's Brown Act Violations**

This firm represents Dina Fangary. This letter is to inform the City of Hermosa Beach that Dina Fangary hereby joins in the cure and correct demands sent to the city from Ken Hartley dated July 21, 2020 and Cameron Samimi dated July 20, 2020. Please provide this office with copies of your responses and/or planned actions in response to both demands, which are attached hereto as Exhibits A and B.

Sincerely,

FANGARY LAW GROUP

By:



Hany S. Fangary

cc: Michelle Gilmer, Deputy District Attorney
Los Angeles County District Attorney Office
Public Integrity Division

EXHIBIT A

July 21, 2020

Hermosa Beach City Council
City of Hermosa Beach

Dear City Council,

This letter is to call your attention to what appear to be substantial violations of the Ralph M. Brown Act that jeopardize the finality of the action taken by the Hermosa Beach City Council on June 23, 2020. The hearing, text amendment TA-19.1 "CONSIDERATION OF TEXT AMENDMENT TO THE M-1 LIGHT MANUFACTURING ZONE INCLUDING A LIMITED EVENT PERMIT FOR CYPRESS DISTRICT BUSINESSES" began on February 25, 2020 and concluded with a vote to pass an amendment to the M-1 Light Industrial Zone on June 23, 2020.

The public was deprived of key information that was necessary for it to properly and fully-participate in deliberation of the project. The public was deprived of the right to publicly participate before decision-making.

The most blatant and extreme violation of the Brown Act was Mayor Campbell using her public position to circumvent transparency for her personal financial enrichment. The Mayor failed to disclose her substantial financial interest in the project, improperly participated and voted, provided misleading statements as to her recusal, and failed to provide the opportunity for public comment.

Background

At the meeting on February 25, 2020, the Hermosa Beach City Council public hearing listed item 5(a): "*CONSIDERATION OF TEXT AMENDMENT TO THE M-1 LIGHT MANUFACTURING ZONE INCLUDING A LIMITED EVENT PERMIT FOR CYPRESS DISTRICT BUSINESSES*". This item was initiated by the Mayor Pro Tem Massey at the request of the Mayor's husband Michael Collins during public comment. Mayor Campbell and her husband Michael Collins own an art gallery business named Shockboxx Gallery in the Cypress District.

Shockboxx Gallery is in the business of selling retail art and renting the space for events. Shockboxx Gallery has been operating illegally without proper zoning, permits, or approvals. City Council and City Staff tacitly approved of this illegal business, actively patronized it, and refused to take any corrective action against it until the issue was made public.

The zoning code does not allow for retail sales or assembly uses in the M-1 zone., and Shockboxx Gallery would be required to close unless the City amended the

zoning code. This is the source of the City's Council's proposal for allowing "limited event permit" zoning text amendment would give the gallery the opportunity to hold 72 events over a two-year period. With the existing 12-event permit process already in place, this would now allow the art gallery to have events every weekend. Apart from a business owned in-part by a sitting City Council member, it is difficult to imagine any business in any district that would enjoy similar accommodation or such preferential treatment.

As the initial hearing began on February 25th, the City Attorney initiated a discussion regarding a request that the City Council discuss and vote to postpone the hearing to another date. Mr. Jenkins wished to obtain a letter from the Federal Political Practices Commission to determine if Councilmember Massey could participate in the hearing due to his personal residence within 500ft of the project. Apparently, Mr. Jenkins either found out just before the hearing that Mayor Pro Tem Massey intended to not recuse himself or he was planning on allowing Councilmember Massey to participate regardless of the FPPC requirement and was caught off guard by a last minute written communication reminding Mr. Jenkins of this requirement. At Mr. Jenkins request, Mayor Campbell and the Council opened the item, quickly discussed and then voted to continue the hearing. Councilmember Massey made the motion, it was seconded and vote was taken to postpone the hearing. The public was not allowed to comment before the vote was taken.

At the continuance of the hearing on June 23, 2020, the Hermosa Beach City Council reopening the item ***"CONSIDERATION OF TEXT AMENDMENT TO THE M-1 LIGHT MANUFACTURING ZONE INCLUDING A LIMITED EVENT PERMIT FOR CYPRESS DISTRICT BUSINESSES."***

With Mayor Pro Tem Massey now having a determination letter from the FPPC that seems to allow his participation in the hearing, Mayor Campbell now recused herself and said: *"I would like to announce that I continue to be recused on this item based on the proximity of my home to the area under discussion."* The Mayor's recusal meant that the Mayor Pro Tem would act as the Mayor for this hearing.

During the hearing, after the staff report and public comment, another Councilmember stated his concerns about the Mayor's disclosure: *"I have concerns about the Mayor recusing herself today and mentioning the reason she is recusing herself is because of the proximity of the property to her residence and not the fact that she and her husband own a project in that district, that concerns me cause it's not transparent. And it's also my understanding that that business is not listed in the Mayors Form 700 disclosure"*.

The same Councilmember also expressed concern regarding the Mayor Pro Tem's participation in the matter prior to his obtaining an FPPC determination and the motivation behind the unusual efforts to participate.

"Justin you also know that you recused yourself on two litigation matters specifically because these pertained to a property in the Cypress district but for inexplicable reasons you decided to postpone this meeting for about four months just so you can get a waiver from the FPPC so you can participate, which gives the perception that you are basically trying to do this just so you can back-up the Mayor and support her business.... you took action to support the Mayor and her business because the Mayor's business happens to be in the district, that's my position, you can disagree with it, but I think that is the only reason you make the exception in this case."

Having been notified of the obvious disclosure omission before public participation, the Mayor Pro Tem continued on without re-opening public comment given this new and important information. Ultimately a vote was taken to pass the text amendment allowing the special dispensation for the Mayor's husband's business.

Violations

First, given the fact that Mayor Campbell owned a business in the zone that the text amendment would most benefit, she should have properly disclosed her financial interest and recused herself before the hearing even began at both hearings. In accordance with government code 87105, Mayor Campbell had a duty to publicly disclose her financial interest in detail sufficient for the public to understand, recused herself from the matter and leave the room. The public was intentionally deprived of this information, which certainly was an important consideration in the creation of the text amendment.

There are new regulations that bear directly on this situation (2 Cal. Code Regs. Section 18707), and it appears Mayor Campbell's failure to properly disclose the reasons for her recusal are in direct violation of them.

Additionally, Brown Act section 54949 states each member of a legislative body who attends a meeting of that where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter is guilty of a misdemeanor. Clearly, at a minimum Mayor Campbell certainly knew the public was entitled to know about her financial interest in the project and intentionally deprived the public of that information. Perhaps the City Prosecutor or District Attorney's Public Integrity Unit can decide whether this is something worth pursuing.

Second, the Mayor improperly participated in the portions of the hearing on 2.25.2020. Instead of leaving, Mayor Campbell led the hearing and voted to support Mayor Pro Tem's motion to continue the hearing so he could obtain a determination letter from the FPPC.

Third, Mayor Pro Tem on portions of the hearing on 2.25.2020 did not allow the public to comment as part of public participation.

Fourth, at the 2.25.2020 hearing Councilmember Massey whom also was required to disclose his financial interest and recuse himself, instead made no such disclosures, participated in the hearing and actually made the motion to stop the very hearing that he should not have been part of so he could have time to craft a letter to the FPPC in an effort to later allow him to participate.

Fifth, at the 7.23.2020 portion of the hearing, Mary Campbell once again failed to properly disclose her financial interest in Shockboxx Gallery. Instead, she chose to mislead the public by stating she had previously recused on the previous hearing when in fact she did not, participated, and voted. Additionally, rather than disclose her financial interest in the business this text amendment was designed to help, the Mayor recused due to her personal residence's proximity to the project.

Finally, at the June 23, 2020 hearing when key information regarding Mayor Campbell's undisclosed financial interest was disclosed by Councilmember Fangary after public comment, Mayor Pro Tem Massey failed to re-open public comment given this new information.

The City Council deprived the public of critical information that could have impacted this legislative action. Had Mayor Campbell properly and fully disclosed her financial interest in a business that would directly financially benefit her and her husband, the public may have had something to say about this self-serving process.

The public was not aware of the Mayor's financial interest is also supported by the fact that the Mayor omitted her financial interest in Shockboxx Gallery as required by the FPPC in Form 700. As you know, the very reason the FPPC requires financial disclosures in its Form 700 requirements is that "it provides transparency and ensures accountability in two ways: It provides necessary information to the public about an official's personal financial interests to ensure that officials are making decisions in the best interest of the public and not enhancing their personal finances."

Unfortunately, not only did Mayor Campbell not adequately disclose, she actively participated in guiding the hearing to directly benefit her. She both participated, as Mayor allowed a Councilmember who should have recused to participate and make motions, as well as voted on the item. Given the fact that Councilmember Massey was the councilmember that requested for the item to be agendized, Mayor Campbell understood that his participation in supporting the text amendment was to her financial benefit. This is a brazen example of a City official using her public office for personal enrichment.

As you are aware, the Brown Act creates specific agenda obligations related to an item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions—namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to Government Code Section 54960.1, I demand that the Hermosa Beach City Council cure and correct the illegally taken action as follows:

- (1) Hold a properly noticed hearing and require Mayor Campbell adequately disclose her financial interest in Shockboxx Gallery and allow the public an opportunity to comment of which it was deprived.
- (2) Provide a formal and explicit withdrawal from any commitment made, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment might in certain circumstances include the provision of any and all documents in the possession of the local agency related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order you to pay my court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,

Ken Hartley
723 30th Street

EXHIBIT B

Councilmember Hany Fangary

From: Cameron Samimi <cameron@lyonstahl.com>
Sent: Monday, July 20, 2020 1:14 PM
To: Suja Lowenthal; City Council
Subject: Violation of Brown Act - Cure and Correct

*Presiding Officer
Members
Name of Legislative Body
Name of Local Agency*

Dear City Council

*This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by **the city manager**.*

The nature of the violation is as follows: The City Manager has acted solely or without voting on the matter or hearing any comments from the members of the community. At no time was removal of the Volleyball poles which are privately owned in the city by residents ever voted on or brought to a vote. In fact no resident was made aware ahead of time of such vote and no vote took place within the city council.

*The action taken was not in compliance with the Brown Act it occurred as the culmination of a discussion in closed session of a matter which the Act does not permit to be discussed in closed session (**and/or**) there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and there was no finding of fact made by the **Hermosa Beach City Council** that urgent action was necessary on a matter unforeseen at the time the agenda was posted.*

*In the event it appears to you that the conduct of the **Hermosa Beach City Council** specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."*

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions—namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), I demand that the Hermosa Beach City Council cure and correct the illegally taken action as follows: Please have all posts put back to their respective spots and provide the public the awareness and opportunity to comment of which it was deprived, e.g. the formal and explicit withdrawal from any commitment made, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment might in certain circumstances include the provision of any and all documents in the possession of the local agency related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order you to pay my seek court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,

Cameron Samimi

Hermosa Beach Resident

Cameron Samimi

First Vice President

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