



Orange
County

LETTER OF TRANSMITTAL/FAX

TO City Clerk
City of San Clemente
Laura Campagnolo
910 Calle Negocio
San Clemente, CA 92673

Date:	7/29/2024
Attention:	Laura Campagnolo
RE:	Ralph M. Brown Act Complaint

WE ARE SENDING YOU Attached Fax Under separate cover

For FAX: Number of Pages including this one 8 the following items:

Shop drawings Prints Plans Samples Specifications

Copy of letter Change order Attached to email

Copies	Date	No.	Description
1	8/29/2024		Clarification Letter RE Intention of the Complaint and its Adjudication
1	8/29/2024		Government Code 54956.9 2 pps
1	8/29/2024		Ralph M. Brown Complaint Letter 1 ppg
1	9/3/2024		City Council Agenda Closed Session 09-03-2024 3 ppgs

THESE ARE TRANSMITTED as checked below:

For approval Approved as submitted Resubmit _____ copies for approval

For your use Approved as noted Submit _____ copies for distribution

As requested Returned for corrections Return _____ corrected prints

For review and comment _____



REMARKS:

Ralph M. Brown-Misc Paperwork-disavowal Letter Reference Documents

Copy To: Elizabeth Mitchell; Andy Hall; Samantha Wylie Signed: 
Edward R. Kweskin, Principal

Entitlement-Management Sustainability
 TEL 949-664-3368
 FAX 949-498-4474
 Email: ekweskin@resoluteconsulting.net
 180 Calle Iglesia Suite 200
 San Clemente, California 92672-7502

Edward R. Kweskin
Commissioner
City of San Clemente
Beaches, Parks and Recreation Commission

August 29, 2024

Laura Campagnolo
City Clerk
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

RE: City of San Clemente City Council Regular Meeting Agenda for Tuesday, September 3, 2024:
Closed Session Item A. Conference with Legal Counsel-Anticipated Litigation.

Dear Madam Clerk:

The undersigned is in receipt of the referenced agenda for the Meeting of Tuesday September 3, 2024 and wishes to clarify the intent of the Formal Complaint dated August 20, 2024 as indicated as a Draft dated 08-21-2024.

To Wit:

1. The understanding for purposes of the referenced complaint is a procedural matter in the context of a regular meeting of the Beaches, Parks and Recreation Commission based on an admonition of the City Staff regarding a concern for an irregularity of the Ralph M. Brown Act.
2. The undersigned, author of the Complaint Letter, disavows any interest or participation in any formal litigation through the judicial system.
3. The intent of the complaint was exclusively to review the facts and circumstances of a procedural decision which appeared to violate the Ralph M Brown act, verify the facts and circumstances of the procedural action, and if confirmed in violation advise the offending parties of their error and schedule a reconsideration of the question in a proper procedural manner consistent with the requirements of the open meeting statute.
4. The whole of the complaint was per 54956.9(c) have an administrative body exercising its adjudicatory authority (in this case, assumed to be the City Council) review facts and (circumstances and determine a correction and cure as they may deem appropriate.

*(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, **administrative body exercising its adjudicatory authority**, hearing officer, or arbitrator.*

Again, the undersigned has no interest and will disavow any participation in any formal judicial litigation.

The interest of the undersigned is to maintain the integrity of the Commission by insuring all members understand the rules and regulations governing their decisions and abide by them faithfully.

Respectfully Submitted,



Edward R Kweskin, Commissioner, Beaches, Parks and Recreation

U.S. Federal and State Cases, Codes, and Articles

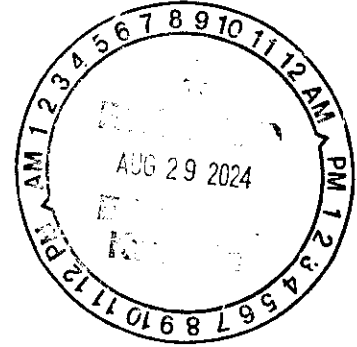
Select a tab to search United States Cases, Codes, or Articles

Cases	<u>Codes</u>	Articles
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Search by keyword or citation
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California Code, Government Code - GOV § 54956.9

Current as of January 01, 2023 | Updated by FindLaw Staff (https://www.findlaw.com/company/our-team.html)

(a) Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

(b) For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

- (1) Litigation, to which the local agency is a party, has been initiated formally.
- (2) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.
- (3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).
- (4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

(e) For purposes of paragraphs (2) and (3) of subdivision (d), "existing facts and circumstances" shall consist only of one of the following:

- (1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.
- (2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.



(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with [Section 810](#)) of Title 1 of the Government Code (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb99c73a0a5e711ed9c4884bd2536> or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to [Section 54957.5](#) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb99c73a1a5e711ed9c4884bd2536>

(4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to [Section 54957.5](#)

(<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb99c9ab0a5e711ed9c4884bd2536>) The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(f) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Division 10 (commencing with [Section 7920.000](#)) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb99cc1c0a5e711ed9c4884bd253681> of Title 1).

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

< [Back to chapter list \(https://codes.findlaw.com/ca/government-code/\)](https://codes.findlaw.com/ca/government-code/)

< **Previous part of code** (<https://codes.findlaw.com/ca/government-code/gov-sect-54956-87/>)

Next part of code > (<https://codes.findlaw.com/ca/government-code/gov-sect-54956-88/>)

Cite this article: FindLaw.com - California Code, Government Code - GOV § 54956.9 - last updated January 01, 2023 |

<https://codes.findlaw.com/ca/government-code/gov-sect-54956-9/> (<https://codes.findlaw.com/ca/government-code/gov-sect-54956-9/>)



[Read this complete California Code, Government Code - GOV § 54956.9 on Westlaw \(https://1.next.westlaw.com/Document/ID91E27D0AB5711ED81C18076A89109CB/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)\)](https://1.next.westlaw.com/Document/ID91E27D0AB5711ED81C18076A89109CB/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)))

FindLaw Codes may not reflect the most recent version of the law in your jurisdiction. Please verify the status of the code you are researching with the state legislature or via Westlaw before relying on it for your legal needs.

Was this helpful?

Yes

No

2/

Edward R. Kweskin
Commissioner
City of San Clemente
Beaches, Parks and Recreation Commission

August 20, 20200

Laura Campagnolo
City Clerk
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

DRAFT 08-21-2024

RE: Violation of the Ralph M. Brown Act at Regular Meeting of the Beaches, Parks and Recreation Commission, 08-13-2024 Formal Complaint Letter

Dear Madam Clerk:

At the Regular Noticed Meeting of the City of San Clemente, Beaches, Parks & Recreation meeting, with the seating of newly appointed, the first agenda item on the agenda was for the election of a Chairman and Chairman Pro-Tem.

Prior to this action it was announced by the Director, Ms. Samantha Wylie that the administration had requested the action be postponed to the next regular meeting since some discovered irregularities associated with the matter had come to the attention of the administration.

A vote of the commission did not concur with the request for postponement. And the matter proceeded.

A nomination process proceeded with some alacrity with a Chairman and Chairman Pro-Tem nominated. An alternative nomination was proposed. That nomination did not come to a vote since the prior nominated Chair and Chairman Pro-Tem was summarily voted in by the majority and seated. With the speed of the process it was apparent that this action had been orchestrated outside the meeting as a probable seriatim meeting. Act (Govt Code Section 54952.2(b)(1)). The request to postpone action by staff indicated the irregularity had been discovered.

The speed of the election and lack of any discussion indicated that the selection had been made by the majority of the commission (4) prior to the meeting in violation of the Ralph Brown Act (Govt Code Section 54952.2(b)(1)).

This letter is a formal complaint by the undersigned challenging the referenced action of the Commission in the election of Chairman and Chairman Pro-Tem.

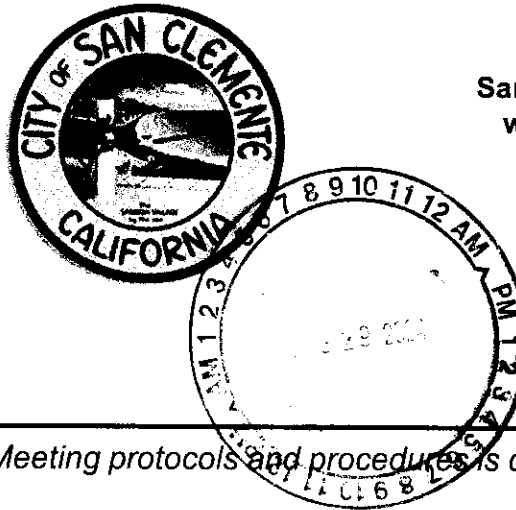
The Cure and Correct Request is to void the referenced action. Have a new election for the positions with only the non-violating members participating.

Respectfully Submitted,


Edward R. Kweskin

Commissioner

5:00 p.m. - Closed Session
6:00 p.m. - Business Meeting



Mayor Cabral
Mayor Pro Tem Enmeier
Councilmember Duncan
Councilmember Knoblock
Councilmember Loeffler

Information concerning City Council Meeting protocols and procedures is contained at the end of this agenda.

RULES FOR ADDRESSING COUNCIL

- Members of the public may address the City Council on matters within the jurisdiction of the City of San Clemente.
- If you wish to address Council, please complete one of the blue speaker cards located at the entrance to the Council Chambers and turn it in to the City Clerk or Deputy City Clerk.
- Persons wishing to address Council concerning an agenda item will be invited to address Council during the time that Council is considering that particular agenda item. Persons wishing to address Council concerning a non-agenda item will be invited to address Council during the "Oral Communications" portion of the meeting.
- When invited by the Mayor, please step to the podium, and if you wish, state your name and the City in which you reside, and make your presentation. Please limit your presentation to three minutes.

MISSION STATEMENT

The City of San Clemente, in partnership with the community we serve, will foster a tradition dedicated to:

Maintaining a safe, healthy atmosphere in which to live, work and play;

Guiding development to ensure responsible growth while preserving and enhancing our village character, unique environment and natural amenities;

Providing for the City's long-term stability through promotion of economic vitality and diversity...

Resulting in a balanced community committed to protecting what is valued today while meeting tomorrow's needs.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act ("CEQA") is the state law that requires the City to evaluate and document the potential environmental consequences of discretionary decision. (See, California Public Resources Code Sections 21000-21189.3; and the "CEQA Guidelines" at California Code of Regulations Title 14, Division 6, Chapter 3, Sections 15000-15387). For each item that requires a CEQA determination by the City Council, there is a reference to that determination on this agenda, and more information regarding the CEQA analysis is included in the documents that accompany this agenda. To the extent that City staff determines that particular items are not subject to CEQA, there will be no indication of a CEQA action on this agenda.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Pursuant to Government Code § 84308, City Council Members are disqualified and not able to participate in any agenda item involving contracts (other than competitively bid, labor, or personal employment contracts), franchises, discretionary land use permits and other entitlements if the City Council Member received more than \$250 in campaign contributions from the applicant or contractor, an agent of the applicant or contractor, or any financially interested participant who actively supports or opposes the City's decision on the agenda item since January 1, 2023. Members of the City Council who have received, and applicants, contractors or their agents who have made, campaign contributions totaling more than \$250 to a City Council Member since January 1, 2023, are required to disclose that fact for the official record of the subject proceedings. Disclosures must include the amount of the campaign contribution and identify the recipient City Council Member and may be made either in writing to the City Clerk before the agenda item or by verbal disclosure during consideration.

CLOSED SESSION (5:00 P.M.)**A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

➔ Significant exposure to litigation pursuant to Government Code section 54956.9(a)&(d)(2)
Number of Cases: 2

➔ 1. Facts and circumstances per Government Code section 54956.9(e)(2): Alleged violation of the Ralph M. Brown Act as set forth in the August 21, 2024 letter from Edward R. Kweskin.

2. Facts and circumstances per Government Code section 54956.9(e)(1): Facts and circumstances that might result in litigation against the City that the City believes are not yet known to a potential plaintiff or plaintiffs.

B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Existing litigation pursuant to Government Code Section 54956.9(d)(1)
Number of Cases: 12

1. Case Name: *Brian Dick, et al. v. City of San Clemente, et al.*, Orange County Superior Court Case No.: 30-2024-01406991-CU-WM-CXC.
2. Case Name: *Harbor View Estates Homeowners Association v. City of San Clemente*, Orange County Superior Court Case No. 30-2024-01371169-CU-WM-CXC.
3. Case Name: *City of San Clemente v. Alfie Shahid, et al.*, Orange County Superior Court Case No. 30-2024-01381591-CU-MC-CJC.
4. Case Name: *Ruth Martin v. City of San Clemente*, Orange County Superior Court Case No. 30-2023-01332706-CU-MC-CXC.
5. Case Name: *Freda Philomena D'Souza v. City of San Clemente, et al.*, U.S. District Court, Central District of California, Case No. 8:20-CV-01863-JVS-DFM.
6. Case Name: *Peggy Burke v. City of San Clemente, et al.*, Orange County

Superior Court Case No. 30-2023-01303894-CU-PO-CJC.

7. Case Name: *Priscilla Mejia v. City of San Clemente, et al.*, Orange County Superior Court Case No. 30-2023-01343945-CU-PO-CJC.
8. Case Name: *Kenneth Elsner v. City of San Clemente, Chad Biggs, et al.*, Orange County Superior Court Case No. 30-2023-01344114-CU-PA-CJC.
9. Case Name: *Sarah Altuwajri v. Capistrano Unif. School Dist., et al.*, Orange County Superior Court Case No. 30-2024-01406593-CU-PO-NJC.
10. Case Name: *Scott Smith v. City of San Clemente*, Orange County Superior Court Case No. 30-2024-01409991.
11. Case Name: *Gene James v. City of San Clemente*, Orange County Superior Court Case No. 30-2024-0143140-CU-OE-CJC.
12. Case Name: *Kristen Nelson v. GC-8, LLC, et al.*, Orange County Superior Court Case No. 30-2023-01334251-CU-OR-CJC.

BUSINESS MEETING (6:00 P.M.)

CALL TO ORDER

INVOCATION – Assistant Pastor Steve Pascoe, Calvary Chapel San Clemente

PLEDGE OF ALLEGIANCE

ROLL CALL

1. Special Presentations

A. City of San Clemente Blue City Certification

Presentation by Ashley Pries, Chief City Liason, Blue City Network, in recognition of the City of San Clemente being named a Certified Blue City, Tier 2 Ocean Champion, for its commitment to healthy waterways and oceans.

B. San Clemente Water Polo Club Junior Olympics Medalists

Presentation of Commendation to the San Clemente Water Polo Club Junior Olympics Medalists in recognition of the 10U Boys Team winning the Gold Medal and 10U Girls Team winning the Silver Medal.

2. Council Member Reports