

November 10, 2015

Mayor Bob Lingl
Lompoc City Council
100 Civic Center Plaza
Lompoc, CA 93436

Dear Mayor Lingl,

I have received Mr. Joseph Pannone's letter of November 4, 2015, apparently written on the City Council's behalf, in response to my "cease and desist" letter dated October 6, 2015. The City Council apparently directed the City Attorney to respond with an "unconditional commitment to cease, desist from, and not repeat the past action" in accordance with CA Code Section 54960.2(c)(1). While I appreciate the City Council's consideration of my concerns, Mr. Pannone's response is unacceptable for three substantive reasons, which I discuss below. Thus in the absence of further action by and communication from the City Council, I will proceed in accordance with Section 54960.2(a)(4), having received "other than an unconditional commitment" (see also Section 54960).

First, Mr. Pannone's letter completely disregarded my description of the "past action," and thus it is non-responsive to the cease and desist request. In my letter I described the past action as follows:

By this letter I request that you cease and desist from the use of closed sessions to discuss the California Space Center Project or the ENA, except in very narrow and specific instances when the council's purpose is "to grant authority to its negotiator regarding the price and terms of payment" (as is allowed by law).

Note that the focus of the challenge is the City's use of *closed sessions* to discuss *any topic* related to the CSC or the ENA (excluding instances when a closed session might be authorized and consistent with a *narrowly construed* interpretation of the real property exemption of the Brown Act.)

In Mr. Pannone's response to my letter, he ignored my clearly stated intentions. He reframed the "past action" as follows and committed that the City Council "will cease, desist from, and not repeat the challenged action as described":

- (i) providing direction to the City's real property negotiation pursuant to Section 6. of that certain Exclusive Negotiation Agreement, dated June 2, 2015, (the "ENA") by and between the City and the California Space Center, LLC, ("CSC"), to issue a notice of default for the CSC's failure to follow certain terms of the ENA, whose purpose is to provide for negotiations between the City and the CSC for CSC's potential of 82 acres owned by the City, and*
- (ii) reporting out that direction at the same Council meeting.*

Note that Mr. Pannone failed to acknowledge that the past action occurred in closed session. More importantly, based on his description, the commitment to cease and desist applies only to the issuance of any future notices of default to the CSC. By focusing on the notice of default in particular, Mr. Pannone has significantly limited the Council's commitment, in regards to the range of discussions or decisions that must be held in open session.

Second, Mr. Pannone's letter fails to serve as an "unconditional commitment" because, according to Section 54960.2(c)(1), such a commitment must be signed by the "chairperson or acting chairperson of the legislative body," not by the legislative body's attorney.

Third, Mr. Pannone's letter is unacceptable because, according to Section 54960.2(c)(2), an unconditional commitment "shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business." The City Council discussed the "alleged Brown Act Violation" during a closed session on November 3, 2015, after which Mr. Pannone announced in open session that "no reportable action" had occurred. Apparently, though, Mr. Pannone was directed during that closed session to draft and send a response to my cease and desist letter.

Simply put, while the City Council was endeavoring to address one Brown Act violation, it committed another.

Here's what I think should happen next. These alleged violations of the Brown Act need to be agendaized and discussed in open session. I hope that you will be able to restore my confidence in your commitment to transparency. Were these procedural errors made through ignorance or with ill-intent? Is your aim to follow both the letter and the spirit of the Brown Act?

I respectfully request that the City Council respond in accordance with CA Code Section 54960.2 by approving in open session an unconditional commitment to cease, desist from, and not repeat the past actions described below:

- (i) using closed sessions to discuss the California Space Center Project or the ENA, except in very narrow and specific instances when the council's purpose is "to grant authority to its negotiator regarding the price and terms of payment" (as is allowed by law).
- (ii) using closed sessions to discuss and approve actions related to alleged Brown Act violations.

If the Council fails to respond I may be left with no recourse but to consult with the District Attorney and "commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations" of the Brown Act (Section 54960). In accordance with Section 54960.2(b), and because the City Council has failed to respond with an "unconditional commitment" within 30 days of my original letter, "the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5."

Respectfully yours,



Jane Behr

1729 Berkeley Dr

Lompoc, CA 93436

805.717.2628

jane@northsidelompoc.com

CC: Council Members
City Attorney
City Manager
Asst. City Manager
CEO, California Space Center
Executive Director, First Amendment Coalition