



PROCLAMATION CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

TUESDAY, JANUARY 23, 2024

3:00 P.M.

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY, CA 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – VACANT

DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://cityofberkeley-info.zoomgov.com/j/1604217623>. To request to speak, use the “raise hand” icon by rolling over the bottom of the screen. To join by phone: Dial 1-669-254-5252 or 1-833-568-8864 (Toll Free) and enter Meeting ID: 160 421 7623. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.*

To submit a written communication for the City Council’s consideration and inclusion in the public record, email council@berkeleyca.gov.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Preliminary Matters

Roll Call

Public Comment - Limited to items on this agenda only

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2):

- a. Workers' Compensation Case: ADJ Number: ADJ16352062

2. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) and 54956.9(d)(1)

- a. Service Employees International Union Local 1021, CSU/PTRLA v. City of Berkeley, Arb No. 21-0278

3. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Anne Cardwell, Deputy City Manager, LaTanya Bellow, Deputy City Manager, Aram Kouyoumdjian, Human Resources Director, Jonathan Holtzman, Renne Public Law Group

Employee Organizations: Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Fire Fighters Association, Local 1227 I.A.F.F. / Berkeley Chief Fire Officers Association; Berkeley Police Association; SEIU 1021 Community Services and Part-time Recreation Activity Leaders, SEIU 1021 Maintenance and Clerical, Public Employee Union Local 1, Unrepresented Employees

4. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2)

- a. Significant exposure to litigation pursuant to Section 54956.9(d)(2): One (1) case. See attached letter from Law Office of Jonathan Weissglass.

OPEN SESSION:

Public Reports of actions taken pursuant to Government Code section 54957.1.

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 18th day of January, 2024.


Jesse Arreguin, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Mark Numainville, City Clerk

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street.



COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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,



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)

