LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
PUBLIC INTEGRITY DIVISION

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November 10, 2015

Honorable Council Members
Huntington Park City Council
6550 Miles Avenue
Huntington Park, CA 90255

Re: Alleged Brown Act Violations; P15-0482; P15-0572

Dear Honorable Council Members,

We have received complaints alleging violations of the Ralph M. Brown Act (the Act) by the Huntington Park City Council at the September 8, and October 6, 2015 City Council meetings. As explained below, we do not believe that any violation occurred during the September 8, 2015 meeting, when you denied a speaker a second chance to speak, but we do believe you improperly and unreasonably removed members of the public from the September 8, and October 6, 2015 meetings.

California Government Code section 54954.3(a) states in part, "Every 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...." We observed that at the 4:51 mark of part 2 of the videotape of the September 8, 2015 meeting, after public comments had concluded, a member of the public inquired, "Excuse me, aren't you, isn't there supposed to be options for members of the audience to comment?" The mayor began to explain, "No this is not a...." The Mayor was then interrupted by the City Attorney who explained that while public comment is appropriate on matters of general interest within the subject matter jurisdiction of the City Council, and for any item on the agenda, public comment had nonetheless concluded. The City Attorney then found that member of the public to be "out of order" and had him removed from the meeting. We note that the question took 4 seconds to ask, and the entire "incident" lasted less than 30 seconds.

We first address the question asked by the member of the public. Although many cities do allow for members of the public to speak separately on each item on the agenda, they are not required to do so. The Act specifically authorizes the legislative body to adopt reasonable regulations to assist in processing comments from the public. Pursuant to California Government Code section

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54954.3(b), the body may establish procedures for public comment as well as specifying reasonable time limitations on particular topics or individual speakers. Therefore, allowing public comment only at the beginning of the meeting is permissible under the Act. Accordingly, there was no violation when the Huntington Park City Council refused to allow the speaker to again address the City Council.

However, we do find that the member of the public was improperly and unreasonably removed from the meeting. The City Attorney has cited two cases that he believes supports his position to remove members of the public from City Council meetings. We note that in both cases cited by the City Attorney, the person who was deemed to be disruptive was first warned and asked to desist from his conduct, before further action was taken.

The first case, *White v. Norwalk*, 900 F.2d 1421, involved a dispute between residents who claimed they were unfairly ejected by the City Council from a meeting. Interestingly, the City of Norwalk denied this allegation and claimed that the speaker "was ruled out of order for being unduly repetitive and **was escorted to his seat** for refusing to stop talking after the Mayor ruled him out of order **and asked him to desist**." (Emphasis added.) The plaintiffs challenged the City's rules of decorum arguing they were a violation of the First Amendment. However, the United States Court of Appeals for the Ninth Circuit noted that "the City asserts that removal **can only be ordered when someone making a proscribed remark is acting in a way that actually disturbs or impedes the meeting**." (Emphasis added.) The Court, in making its ruling, "adopted defendants' interpretation of the ordinance that removal could only be ordered when someone making a proscribed remark acted in a way that actually disturbed or impeded the meeting. The Court held, "So limited, the ordinance on its face was not fatally overbroad."

The second case cited by the City Attorney, *Reza v. Pearce*, 798 F.3d 881, involved the removal of "a member of Tonatierra, a community development organization that seeks to protect the rights of migrant workers and their families," who was attempting to exercise his First Amendment rights during a discussion of Arizona's state immigration law. The Court found that, "Both opponents and supporters of the proposed legislation applauded and booed in the overflow room during the course of the hearing." The Court noted that Senator Pearce claimed that "noise from the overflow room began to interfere with legislative debate. At this time, Officer John Burton approached Reza and asked him to try to silence the audience. Reza refused to do so...." After the hearing, Senator Pearce asked officers "to identify those who had been protesting loudly in the overflow room." Officers "identified Reza as one of the individuals who had disrupted the Senate hearing, and barred Reza from entering the building." The Court held, "**A restriction on expressive conduct in a limited forum must be reasonable in light of the purpose served by the forum.**" (Emphasis added.) The Court noted that, "There is a factual dispute as to whether Reza's speech in the overflow room actually disrupted the hearing...Some claim that Reza's actions interfered with the Senate hearing on S.B. 1070, which prevented the Senate from finishing its business...Others, including Senator Gallardo, claim that Reza did not do anything to disrupt the Senate hearing. They contend that Reza only applauded loudly." The Court ruled, "Senator Pearce's solution, imposing a complete bar on Reza's entry into the Building, exceeds the bounds of reasonableness as a response to a single act of disruption..." The Court then cited *White v. Norwalk, supra,* and specifically noted, "**We upheld the city ordinance, but only because it authorized removal when an attendee 'disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting**.'" (Emphasis added.)

As noted above, a member of the public simply inquired, "Excuse me, aren't you, isn't there supposed to be options for members of the audience to comment?" Many local cities, and indeed the Los Angeles County Board of Supervisors, allow for multiple comments from audience members, as each item of business is discussed. While we understand that the City of Huntington Park has chosen to limit public discussion, this does not make the speaker's question unreasonable. Indeed, the speaker identified himself as a resident of Torrance during the public comment portion of the meeting, and may not have been familiar with the manner in which the Huntington Park City Council conducts its meetings. We additionally note that the speaker's tone was neutral, he did not raise his voice when asking the question, and he did not dispute the Mayor's or the City Attorney's ruling. The issue was resolved in seconds. Accordingly, there was absolutely no reason to remove the speaker from the meeting. To quote the United States Court of Appeals for the Ninth Circuit, removal is authorized only "when an attendee disrupts, disturbs or otherwise impedes the orderly conduct of the Council meeting."

We have also reviewed the videotapes of the October 6, 2015 Huntington Park City Council meeting. We note that during the public comments portion of the meeting, the speaker who was removed from the September 8, 2015 meeting, again spoke. We additionally note that the speaker's comments were again critical of a majority of the City Council. We observed that two members of the public, at separate times, exclaimed "yes" during his speech to the Council. One member of the public, who exclaimed "yes" three times during the three minute speech, was removed from the meeting. While his "yes" comments were audible, they were not overly loud and did not interrupt the speaker. His "yes" comments, within the context of the speaker's speech, cannot be described as confrontational, inflammatory, belligerent or outrageous, nor did they impede the orderly conduct of the meeting.

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We expect that this letter will assist you to understand and comply with the requirements of the Brown Act, and that no further action by our office will be necessary. Please feel free to contact us should you have any questions. We thank you for your attention to this matter, and for your concern for open government pursuant to the Brown Act.

Very truly yours,

JACKIE LACEY
Los Angeles County District Attorney

By Sean Hassett

Sean Hassett
Assistant Head Deputy