



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

VIA OVERNIGHT DELIVERY

October 14, 2021

Philip D. Kohn, Esq.
Laguna Beach City Attorney
c/o Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612

RE: Issues Related to June 29, 2021, Laguna Beach City Council Closed Session

Dear Mr. Kohn:

This letter is in follow-up to our meeting of October 12, 2021, regarding the closed session held by the Laguna Beach City Council on June 29, 2021, with respect to the Hotel Laguna renovation project. The Orange County District Attorney's Office ("OCDA") appreciates the willingness of the City of Laguna Beach to come forward in good faith to respond to questions raised as a result of that closed session, address areas of concern, and take action to avoid future potential issues.

Of paramount importance to our democratic system of government is the public's right to advance notice of proposed government action as well as the opportunity to observe and participate in legislative proceedings. In this regard, OCDA is committed to ensuring that local legislative practices comply with all statutory requirements. This inherently includes those provisions within the Ralph M. Brown Act that mandate and guarantee transparency "in the conduct of the people's business." (Gov. Code, § 54950.)

To ensure integrity and transparency in the legislative process and avert potential future issues with respect to closed sessions, you indicated that the City Council is prepared to formally implement certain safeguards. This includes providing more expansive and detailed descriptions of closed session agenda items beyond the minimal "safe-harbor" requirements contained within California Government Code section 54954.5.

It also includes giving certain verbal admonitions to Council Members prior to conducting any closed sessions, allowing Council Members to raise concerns about the propriety of closed session meetings, and permitting Council Members to remove themselves from any meetings they deem unlawful. The admonitions would advise Council Members and other meeting attendees that discussions are strictly limited to the subject matter justifying the closed sessions and are confidential.

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

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In response to OCDA's request that the City Council record all closed sessions for a period of six months and retain the recordings for one year, you stated that the City Council would be willing to log official minutes for all closed session meetings. The minutes would document all action taken by the City Council, whether reportable or not, and be retained in confidentiality by either the City Manager or an officially designated Laguna Beach representative. Minutes would be taken for all closed sessions held within the next six months, and be retained for one year thereafter.

After due consideration, we believe the proactive measures implemented by the City Council, combined with the official recording of closed session minutes will achieve our congruent goals of Brown Act compliance, transparent public policy and action, and good government practice. Consequently, and to the extent they have not already been formally adopted, we request that the City Council officially resolve and substantively commit to the following provisions:

1. To the extent permitted by law and to the extent it does not undermine the legitimate need for confidentiality, the City Council will provide detailed closed session agenda item notices to the public;
2. Prior to conducting any closed sessions, the Laguna Beach City Attorney or other designated official will provide an admonition to all Council Members in attendance, advising that closed session discussions are to be strictly limited to the justification and purpose for the closed session, any Council Member may raise his or her concerns as to the propriety of a closed session prior to any subject matter discussion, any Council Member concerned about the legality of the closed session may remove themselves from the meeting, and all communications pertaining to the subject of the closed session are confidential and may not be disclosed except as authorized by the City Council or permitted by the Brown Act; and
3. A log of official minutes will be maintained for all action taken by the City Council during closed sessions for a period of no less than six months following adoption of the resolution. The logbook will be maintained in confidence by the City Manager or other official designee, subject to disclosure only as set forth in the Brown Act or to OCDA.

If the City Council implements these measures, OCDA will take no further action regarding these alleged violations. Therefore, please provide me with a record of reportable action taken by the City Council as to the proposed resolutions, including the vote count taken, no later than **November 4, 2021**.

Respectfully,



Steven Schriver
Senior Deputy District Attorney
Special Prosecutions Unit