

SCOTT J. RAFFERTY

ATTORNEY AT LAW

1913 WHITECLIFF COURT
WALNUT CREEK CA 94596

(202)-380-5525
RAFFERTY@GMAIL.COM

February 21, 2022

Ms. Christa Freemantle

Clerk, City of Folsom

50 E. Natoma Street

Folsom CA 95630

by electronic and postal mail

cc: Mayor Kerri Howell, members of
the City Council, City Attorney

Dear Ms. Freemantle:

This letter constitutes a demand specified by Section¹ 54960.1(b) that the City of Folsom cease and desist from violations of the Brown Act committed in connection with the public hearing the Council conducted on February 11, 2022. The Council purported to conduct these hearings pursuant to Elections Code, Section 10010. This letter also satisfies the requirement of Section 54960.2 and enables my clients to file an additional action to determine that the actions specified herein were taken in violation of the Brown Act. To the extent set forth herein, the City of Folsom may respond to this demand by making an unconditional commitment to cease and desist from the challenged practices.

The unlawfully conducted hearings are already the subject of litigation before the Superior Court. Because Elections Code, Section 10010 precludes actions designed to mislead the public, to prevent their active participation, or to exhaust their attention by conducting hearings over a protracted period, the City Council cannot effectively cure or correct the effects of these violations simply by redoing the hearing. This would burden the public with attending more hearings, after "actions" (as defined in the Brown Act) have been taken and when the underlying decisions can only be reversed in by a judicial decree from the Superior Court (or the District Court for the Eastern District of California). Therefore, I will be writing the City Attorney separately to propose additional actions that are necessary to prevent an expansion of the current litigation.

The violations include:

¹ "Section" refers to the Government Code, except as noted.

1. The failure to make available all non-exempt documents relating to council districts that were distributed to the council in advance of its February 11, 2022 meeting.
2. The failure to permit the public to inspect the written slides presented on February 11, 2022 during the meeting.
3. The redaction of the time and date of electronic communications to conceal when they were received and when they became subject to public disclosure.
4. The continuing failure, even after the meeting, to allow inspection of writings subject to §54957.5, including those identified in (1)-(3) and the data files presented at those meetings.
5. The reception during the February 11, 2022 meeting of text messages relayed by the City Manager, even though her telephone number had not been published as identified as a means for providing public input.

These violations are exceptionally flagrant. A.B. 361 recently amended Section 54953(e)(2)(B) to require that

In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

Ms. Anderson knew that her cellphone had not been provided in the public notice, let alone in each instance in which the time of the teleconference was given. She acted with the specific intent of depriving Plaintiffs and other advocates of district elections equal access to the limited public forum created by the Brown Act, based on their viewpoint, in violation of civil rights guaranteed the First Amendment.

Similarly, deputy city clerk Lydia Konopka refused to provide the staff report and comments distributed to a majority of the City Council, which must be provided “without delay” under the Brown Act. Instead, she committed to “be in contact when the records are available for review.” That was on February 10, 2022.

The failure to produce these records invalidates actions taken on February 8 and February 15, 2022, and make it inappropriate to continue the hearing on February 22, 2022. This letter demands that you cure and correct the violations by restarting any hearing process, which may not be possible given statutory deadlines. However, there is no other basis to continue the hearing, since the documents were not made available in time for the public to make meaningful comment on the selection of the preferred maps.

Rafferty to Freemantle, Brown Act Demand Letter, February 15, 2022, page 3

This letter also demands that the City cease and desist from failing to make Brown Act documents available to the public at the meeting, which includes posting them in the case of a teleconferenced meeting and making them available on paper in the council chambers.

Thank you for your prompt attention to these matters.

Sincerely,

A handwritten signature in black ink that reads "Scott Rafferty". The signature is written in a cursive, slightly slanted style.

This page is intentionally left blank.