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January 25, 2024

***VIA ELECTRONIC MAIL
AND REGULAR MAIL***

Mr. Kevin Crye, Chair
Members of the Board of Supervisors
County of Shasta
1450 Court Street, Suite 308
Redding, CA 96001

***Re: Cure and Correct Letter Regarding Violation of Ralph M. Brown Act and
Political Reform Act: Board of Supervisors Meetings January 9, 2024 (Item
R3) & January 24, 2024 (Item R4)***

Dear Chair Crye and Members of the Board of Supervisors:

This office represents the Anderson/Millville Residents regarding the Board of Supervisors approval of the Ordinance No. 665-4 that suspends the collection of new public facility impact fees. The Board's actions in January 23, 2024 enactment of Ordinance No. 665-4 the Board of Supervisors violated the requirements of the Ralph M. Brown Act governing the conduct of public meeting. Additionally, Supervisor Jones' participation in the discussion and approval of Ordinance No. 665-4 voids the approval as he had a direct financial interest in the matter that that constitute a conflict of interest under the Political Reform Act of 1974, Government section 81000 *et seq.*

A. The Board Violated the Brown Act's Prohibition on Serial Meetings

Pursuant to the Ralph M. Brown Act Anderson/Millville Residents request that the Shasta County Board of Supervisors cure and correct the Board's violation of Government Code section 54952.2(b) for conducting serial meetings prior to the enactment of Ordinance No. 665-4.)

Item R3 for the Board's January 9, 2024 provides: "Receive a presentation and introduce and waive the reading of *An Ordinance of the Board of Supervisors of the County of Shasta Amending Ordinance No. 665 of Shasta County Entitled, "An Ordinance of the Board of Supervisors of the County of Shasta Adopting Public Facility Fees for all New Development within the County of Shasta" by Suspending the Collection of New Public Facility Impact Fees*" (Sponsored by Supervisor Crye)."

During the discussion of Item R3, Chair Crye made statements indicating that he had discussed suspending the impact fees with board members prior to the meeting. Chair Crye stated: "I've worked on this for pretty close to six months * * * and I wish I could have talked everyone into this three months ago when I knew I was going to be chair." Chair Crye's

comments indicate that he had discussions with other Supervisors regarding the suspension of the impact fees.

Item R4 for the January 23, 2024 Board meeting provides: “Take the following actions: (1) Open a public hearing; (2) close the public hearing; and (3) enact *An Ordinance of the Board of Supervisors of the County of Shasta Amending Ordinance No. 665 of Shasta County Entitled, 'An Ordinance.'*”

After the close of the public hearing, the Board enacted Ordinance No. 665-4. The Ordinance suspends the collection of new impact fees across all development categories. However, as indicated by Chair Crye, part of the Board’s discussion and deliberation appears to have been done through serial meetings outside of the public’s presence. Such discussions constitute serial meetings which the Brown Act specifically prohibits.

As a remedial statute, the Brown Act must be construed liberally so as to accomplish its purpose and suppress the mischief at which it is directed. (*International Longshoremen’s and Warehousemen’s Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 294, modified on denial of rehearing, review denied. *Epstein v. Hollywood Entertainment Dist. II Business Improvement Dist.* (2001) 87 Cal.App.4th 862, 869.) Moreover, Government Code section 54950 expressly states that:

“It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

Accordingly, the public’s involvement in the public process is not one of a bystander. It is the public who has charged Board members with conducting their business. Thus, the Brown Act prohibits serial meetings that are conducted through direct communications, personal intermediaries or technological devices for the purpose of developing a concurrence as to action to be taken. (Gov’t Code, § 54952.2(b); *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 103.) Given that the

The Board has 30 days from receipt of this demand letter to either cure or correct the challenged actions, or inform my office of your decision not to do so. If the Board fails to cure or correct as demanded, the Anderson/Millville Residents may seek judicial invalidation of the Board’s January 24, 2024 enactment of Ordinance No. 665-4, in which case Anderson/Millville Residents would seek an award of court costs and reasonable attorney fees. (Govt. Code §§ 54960(a), 54960.1, 54960.5.)

B. Supervisor Jones' Participation in the Discussion, Deliberation and Enactment of the Ordinance Constitutes a Conflict of Interest.

On October 24, 2023, the Board approved the Mitigated Negative Declaration (“MND”) for the Zone Amendment 13-007 Project – High Plains Shooting Sports Center - (“Project”). The applicant for the Project is Supervisor Patrick Jones. At the time the Board approved the Project, Ordinance 665 provided for the payment of impact fees for projects such as Supervisor Jones’ Project. It is estimated that the impact fees associated with Supervisor Jones’ project would amount to approximately \$20,000. As a result of the Board’s enactment of Ordinance No. 665-4, which Supervisor Jones voted in favor of, he will be relieved of paying the approximately \$20,000 in fees for the development of his project. Supervisor Jones’ participation in the discussion, deliberation and enactment of Ordinance No. 665-4 constitutes a direct conflict of interest and violates the requirement of the Political Reform Act, Government Code, § 81000 *et seq.*

The Act’s conflict of interest provisions provide that “[a] public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” (Gov’t Code § 87100.) “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family.” (Gov’t Code § 87103.) It also applies to “(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more. (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (*Id.*)

“The whole purpose of the PRA was ‘to preclude a government official from participating in decisions where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is employed.’ (*Witt v. Morrow* (1977) 70 Cal.App.3d 817, 822-823.) It is not just actual improprieties which the law seeks to forestall but also the appearance of possible improprieties.” (*Id.* p. 823.)” (*Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050, 1058.) The Fair Political Practices Commission in carrying out the purposes and provisions of the PRA adopted California Code of Regulations that provide:

No public official at any level of state or local government may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying conflict of interest. A public official has a conflict of interest in the decision will have a reasonably foreseeable material financial effect on one or more of his/her economic interests, unless the public official can establish either: (1) that the effect is indistinguishable from the effect on the public generally, or (2) a public official’s participation is legally required. (Cal. Code Regs., tit. 2, § 18700(a).)

Supervisor Jones' participation in and voting for the enactment of Ordinance No. 665-4 bestows upon him a financial benefit of approximately \$20,000 that is clearly distinguishable from its effect on the public generally. Not only is there an appearance of a conflict of interest, it constitutes a direct conflict of interest. As Supervisor Jones has a direct financial interest in the outcome, the PRA and the Fair Political Practices Commission's regulation specifically prohibited his participation in enacting Ordinance No. 665-4. (See *Witt v. Morrow, supra*, 70 Cal.App.3d at 822-823; *Hamilton v. Town of Los Gatos, supra*, 213 Cal.App.3d at 1058; Gov't Code § 87103; Cal. Code Regs., tit. 2, § 18700(a).)

As Supervisor Jones' participation constitutes a conflict of interest, Anderson/Millville Residents request that at next regularly scheduled meeting the Board of Supervisors vacate and rescind enactment of Ordinance No. 665-4 and reestablish the impact fees that existed. If the Board fails to take remedial action, then Anderson/Millville Residents reserve their right to file a Petition for Writ of Mandate requesting that the Shasta County Superior issue a writ of mandate directing the Board to vacate and rescind its enactment of the Ordinance. Anderson/Millville Residents will also seek recovery of attorney's fees and costs associated with the legal action.

LAW OFFICE OF DONALD B. MOONEY



Donald B. Mooney
Attorney for Anderson/Millville Residents

cc: Clerk of the Board
Gretchen Stuhr, Interim County Counsel
Clients