

## Mary Lavelle

---

**From:** Chris Martin <rayemart1977@gmail.com>  
**Sent:** Thursday, October 15, 2020 11:34 PM  
**To:** Mary Lavelle; Christopher Diaz; Steven McHarris; Anthony Phan; Bob Nuñez; Carmen Montano; Karina Dominguez; Rich Tran  
**Cc:** jeff.smith@ceo.sccgov; ghase@metronews.com; jgeha@bayareanewsgroup.com  
**Subject:** Cure and Correct Brown Act Violation  
**Attachments:** letter2.jpg

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**CAUTION - EXTERNAL SENDER.**

---

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Mayor Rich Tran,  
Milpitas City Council Members

Dear City Attorney:

Christopher J. Díaz ,

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Milpitas City Council and City Attorney.

The nature of the violation is as follows: On 10/15/2020, the Milpitas City Council took action to withdraw and Stop the Project Homekey (located at 1000 Hillview Court, Milpitas CA) However the Mayor, without public comment, and without a council Majority vote, sent an earlier letter (dated 10/13/2020, 2 days before the Schedule Special Council Meeting), (attached below) to the County of Santa Clara requesting the County to Stop the Project. Therefore, tainting the 10/15/2020 meeting and acting without good faith or transparency with blatant disregard for the democratic process.

The action taken was not in compliance with the Brown Act because The Brown Act mandates that agendas for regular meetings allow for two types of public comment periods. The first is a general audience comment period, which is the part of the meeting where the public can comment on any item of interest that is within the subject matter jurisdiction of the local agency. This general audience comment period may come at any time during a meeting (Section 54954.3).

The second type of public comment period is the specific comment period pertaining to items on the agenda. The Brown Act requires the legislative body to allow these specific comment periods on agenda items to occur prior to or during the City Council's consideration of that item (Section 54954.3).

Some public entities accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Other public entities provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda.

Either method is permissible, though public comment on public hearing items must be taken during the hearing. Caution should also be taken with consent calendars. The body should have a public comment period for consent calendar items before the body acts on the consent calendar, unless it permits members of the audience to “pull” items from the calendar.

The Brown Act allows a body to preclude public comments on an agenda item in one situation, where the item was considered by a committee of the body which held a meeting where public comments on that item were allowed. So, if the body has standing committees (which are required to have agendaized and open meetings with an opportunity for the public to comment on items on that committee's agenda) and the committee has previously considered an item, then at the time the item comes before the full body, the body may choose not to take additional public comments on that item. However, if the version presented to the body is different from the version presented to, and considered by, the committee, the public must be given another opportunity to speak on that item at the meeting of the full body (Section 54954.3)

In the event it appears to you that the conduct of the Milpitas City Council specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines “action taken” for the purposes of the Act expansively, i.e. as “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

Pursuant to that provision (Government Code Section 54960.1), I demand that the Milpitas City Council cure and correct the illegally taken action as follows: All individual Votes to withdraw from the Project Homekey proposal on 1000 Hillview Court, Milpitas CA, be deemed invalid , e.g. the formal and explicit withdrawal from any commitment made, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment might in certain circumstances include the provision of any and all documents in the possession of the local agency related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action, however due to the extreme time restraint created by the funding and Project Schedule and because the Mayor took a stance and spoke for the City Council as a whole in advance (on 10/13/2020) on a development project prior to Public Hearings I request ALL INDIVIDUAL VOTES BE DEEMED INVALID. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order you to pay my court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,  
Christopher Martin,  
1850 Blue Spruce CT, Milpitas CA 95035  
(Submitted 10/15/2020)



**CITY OF MILPITAS**  
**OFFICE OF MAYOR RICH TRAN**

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479  
PHONE 408.586.3029, FAX 408.586.3056, EMAIL rtran@ci.milpitas.ca.gov

October 13, 2020

RE: Project HomeKey (Milpitas)

To the Santa Clara County Board of Supervisors and County Executive Jeff Smith

It is a great blessing to be a resident of Santa Clara County, in my opinion the greatest County in our nation. We are fortunate to have many resources in Milpitas, such as the County run library and our very valued Valley Health Clinic. Furthermore, Milpitas residents have a special place in our hearts for Ed Levin Park. Our City's partnership with the County has always been strong.

Over the past few months and most recently with the funds granted for Project HomeKey Milpitas, many of our residents have been greatly alarmed with the lack of community engagement and transparency surrounding this project from the County. This is not the same process for homeless housing projects like in the past with Measure A (Housing Bond 2016), where cities in Santa Clara County can have greater influence. We understand State AB 83, but it cannot be a law that excuses the absence of equal treatment for Milpitas residents who have been faithful to our County government. I have considered a lot of good faith for our County to represent Milpitas fairly, however this project has now become a troubling issue.

I stand with the residents of Milpitas, ~~and many of whom who are employed throughout Santa Clara County.~~ We ask you to stop the project, hold meetings for Milpitas residents, and provide us a voice through the democratic process that America promises. There are many Milpitas residents that are opposed to this project as do I.

On behalf of your constituents in Santa Clara County, we await your response, and remain hopeful our County will continue to serve us with honor. I can be reached via phone, email, or through the City Manager/City Attorney. Thank you and God Bless.

Sincerely,

Rich Tran

Mayor