

July 20, 2020

Rebekah Barr, City Clerk
City of Sonoma
One The Plaza
Sonoma, CA 95476

Re: *Demand to Cease and Desist Violation of Brown Act*

Dear Ms. Barr,

I regret that submitting this letter is necessary, as I was hoping the City Council of the City of Sonoma (“City Council” and “City”) would act on its own volition to address the violation of the Brown Act (Government Code Section 54950, *et seq.*) that occurred during a special closed session meeting on June 18, 2020. The City Council is aware of its wrongdoing, yet it has taken no steps to rectify the matter.

The June 18 meeting was unusual, as it was and remains the only in-person meeting held by the City Council or any of its commissions since March 16, 2020. The June 18 meeting was also unusual in that it was insisted that the City Council meet alone without the presence of the City Attorney, City Manager, or any other authorized staff member. I expressed concern and left the meeting after it became apparent the four members of the City Council who were physically present had not only engaged in a discussion it was not authorized to have but also came to a collective decision or commitment regarding action it was not authorized to take. Such “collective decision” or “collective commitment” constituted an “action taken” under the Brown Act.

After leaving the meeting and calling the City Attorney, I drafted a memorandum detailing the City Council’s illegal conduct and action during the June 18 meeting and sent it to the Mayor and City Attorney. I have received no response. In light of this lack of acknowledgement or proactive effort to address the City Council’s egregious behavior, I am compelled to send this letter pursuant to Government Code Sections 54960, 54960.2, and 54963, as well as any other provision of the Brown Act that may apply.

As a public servant who took an oath to support, defend, and faithfully follow the United States and California constitutions, and on behalf of the public who deserve transparency and honesty from its elected leaders, I am left no option but to demand the following: (1) For the City Council to make an unconditional commitment to cease and desist its violation of the Brown Act and to not repeat its violation that occurred on June 18, 2020; (2) For the City Council to approve such unconditional promise at a public meeting pursuant to Government Code Section 54960.2; and (3) For the City Council to commit to having the City Manager, City Attorney, or other authorized third party present at every closed session meeting for a period of at least twelve (12) months.

The June 18, 2020 In-Person Meeting

On March 17, 2020, operations of the City were fundamentally altered when the Sonoma County Public Health Officer issued Order No. C19-03, which imposed a drastic

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shelter-in-place mandate as a result of the quickly escalating public health crisis caused by the novel coronavirus. As a result of concerns for public safety and a need to focus on the impacts of the health crisis, the City subsequently cancelled meetings of the City Council scheduled for March 23 and April 6. On April 13, 2020, the City Council met for the first time since the shelter-in-place took effect, only this time by a new virtual format authorized by Executive Order N-29-20 issued by Governor Newsom on March 17, 2020.

In total, and of the date of this letter, the City Council has held twelve meetings since the cancellations in March and April. The City has also held six commission meetings. Of these **eighteen** meetings held by the City, which do not include meetings held for the purpose of practicing the new virtual technology, all were conducted virtually... except for **one**.

On June 18, 2020, the City Council convened a special meeting at 5:00pm for the purpose of holding a closed session. Unlike the fourteen prior City meetings or the three City meetings after, this meeting was held in person in the Emergency Operations Center room—a room once used by the City Council for workshop meetings before the City Council made the decision to hold all of its meetings in the City Council Chambers where they could be recorded and broadcast to the public.

The agenda description for the only item on the June 18, 2020 Special Meeting agenda was as follows:

3.1: CONFERENCE WITH LABOR NEGOTIATORS - Pursuant to Government Code Sec 54957.6:

Agency Designated Representatives:	City Manager Capriola
Employee Organizations:	Sonoma Employees' Assoc. (SEIU 1020)
Unrepresented Employees:	Accountant Administrative Services Manager City Clerk/Executive Assistant Deputy City Manager Dev Services Director/Building Official Deputy Finance Director Planning & Community Services Director Public Works Director/City Engineer Public Works Administrative & Project
Manager	Public Works Operations Manager Senior Management Analyst Senior Planner

As explained in greater detail below, the meeting that was ultimately held by the members of the City Council and with no staff present did not comport with what was published in the agenda. Instead of discussing budgetary needs, concessions by management staff, or our memorandum of understanding with SIEU 1020, the four Council Members who were physically present that day instead launched into a

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discussion about an individual whose position was not listed on the agenda for discussion and instead was named as the agency representative for labor negotiation: City Manager Cathy Capriola. In fact, the discussion that occurred began with a statement that there was no interest in pursuing additional concessions from any of the unrepresented employees listed in the agenda, which was the stated purpose of the meeting.

Instead, an improper and illegal meeting was held in which the four Council Members physically present discussed, at length, each of their own perceived specific complaints and charges against the City Manager and, ultimately, collectively agreed to impose the disciplinary measure of a one-month furlough beginning July 1. The fact that the number of coronavirus cases in Sonoma County was steadily increasing was of no concern. The worst that could happen, according to the discussion, was that the grass would not get cut. The fact that the City Manager had already scheduled time off for most of July was also of no consequence, as she could still work while on vacation leave but would be prohibited from working while furloughed. The discussion vacillated between a sense that the City Council felt the City Manager deserved to be punished for the criticisms and complaints raised and a sense that the City Council knew best and was doing it for the City Manager's own good because she deserved a break.

This meeting was a clear violation of the Brown Act, which provides specific requirements regarding closed session meetings held to discuss employment matters and which prohibits secret meetings of legislative bodies except as explicitly authorized. As it turned out, the description published on the agenda was merely pretense for the City Council to meet alone and in-person to conspire to prohibit the City Manager, the chief administrative officer of the City, from performing city-related work. While closed session meetings can be held to discuss specific complaints and charges against an employee, such meeting may be held only upon proper and accurate notice—not only to the public, but to the employee as well. Closed session meetings can also be held to discuss disciplining an employee or to conduct a performance evaluation in the regular course of business. A closed session meeting cannot be held, however, for the purpose of imposing a furlough on an employee for the purpose of punishing the employee—and not for the purpose of budgetary needs—while under the guise of labor negotiations for other employment positions. A legislative body cannot meet in secret—even forcing the designated representative, whose position was not agendaized for discussion, to leave the room—to discuss ways to punish that agency representative. Such action is not only illegal under the Brown Act, it is criminal.

The City Council's Illegal Conduct and Action

As mentioned above, the June 18, 2020 City Council meeting was the only City meeting held in person from the date the first shelter-in-place order was issued to the date of this letter. I opted to attend this meeting remotely because I felt an in-person meeting was premature in light of the increasing number of coronavirus cases in Sonoma County and my higher-risk status as someone with an autoimmune disease. When I did not get a link for a Zoom meeting, I inquired with the City Manager as to how I would be able to participate. I was told that she would call me and allow me to participate in the meeting by speaker phone.

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When it came time for the meeting, I was told that the telephone in the Emergency Operations Center was having issues and that Council Member 1 would call me because the City Manager, despite being listed as the agency representative on the agenda and whose position was not listed for discussion, would be required to leave the closed session meeting. Council Member 1 called me, the meeting began, and we quickly moved into closed session. The City Manager said a few words, passed out documents related to subject matter described in the agenda, and left. As far as I could tell from my telephonic attendance, the only individuals left in the room were the Mayor and the three other members of the City Council.

The discussion began when Council Member 1 declared that they had no interest in further impacting **any** of the management employees listed on the agenda but instead wanted to furlough the City Manager for the month of July. The proposed furlough was not based on any budgetary concern but instead was meant to prohibit the City Manager from working for a month since furloughed employees are prohibited from doing work during a furlough. It was at this point, at the outset of the discussion, that I made the first of two comments during my attendance at the meeting. I noted the City Manager had already planned to take three weeks off during the month of July and was only returning for one week in between to allow the other department heads to take time off as well.

Three weeks off was not satisfactory because they were not contiguous, it was not a full month, and she could still work if she wanted to, so the discussion of furloughing the City Manager ensued with Council Member 1 listing off the specific complaints and charges against the City Manager that they felt warranted this form of employee discipline. The Mayor, Council Member 2, and Council Member 3 followed suit. All four Council Members physically present agreed that this action should be taken and that the City Manager should be furloughed for the month of July.

Fifteen minutes into this discussion, Council Member 3 noted they had not heard from me on this agreed-upon plan. This was the first pause in the otherwise enthusiastic and incessant discussion. It was at this point that I stated I was concerned that the discussion was not within the bounds of the Brown Act and would be leaving the meeting. I then repeated this statement. The only response was from Council Member 1, who simply said, "Bye." I hung up and called the City Attorney. After a brief conversation with the City Attorney, I drafted a memo of what happened in the meeting and what was discussed and emailed it to the City Attorney and the Mayor. I also texted the City Manager to inform her that I left the meeting early because I was concerned there was a Brown Act violation and that I had talked to the City Attorney and sent him and the Mayor a memo.

Demands

I did not receive a response or follow up communication to my memo. In fact, I did not hear about this matter at all until I told the City Manager some time later that I wanted to know how the City was going to handle its flagrant Brown Act violation and abuse of power. Afterward, the City Attorney reached out and said he "was interested in knowing where [I] want to go with this."

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What I want is this: (1) For the City Council to make an unconditional commitment to cease and desist its violation of the Brown Act and to not repeat its violation that occurred on June 18, 2020; (2) For the City Council to approve such unconditional promise at a public meeting pursuant to Government Code Section 54960.2; and (3) For the City Council to commit to having the City Manager, City Attorney, or other authorized third party present at every closed session meeting for a period of at least twelve (12) months.

The action taken by the City Council during the June 18, 2020 closed session meeting did not come to fruition. The City Manager is currently on vacation leave where she can advise her staff and return to work if the need arises. It appears the City Council had a change of heart at some point after I expressed my concern and left the meeting. While I am relieved by this result, it does not change the illegality and impropriety of the meeting, and this change in course would not have occurred had I not taken the actions I did. In their discussion and collective agreement concerning the matters detailed in this letter, the members of the City Council were unequivocal and resolute.

While this letter focuses on the illegal actions taken in violation of the Brown Act, I would be remiss to not mention my concerns and disappointment regarding the subject matter of the discussion held and action taken. In a meeting held under a veneer of the City's budget concerns resulting from the impacts of the public health crisis, the City Council was fixated on prohibiting the City Manager from performing her job without a settled reason for doing so. At times, it was because the City Council felt they would be doing the City Manager a favor in light of the external circumstances that have required her to work late and on the weekends. At other times, it was because the City Council felt the City Manager should be punished in light of the specific complaints and charges raised. The only consistent attitude throughout the discussion was that the members of the City Council wanted to take this extraordinary action because they had the power to do so.

The public deserves honesty and transparency from its elected leaders regarding the discussion the City Council was not authorized to have, the actions it was not authorized to take, and the subsequent attempt to pretend like these events did not occur. I look forward to the City Council's prompt acknowledgement and action regarding its improper and illegal actions at the June 18, 2020 meeting.

Sincerely,



Rachel Hundley
Vice Mayor, City of Sonoma
rachel.hundley@sonomacity.org
(707) 999-8394