
From: Chris Martin <
Sent: Thursday, September 17, 2020 11:56 PM
To: Christopher Diaz; Carmen Montano; Anthony Phan; Bob Nuñez; Karina Dominguez; Rich Tran; Mary Lavelle; Steven McHarris
Subject: [BULK] Cure and Correct Letter (Brown Act Violation)
Importance: Low

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. Diaz ,

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: In its meeting of 09/15/2020, the Milpitas City Council took action to pull and refuse public comments on an item on the agenda (Item 12, Approve and Adopt a City Social Media Policy) after removing and refusal to read comments , the city Voted by roll call and took formal action on Agenda Item 12, while denying public participation by refusal to acknowledge all submitted public comments.

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: Place Item 12 (Approve and Adopt a City Social Media Policy) back onto the agenda and provide the public the awareness and opportunity to comment of which it was deprived, 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 or inform me of your decision not to do so. 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 seek court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,
Christopher Martin,
Milpitas CA 95035
(Submitted 09/17/2020)



CITY OF MILPITAS

OFFICE OF THE CITY ATTORNEY

TEL: (408) 586-3040 FAX: (408) 586-3056

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479

September 18, 2020

Via email

Chris Martin

RE: Public Comment at City Council Meeting

Dear Mr. Martin:

The City of Milpitas is in receipt of your emails dated September 15th and 16th expressing legal concern that your comment(s) was not read during the public comment portion of Agenda Item 12 regarding the Social Media Policy at the City Council meeting held on September 15, 2020. You expressed concern that you submitted a comment by email and it was not read at the meeting as public comment. You also expressed concern that you submitted a public comment through the online form but it was not read at the meeting as public comment. The City looked into these issues as we value public participation in our public meetings.

With regard your comment submitted by email, on March 17, 2020, California Governor Gavin Newsom issued Executive Order N 29-20 allowing for virtual public meetings under the Brown Act. As part of that Order, the Governor indicated that the agenda that is posted shall "give notice of the means by which members of the public may observe the meeting and offer public comment." The Milpitas City Council meeting agenda for September 15th provided this information in compliance with the Brown Act, as modified by the Governor's Order. As noted on the agenda, the means to offer public comment was through the online form that can be found at <http://www.ci.milpitas.ca.gov/publiccomment>. There is no reference on the agenda as to e-mailed comments being accepted for public comment.

Further, the City did look into your submission of public comments through the online form on September 15th. Based on the research conducted by the City's Information Technology Director, it appears you submitted comments for a Commission meeting and not the City Council meeting. By submitting comments for a Commission meeting, the City Clerk's office would not have seen your comments as they were only monitoring those comments submitted for the City Council meeting. We have included in the attached PDF the Information Technology Director's research findings, along with the comments you submitted via the online form. Both show that your comments submitted via the online form were submitted for the Library and Education Advisory Commission meeting. As I mentioned previously, if you have screenshots or images showing a different outcome on your end, we would be happy to review.

Chris Martin
September 18, 2020
Page 2

Finally, the City Council will consider your September 17th email demanding a cure and correct at a future closed session.

We look forward to your participation in a future City Council meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris Diaz", with a long horizontal flourish extending to the right.

CHRISTOPHER J. DIAZ
City Attorney
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

cc: Steve McHarris, City Manager
Attachment: as cited

We found three comments that were submitted by Mr. Martin on September 15, 2020.

1 comment at 7:29 9/15/2020

1 comment at 11:53 9/15/2020

1 comment at 11:57 9/15/2020

Staff was not able to see these three comments submitted by Mr. Martin since they were sent to an inbox that was not being monitored by staff during the Council meeting.

Mr. Martin used the wrong form to submit public comments during the Council meeting. These comments were submitted into an inbox being used for public comments for our 12 commissions.

Council meeting has its own inbox. This inbox was monitored last night during the meeting. There were 48 public comments that were received and read by the City Clerk Office.

The form clearly states (Meeting Name, Date, Time of Meeting) what meeting it is accepting public comments. In this case, Mr. Martin submitted all three comments to the a form that was used for the Library and Education Commission that took place the night before on 9/14/2020 at 7:00 PM. Below are two screenshots showing the messages in the database and title of the form.

<input type="checkbox"/>	#	Date Created	Date	Name - First	Name - Last
<input type="checkbox"/>	42	14 hours ago	Sep 15, 2020	CHRISTOPHER	MARTIN
<input type="checkbox"/>	41	14 hours ago	Sep 15, 2020	CHRISTOPHER	MARTIN
<input type="checkbox"/>	40	19 hours ago	Sep 15, 2020	CHRISTOPHER	MARTIN



Mike Luu Information Technology
Director

Phone: (408) 586-2706 Email:
mluu@ci.milpitas.ca.gov
1265 N. Milpitas Blvd., Milpitas CA 95035
www.ci.milpitas.ca.gov



MCSE,MCT,OCP,CCNP

From: machform@ci.milpitas.ca.gov <machform@ci.milpitas.ca.gov> on behalf of Meeting Public
Comment <machform@ci.milpitas.ca.gov>
Sent: Tuesday, September 15, 2020 7:29 PM
To: Public Comment <publiccomment@ci.milpitas.ca.gov>
Subject: Public Comments

Thank you for your comments!

Library and Education Advisory Commission Meeting - September 14, 2020 at 7:00 PM

Date Sep 15, 2020
Name CHRISTOPHER MARTIN
Address: The Pines
Agenda Item: PUBLIC FORUM

Comment

Dear City Council Members, Mayor, City Attorney and City Manager

Public comment on the Agenda Item regarding Social Media.

It does not matter what disclaimer the city publishes; it does not matter what disclaimer individual council members, or the mayor publish. Once an individual engages in open conversations with constituents and the general public, regarding ballot measures, endorsements, campaigning, agenda items, and general city business under the heading of their city title, that individual has transitioned the page from a private page to a Public Forum. A Public Forum that is now subject to the governance of Public Record. (Legal Reference: Knight vs Trump.)

Mayor Tran, with Actual Malice, has used Public Forum to knowingly and purposely post a defamatory, libel, false statement directly about me, while naming me personally in that false statement. He used that false statement to discredit me within the Milpitas community, to damage my reputation, and to instigate fellow Milpitas citizens to rally on his behalf. Because of Mayor Tran's unconscionable behavior and the nature of the statement he has opened me up to harassment and placed not only myself but my family in danger. A family that includes my wife, our small child and my elderly mother-in-law. Specifics of the harassment and threats I have received will be shared with the city attorney in future disclosure proceedings, if needed.

It is sad to see, that once again, inappropriate behavior by our city's leader Mayor Tran may cost this city time and resources that at this moment the city cannot afford.

Also I would like to let Mayor Tran know I will be filing a complaint with the OSC on a separate matter that will reference Hatch Act violations. The Hatch Act forbids members of the Military to include reservists from appearing in uniform on or in publications that promote partisan political elections and or campaigning for partisan Political office. Which Mayor Tran has engaged in on his Public Forum Mayoral Facebook Page by posting pictures of himself in Uniform while posting campaigning events, endorsements and miscellaneous political posts, documents and city business on the same Public Forum Facebook page.

Regards,
Chris Martin
The Pines Milpitas.

From: machform@ci.milpitas.ca.gov <machform@ci.milpitas.ca.gov> on behalf of Meeting Public
Comment <machform@ci.milpitas.ca.gov>
Sent: Tuesday, September 15, 2020 11:53 PM
To: Public Comment <publiccomment@ci.milpitas.ca.gov>
Subject: Public Comments

Thank you for your comments!

Library and Education Advisory Commission Meeting - September 14, 2020 at 7:00 PM

Date Sep 15, 2020
Name CHRISTOPHER MARTIN
Address:
Agenda Item: PUBLIC FORUM
Comment
Read my letter if not its censorship and. Violation of my 1st amendment

From: machform@ci.milpitas.ca.gov <machform@ci.milpitas.ca.gov> on behalf of Meeting Public
Comment <machform@ci.milpitas.ca.gov>
Sent: Tuesday, September 15, 2020 11:57 PM
To: Public Comment <publiccomment@ci.milpitas.ca.gov>
Subject: Public Comments

Thank you for your comments!

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Regards,

Chris Martin

The Pines Milpitas.

NOTICE TO CEASE AND DESIST

Christopher
Martin
Milpitas , California
95035

Date September 2 2020

Re: Defamation of Character – For Libel and/or Slander

Dear Mayor Rich Tran,

Christopher is a respected professional and has spent their life building a positive reputation. Nevertheless, we have been informed that you have been maliciously spreading inaccurate and unfounded information that is damaging to their personal and professional character.

Under the laws in the State of California, it is unlawful for an individual to make deliberate statements that intend to harm the reputation of another party without factual evidence or based on hearsay.

The defamatory statements include, but are not limited to, the following: In your post on facebook on September 1st you said I called you a racist which is an untrue/ false statement that has created undue harassment from individuals that follow your official Mayoral Page that is used to represent City business as well as used to carry the weight of your title as Mayor. I am requesting the post be removed and a retraction be posted.

If you do not cease all related statements a defamation of character lawsuit will be commenced against you.

In addition, this shall serve as a pre-suit letter demanding that you provide us written assurance by September 9 2020 that you will cease and desist from making further factually untrue statements.

If you do not comply with this cease and desist letter by the aforementioned date then a lawsuit may be filed in the proper jurisdiction seeking monetary damages as well as pursuing all available legal remedies for your defamation.

Sincerely,



By Christopher Martin

Mary Lavelle

From: Vince Thayer
Sent: Thursday, September 17, 2020 7:40 PM
To: Christopher Diaz-Contact
Cc: Carmen Montano; Bob Nuñez; Anthony Phan; Karina Dominguez; Mary Lavelle; smharris@ci.milpitas.ca.gov
Subject: Complaint and Legal action
Attachments: IMG-8249.jpg; IMG-8262.PNG; IMG-8252.jpg; IMG-8260.PNG; IMG-8258.PNG; IMG-8259.PNG; IMG-8261.PNG; IMG-8257.PNG

Follow Up Flag: Flag for follow up
Flag Status: Flagged

CAUTION - EXTERNAL SENDER.

I have had a public attack from Mayor Tran on his "Mayor Rich Tran" Facebook page. I tried to offer the mayor a FREE service to do COVID-19 drive through without paying anything and he turned it on social media as if i was trying to sell him something and lied about the actual encounter. I thought he might want this service in Milpitas because i heard he spent lots of money to a lab for the same service Im offering for free. On top of that, i can not comment on his public attack because he blocked and or restricted me from commenting on his "Mayoe Rich Tran" official FB page.

He is restricting my public access to his public page and also to defend myself. He slanders and libels me and can not handle a real debate with me and blocks me from his page. I attached several photos and screenshots of this and i will send all evidence to my attorney.

See attached photos of his public bullying me and my business. And i created a video of me scrolling through his page to show i have ZERO access to defend myself or exercise my first amendment right on a public officials page.

With a loose canyon like this I'm sure this is not his first time doing this and I will show a history of this within my discovery.

Link to my video of my access to his page below
<https://share.icloud.com/photos/007xb8Mgm8tfc9su3sa0UiY3w>

Vince Thayer

President and Founder
Test Me 2, LLC.
269-598-1372 Cell Phone
www.TestMe2.org
vince@testme2.org

Mary Lavelle

From: Dennis Grilli
Sent: Friday, September 18, 2020 4:55 PM
To: Steven McHarris; Christopher Diaz-Contact
Cc: Rich Tran; Bob Nuñez; Karina Dominguez; Carmen Montano; Anthony Phan
Subject: Defamation of Character

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION - EXTERNAL SENDER.

The purpose of this communication is to notify the City of Milpitas of a potential civil action regarding the Defamation of Character as it relates to a citizen of Milpitas, Marsha L. Grilli.

On September 17, 2020 Milpitas Mayor Richard Tran engaged in a text exchange with a local businessman Vince Thayer, who offered the City of Milpitas a free service relating to COVID19 testing. Mayor Tran declined the offer without further explanation. It may have been enlightening to Mr Thayer if Mayor Tran explained that MFD is currently providing that service. Mr Thayer suggested in a following text, apparently believing that the service offered was important to the Milpitas community, indicated that he would approach Mayor Tran's opponent in the upcoming election.

I am aware of this exchange only because Mayor Tran posted the text on his official Mayor Tran Facebook website.

Mayor Tran suggested to his followers on his posting that he was being threatened by Mr Thayer.

This irresponsible, vindictive, senseless action resulted in a flurry of hostile, insulting responses on the Facebook page directed at Mr Thayer.

Marsha Grilli, on the Facebook page, suggested to Mayor Tran that allowing these postings on his Facebook page amounted to cyber bullying, and requested that Mayor Tran "just let it go".

Marsha Grilli was immediately attacked by Mayor Tran's followers repeatedly referring to her as a "Karen".

If you are unfamiliar with this reference, it is related to a racially charged incident in New York City. The colloquial reference is defines a "Karen" as a "privileged, self righteous, racist, white woman".

This reference is insulting, demeaning, defaming and without factual basis. This reference is a clear attack on reputation and standing in the Milpitas community that has been well earned during Marsha Grilli's 42 years of loyal service to the Milpitas community as a citizen and 24 years of service as an elected official of the MUSD and Council.

Mayor Tran provided the platform for this defamation through his official Facebook page. Mayor Tran provoked the circumstances under which the attack was made by posting the text communication with Mr Thayer and thereby encouraged the attacks. This irresponsible, vindictive posting resulted in the scurrilous attacks directed at Marsha Grilli. More than one of the attacks included the reference to "Karen". Mayor Tran allowed these attacks to remain on his official Facebook page exposing Marsha Grilli to a continuing period of embarrassment. One of the attacks, which specifically called Marsha Grilli a "Karen" was particularly vulgar and insulting and was subsequently taken down by Facebook.

Mayor Tran, directly to Marsha Grilli, wrote in reference to the comments being posted, "no one is making you follow this Facebook page".

These attacks having been made, Mayor Tran continues to allow them to train on the Facebook page demonstrating a callous, irresponsible posture.

The City of Milpitas is aware of Mayor Tran's official Facebook page and that he uses this platform as an elected official in Milpitas. The City of Milpitas is complicit in it's use and the ramifications of Mayor Tran's Facebook page.

As Marsha Grilli has been exposed publicly to this defamation, encouraged by Mayor Tran and condoned by the City of Milpitas, I demand a public written apology by Mayor Tran and the City Manager of Milpitas read into the minutes of the next City Council meeting. I believe the Milpitas Council should censure Mayor Tran for this incident.

In the case that this does not occur at the next meeting I will contact our attorney to pursue legal action.

Thank you for your attention.

Dennis Grilli

Sent from my iPad

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