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January 18, 2018

Paul F. DeMeester, Esq.
605 Middlefield Road
Redwood City, California 94063

Re: **Possible Brown Act Violation at August 2, 2017 Special Meeting**

Dear Mr. DeMeester:

I have concluded my review of the claim that your client, Harbor Commissioner Sabrina Brennan, violated the Brown Act on August 2, 2017 when she insisted on continuing to speak at the meeting of the joint Special Committee of the City Council of South San Francisco and the Harbor District. I find that no actual violation occurred, and am consequently closing this inquiry. I write to inform you of that conclusion and to respond to your assertions, on behalf of your client, which I believe incorrectly portray both what occurred and the controlling law.

The meeting in question occurred on August 2, 2017. It was a properly noticed meeting of a Joint Special Committee of the City Council of South San Francisco and the Harbor District. The purpose of the joint committee is to explore the possible merger of the City of South San Francisco and the Harbor District regarding management of the Oyster Point Marina. The joint committee consisted of two members of the Harbor District and two members of the City Council of South San Francisco. At the meeting, Commissioner Brennan was allowed to speak as a member of the public during the public comment portion of the meeting. Commissioner Brennan then continued to seek to address items on the agenda, claiming that it was “within the law to speak as a member of the public on {that item}.” She was told that she could not speak further, as to do so would constitute a violation of the Brown Act. Commissioner Brennan was offered the opportunity to submit her comments in writing so as to avoid the Brown Act violation, but she refused, insisting that she had a right as a member of the public to make further comment. As a result of Commissioner Brennan’s insistence on speaking despite the repeated warnings that to do so would constitute a violation, the meeting was adjourned without being completed.

The Brown Act (Gov. Code Sections 54951-54962) requires a legislative body to comply with public notice and agenda requirements, and to provide an opportunity for the public to comment on items under discussion. The Harbor District is such a body, and because it consists of five members, the presence of the three members constitutes a quorum, triggering the requirements of the Act. Participation by Commissioner Brennan in the Special Committee meeting would indeed violate the Act, as it would create a *de facto* meeting of the Harbor District, for which no notice and agenda had been promulgated. While it was permissible for Commissioner Brennan to attend the Special Committee meeting, even though her presence there meant that a quorum of the Harbor District was at the meeting, she could do so as long as she attended only as an observer (Govt. Code Section 54952.2(c)(6)).

The Attorney General has provided a written opinion regarding this issue. The Attorney General concluded that members of the legislative body could not “ask questions or make statements” while attending the meeting, finding that the Legislature “intended to limit attendance in these circumstances to watching and listening without further participation” (81 Ops. Cal. Atty. Gen. 156, 158). Moreover, the Attorney General opined, the member should not be granted any special privileges, such as sitting at the dais or council table.

Considering Commissioner Brennan’s insistence on continuing to speak beyond the three minutes to which she was entitled, and provided, as a member of the public, her refusal to accept the alternative means offered of providing the information she wished to impart in written form, and her continued presence at the council table, Commissioner Brennan moved beyond the exception provided for by the Legislature of attendance as an “observer.” Despite her protestations to the contrary, both the manner and the content of her comments created the impression that she was acting as a member of the District and not simply as an “observer.” Had the Special Committee allowed her to continue, a “meeting” of the Harbor District in violation of the Brown Act would have resulted.

Government Code Section 54959 sets forth the elements of a criminal violation. A member of a legislative body who attends a meeting of that body where: 1) action is taken in violation of this Act, and 2) where the member intends to deprive the public of information, is guilty of a misdemeanor. Here, it is apparent that no action was taken. Moreover, Commissioner Brennan made no effort to deprive the public of information. Consequently, her actions did not amount to a criminal violation.

In your letter to me dated October 14, 2017, you expressed the opinion of yourself and Commissioner Brennan that no violation occurred because the joint committee is not a legislative body within the meaning of the Brown Act. This conclusion misses the point. The Brown Act violation arose because a third member of the Harbor District, Commissioner Brennan, sought to discuss matters within the purview of the District at a meeting that had not been noticed and agendaized. Her insistence on addressing those issues created a *de facto* meeting of the Harbor District, regardless of the nature of the underlying joint committee meeting that was occurring. In a letter dated December 8, 2017, you further argued that Govt. Code Section 54952.2(c) did not apply in this setting because that subdivision applies only to a standing committee of a legislative body. You claim that the notice of the special joint committee was defective, as it did not refer

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specifically to the “joint” committee, but instead referenced a “standing committee of the City of South San Francisco.” A review of the notice belies that contention. It was entitled in bold, large font “San Mateo County Harbor District” and included “San Mateo County Harbor District – South San Francisco Oyster Point Liaison Committee Meeting” under the words “Special Meeting Agenda.” While the Notice paragraph included the phrase “standing committee of the City of South San Francisco,” that phrase was preceded by “the City Council Harbor District Liaison....” In context, and on its face, it was clear that this was the joint committee and not a separate committee of the City. Moreover, even if the agenda failed to provide proper notice, that would create an additional potential Brown Act issue, and not permit Commissioner Brown to discuss issues with the two Harbor District Commissioners on the panel that afternoon.

Adherence to the Brown Act is not optional for public officials, and the public has a right to expect their elected representatives to both know and adhere to its requirements. Insistence on speaking at a meeting despite numerous explanations, including from the committee’s attorney, that the conduct created a Brown Act violation, is a marked departure from what the law expects. This conduct is especially disturbing as the Committee offered alternative means for Commissioner Brennan to provide comment, and her actions caused the meeting to be prematurely adjourned. While your assurance that Commissioner Brennan will not comport herself in this fashion again is a factor in our decision to take no further action, her insistence that she was deprived of her rights as a member of the public, without any apparent recognition that her actions would have resulted in a Brown Act violation if allowed to continue, is further troubling. As you know, the Brown Act provides a variety of remedies other than criminal prosecution, such as injunctive relief, should your client choose in the future to not follow the requirements of the law.

Very truly yours,

STEPHEN M. WAGSTAFFE, DISTRICT ATTORNEY

By: 
Albert A. Serrato, Assistant District Attorney

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cc: Steven D. Miller, Esq.

Virginia Chang Kiraly, President, San Mateo County Harbor District