

Law Office of Jonathan Weissglass

1939 Harrison Street, Suite 150-B

Oakland, CA 94612

510-836-4200

jonathan@weissglass.com

January 11, 2024*Via U.S. Mail and E-Mail*

Honorable Members of the Berkeley City Council

c/o Mark Numainville, City Clerk

2180 Milvia Street, 1st Floor

Berkeley, CA 94704

E-Mail: clerk@cityofberkeley.info

Re: Cease and Desist Letter Pursuant to Government Code §54960.2

I am writing on behalf of the Berkeley People's Alliance ("BPA") and Nathan Mizell, one of BPA's Board Members and a Berkeley resident, to request that the Berkeley City Council cease and desist from violating Government Code §54957.9.

By way of legal background, Government Code §54957.9, a provision of California's Ralph M. Brown Act, provides:

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

The first sentence of Government Code §54957.9 creates a two-step process for continuing a City Council meeting where "orderly conduct of [a] meeting [is] unfeasible" due to interruptions. First, an attempt is to be made to restore order "by the removal of individuals who are willfully interrupting the meeting." That is, there is to be an attempt to determine who is interrupting the meeting and remove only those people. Second, "the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session." That is, if removal of certain individuals is not sufficient, the room may be entirely cleared as a last resort. The meeting would then continue in the cleared meeting room (with provision for readmittance of those not responsible for the interruption under the last sentence of the section).

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The two-step process discussed above significantly limits the ability of legislative bodies to infringe on the right of members of the public to attend a legislative meeting *in person*. The Legislature has not given legislative bodies the option of moving to a different meeting room. Nor has the Legislature provided that video meetings are an adequate alternative to attending in-person, where members of the public may, among other things, strategize and coordinate, more readily yield time, and make their presence felt. Although BPA and Mr. Mizell do not condone use of force to remove individuals who are allegedly willfully interrupting a meeting, the Legislature provided that removal is a prerequisite to holding a City Council meeting without the in-person presence of the public. The Legislature has made its decision and that decision must be followed.

The City, however, did not follow either the letter or spirit of Government Code §54957.9 on two recent occasions – the November 21 and 28, 2023 City Council meetings. At both, the Mayor, after identifying interruptions, instead recessed the meeting and the City Council held the remainder of the meeting in a different location, without members of the public present in person. No attempt was made on either occasion to follow the two-step process of Government Code §54957.9. It does not resolve the Brown Act violation that members of the public were provided with video access to the meetings after they were recessed and moved because the Act does not provide such an exception.

Pursuant to Government Code §54960.2, BPA and Mr. Mizell request that the City Council unconditionally commit to cease, desist from, and not repeat violations of Government Code §54957.9 by, where a meeting is willfully interrupted so as to render the orderly conduct of such meeting unfeasible, failing to (1) attempt to restore order by the removal of individuals who are willfully interrupting the meeting, and (2) if that is not sufficient, order the meeting room cleared and continue in session in that room. Should the City not do so within 30 days of receipt of this letter, BPA and Mr. Mizell intend to file a lawsuit under Government Code §54960. At that point, under Government Code §§54960.2(b) and 54965, attorneys' fees and costs are in order even if the City eventually makes the requested unconditional commitment.

Given the analysis above, it does not appear that there is any justification under the Brown Act for the actions taken at the November 21 and 28 meetings. If the City on reflection agrees, it makes eminent sense to avoid litigation and attendant fees and costs and make the requested unconditional commitment. On the other hand, if there is some legal authority I am missing that justifies the City's actions, please provide it so I can consider the issue in light of that authority.

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Thank you for your attention to this important matter. The best way to contact me is by e-mail to jonathan@weissglass.com.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan Weissglass". The signature is written in a cursive style with a large, stylized 'J' and 'W'.

Jonathan Weissglass

cc: Dee Williams-Ridley, City Manager (via E-Mail to CManager@berkeleyca.gov)
Farimah Brown, City Attorney (via E-Mail to attorney@cityofberkeley.info)

