SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

Sandoval, Andrew,

Plaintiff(s)/Petitioner(s)

vs.

City of Greenfield,

Defendant(s)/Respondent(s)

Case No.: 23CV003551

ORDER AFTER SUBMISSION ON PETITIONER'S PETITION FOR WRIT OF MANDATE

The hearing on the merits of the Petition in this matter was heard by the Court in Department 15 at 8:30 a.m. on July 3, 2024.

Petitioner seeks a writ of mandate, injunctive and declaratory relief for violations of the Ralph M. Brown Act ("Brown Act") and California Constitution, Article I, Section 3(b). The Verified Petition includes two causes of action: (1) Violations of the Brown Act (Relief Pursuant to Gov. Code § 54960, 54960.1, and 54960.2; CCP Sections 1060, 1085) and (2) Violations of California Constitution, Art. 1, Sect. 3(b) (Relief Pursuant to CCP §§ 2060, 1085).

Petitioner was represented by Shaila Nathu, Esq.

Respondent was represented by Quentin Cedar, Esq.

The Court heard arguments from counsel and took the matter under submission.

Now, at a later hour, the Court rules as follows:

I. Factual and Procedural Background

This dispute arises from the City of Greenfield Council's ("Council") appointment of Andrew Tipton ("Mr. Tipton")[1] as City Councilmember on September 12, 2023 and the Council's subsequent ratification thereof on September 26, 2023. At issue is whether the City

[1] It is noted that the September 12, 2023 Meeting Transcript reveals that at some point Mr. Tipton lost the election for the District 1 Council Member position by a few votes. (See Thompson Decl., Exhibit 4 at 13:8-9 and 14:16-18.)

provided adequate notice of the September 12, 2023 Council meeting ("September 12 Meeting") at which Mr. Tipton was appointed by the Council as a councilmember. Specifically, the issue presented is whether the published agenda for the September 12 Meeting violates the Brown Act by failing to notify the public that the Council would nominate and appoint Mr. Tipton to the vacant councilmember position at the September 12 Meeting. The relevant September 12 Meeting agenda item states:

> "**CONSIDERATION** of Filling Vacant City Council District #1 Seat – *Page 223*
>
> a. Staff Report
> b. Public Comments
> c. Council Comments/ Review/ Action
> Staff Recommended Action – Consider Filling Vacancy"

(Petition, Exhibit A.)

Petitioner is a citizen of the State of California, and resident of Monterey County. Respondent City is a local agency that is governed by a publicly elected, five-member governing council.

Background

On May 23, 2023, Councilmember Untalon notified the City Clerk that she would resign her District 1 City Council seat upon appointment of her successor. (Petition, Exhibit B.) On July 18, 2023, the Council appointed Councilmember Dominguez to fill the District 1 Council seat and Councilmember Dominguez was sworn into office on July 25, 2023. (*Ibid.*) On August 22, 2023, Councilmember Dominguez informed the City Attorney that he would be moving out of District 1, effective September 1, 2023 and would no longer be eligible to fill the District 1 City Council seat. (*Ibid.*) Mr. Dominguez's resignation created the vacant councilmember position at issue in this case.

Under Government Code section 36512, subd. (b), the Council could either fill the vacancy by appointment within sixty days of the commencement of the vacancy, or by calling a special election within sixty days of the vacancy. As noted above, the Council eventually elected to appoint Mr. Tipton to the vacant councilmember seat and Petitioner now challenges that appointment.

Prior instance of filling an earlier council member vacancy: The December 13, 2022 Meeting, the February 2023 Meeting, and the Agendas which Preceded Them.

Over the past couple of years the City has filled multiple councilmember vacancies. As noted above, on July 18, 2023 the Council appointed Mr. Dominguez to fill the District 1 Council seat when Councilmember Untalon resigned. (Petition, Exhibit B.) In addition, as the City notes in its Response to the Petitioner's Opening Brief, the Council also filled another Councilmember seat in 2023 when Mr. Robert White ("Mr. White"), a then standing

Councilmember (2020-2024), assumed the office of Mayor (2022-2026). (Thompson Decl. at Ex. 2.)

On December 13, 2022 ("December 13 Meeting"), the City considered how it would fill the vacancy created by Mr. White's assumption of the office of Mayor. The resultant vacancy was separate from the one at issue in this case.

In its briefing, the City emphasizes that the December 13 Meeting and its corresponding agenda item are significant to the present case because the December 13 Meeting agenda item is substantially similar to the agenda item at issue in this case.

The City references the December 13 Meeting agenda item because Petitioner attended the December 13 Meeting and the City argues that, as a result, had actual knowledge from previous agendas and meetings that the Council could consider appointing someone to the vacant seat immediately even if the agenda item only indicated that it would consider how to fill the vacant city council seat (as is the case in the present case). (Res. Brief at p. 9.)

However, as explained below, what occurred after the December 13 meeting is equally important. The Council Agenda for December 13 Meeting included the following agenda item:

> "**I-4. CONSIDERATION** of Filling Vacant City Council Seat – ***Page 74***
>
> a. Staff Report
> b. Public Comments
> c. City Council Comments/ Review/ Action
> **Staff Recommended Action – Provide Direction**"

(Thompson Decl. ISO Response at Exhibit 1.)

At the December 13 Meeting, City Attorney Jennifer Thompson ("City Attorney") explained to the Council that they had two options to fill the vacant seat that would be created by Mr. White's assumption of mayorial duties: (1) call a special election; or (2) appoint a successor. (*Id.* at Exhibit 3.) Ms. Thompson explained that a special election would be lengthy and cost the City "anywhere between $41,000 and $118,000[.]" (*Id.*) Ms. Thompson further advised that:

> "The law does not tell you how to appoint a successor so you, so really, you have options to choose how that appointment is done. Two common approaches that we see is that either Councilmember s [*sic*] nominate uh successors potential successors and then they vote by majority vote to choose one of those nominees. The other option would be to accept applications and then to interview those applicants in an open session that's something that the City of Monterey is actually doing so they've accepted applications and then later this week they're going to hold interviews of those applicants in open session I believe .... After conducting all of the interviews Council would deliberate and then vote to select one of the applicants. So what we're asking tonight is for you to

> decide a couple of questions. The first is whether or not you would like to proceed with a special election or an appointment and then if you do choose to appoint, would you like to nominate and then vote upon those nominations, or would you like to accept applications and conduct interviews, or alternatively you could select another method of appointing a successor."

(*Id.* at Exhibit 3, Second Page of Unnumbered Transcript.)

Later on in the December 13 Meeting, Mayor White made a motion to "appoint Drew [Andrew Tipton] as to the open seat" (*Ibid.*) It is noted that Mr. Tipton was a Councilmember at the December 13 Meeting. Councilmember Ortiz seconded the Motion. Councilmember Ortiz voted in favor of the appointment of Mr. Tipton, Councilmembers Martinez and Untalon voted against his appointment. (*Id.* at Second and Third Pages of Unnumbered Transcript.) Mayor White then noted that they needed to "move forward" and "take applications" for the vacant position. (*Id.* at Third Page of Unnumbered Transcript) At that time, a member of the public raised a question of fairness in attempting to appoint Mr. Tipton on only one motion. (*Ibid.*) The City Attorney responded:

> "The council is at liberty to nominate any eligible member of the public and vote so they are not limited to nominating one or three or it's really at their discretion how they proceed with appointing somebody so there is no illegality here...."

(*Ibid.*)

Thereafter, according to the City's Transcript (which contains selected portions of the December 13 Meeting), two other names were nominated for the appointment but also both failed to obtain a majority vote. (*Id.* at 3-6.) At some point, Petitioner publicly commented that every district should be represented on the Council. His comments appear to relate to past discussions and advocacy for District elections. (*Id.* at 6.) Petitioner encouraged the Council to make a motion to open the application process to save taxpayers money, in lieu of an election, to determine whether the Council could reach a consensus on a candidate to represent District 1, and if not, then incur the cost of an election. (*Id.*) He also encouraged that the Council fill the vacancy by election. (*Id.*) Ultimately the Council voted to "move this [agenda] item on to the next meeting and move on to the next item...." (*Id.* at 7.)

Inclusion of the word 'appoint' in the agenda for the meeting in which the prior council vacancies were filled.

The parties to the instant proceeding did not inform the Court concerning the events following or at the continued December 13 Meeting. The Court, however, has reviewed the subsequent Council Meeting agendas and Meeting Minutes and will take, *sua sponte*, judicial notice of the events that occurred thereafter. Judicial notice of a public body's meeting minutes, meeting agenda, and specific agenda items is proper. (Evid. Code § 452, subds. (b), (c), (h).)

On or about January 13, 2023, at the adjourned meeting of January 10, 2023 and continued December 13 Meeting, the Council considered filling the City councilmember seat created by Mr. White and determined that the Council would open the position up for applications and that each member of the Council would submit a question for the application. (City Council Meeting Minutes, January 13, 2023 at p. 4-5, attached as Exhibit 1.)

On or about February 8, 2023, the Council interviewed seven candidates and appointed Ariana Rodriguez to the vacant Council seat. Notably, the agenda item for the February 8 and 9 City Council Meeting Special Agenda contained the word "appoint":

> **E-1. CONSIDERATION** of Filling Vacant City Council Seat
>
> a. Oral Report
> b. Public Comments
> c. Applicant Introduction/ Interviews
> d. City Council Comments/ Review/ Action
> **Staff Recommended Action – Appoint Councilmember**

(February 8 and 9, 2023 Meeting Special Agenda at p. 2, attached as Exhibit 2.) In other words, when the Council previously appointed Councilmember Rodriguez to the vacant seat created by Mr. White's assumption of the duties of Mayor, the Council's agenda clearly identified that the recommended action that would likely take place at the February 8, 2023 meeting was to "Appoint Councilmember." (*Ibid.*)

Similarly, it is noted that on July 18, 2023 when the Council appointed Mr. Dominguez to fill the District 1 Council seat when Councilmember Untalon resigned, that City Council Meeting Special Agenda also contained the word "appoint":

> **E-1. CONSIDERATION** of Filling District 1 City Council Seat
>
> a. Oral Report
> b. Public Comments
> c. Applicant Introduction/ Interviews
> d. City Council Comments/ Review/ Action
> **Staff Recommended Action – Appoint Councilmember**

(July 18, 2020 City Council Meeting Special Agenda at p. 2, attached as Exhibit 3.)

Thus, when the Council appointed two other councilmembers in February 2023 (vacancy created by Mr. White assuming the office of Mayor) and in July 2023 (vacancy created by Councilmember's resignation) both agendas specifically used the phrase "Appoint Councilmember." (See Exhibits 2 and 3.)

The September 12 Meeting Agenda, unlike the agenda for the February 2023 and July 2023 meeting at which the prior council vacancies were filled, did not use the word 'appoint.'

In contrast, however, the agenda for the Council's September 12, 2023 meeting at issue in this case did not include the word 'appoint.' Instead, the September 12 Meeting agenda item description employed:

> "**L-5.** **CONSIDERATION** of Filling Vacant City Council District #1 Seat—***Page 223***
>
> a. Staff Report
> b. Public Comments
> c. Council Comments/ Review Action
> **Staff Recommended Action – Consider Filling Vacancy**"

Similarly, the accompanying Staff Report (also known as the "City Council Memorandum") recommended that for the September 12 Meeting, the Council:

> "...determine a process to fill the District 1 Councilmember seat and direct Staff to proceed accordingly. Staff further recommends that the City Council fill the vacancy by appointment."

(Petition, Exhibit B.) In addition, the Staff Report repeats the possible action that the Council may take to fill the vacancy, including appointment of a successor for the remainder of the term as well as call a special election. (*Ibid.*) The Staff Report directs the Council to determine a process to fill the councilmember seat, and ultimately, recommends appointment of a councilmember in lieu of a special election. The Staff included the following "Reason for Recommendation":

> "The City Council can fill the position immediately by appointment. If a special election is called, the vacancy will not be filled until March 2024. Filling the vacancy by appointment will also have minimal, if any, fiscal impact. Filling the vacancy by special election will cost the City at least $17,484 and possibly as much as $29,140."

(*Ibid.*)

At the September 12 Meeting, the City Attorney instructed the Council, "[s]o tonight tasked before you is to decide whether or not to appoint or call for a special election to fill that council seat." (Thompson Decl. at Exhibit 4, Transcript 7:10-12.) The City Attorney further noted later on that:

> "So with that, you do have as I mentioned two options, either appoint a successor, and you can do that in any—really any way you would choose, so you can do what you've done in the past and then accept applications and hold public interviews. You could nominate and just appoint somebody from the dais without the interview process. And

then alternatively, as I also mentioned, you can call for a special election, in which case—yeah, work on that."

(*Id.* Transcript 8:22-24 through 9:1-5.)

Based on a review of the portion transcript of the September 12 Meeting that the City provided, the Council heard from roughly nine (9) members of the public. (See generally, *Id.* at Exhibit 4.) Of the nine who spoke, approximately four who lived in District 1, asked for the Council to adopt a procedure (either special election or otherwise) to fill the vacancy. Four others, who lived in District 1, asked the Council to move forward and appoint Mr. Tipton. (*Id.*) One other member of the public who spoke admitted that they did not live in District 1. (*Id.*) In addition, the Councilmembers cited to various conversations that they claimed to have with persons living in District 1 who purportedly expressed conflicting desires or did not know about the vacant seat. (*Id.*)

At one point during the meeting, the City Attorney advised that an appointment of Mr. Tipton only required a simple majority of the members present (i.e., three Councilmembers). (*Id.*, Transcript 27:2-4.) Councilmember Rodriguez (Mayor Pro Tem) was the only Councilmember who spoke out against the appointment of Mr. Tipton that evening, emphasizing the need to hear from the people living in District 1 (by vote or otherwise) rather than allowing three Councilmembers decide who would serve the District. (See generally, *Id.*) Near the end of this portion of the meeting, Mayor White moved to appoint Mr. Tipton, noting that he was the only one besides "Angela that put his name forward." (*Id.* at 38:12-14.) Councilmembers Ortiz, and Mayor White voted in favor while Councilmember/ Mayor Pro Tem Rodriguez voted against the appointment of Mr. Tipton. It is noted that Councilmember Martinez appeared at the meeting via Zoom but ultimately did not vote on the appointment of Mr. Tipton.[2]

Petitioner's 'cure and correct' demand letter (Government Code section 54960.1 (b), (c)) and the City's action in response

The day after Mr. Tipton was appointed, on September 13, 2023, Petitioner sent a letter ("Letter") to the Council and City demanding that the City:

"…cure and correct and cease and desist the Brown Act violations … [including the following violations:]

- Members of the public were not properly notified that an appointment to the city council would be voted on.

[2] It is unclear from the transcript why Councilmember Martinez did not vote on the issue; however, earlier in the proceedings, it was explained that Councilmember Martinez was attending via Zoom because a family member was hospitalized. At one point during the meeting, it was noted that the Councilmember Martinez could not be heard by the Council due to technical issues and was planning to log back on virtually. The Council moved forward thereafter and it is unclear whether Councilmember Martinez ever joined again.

- Members of the public were not allowed to make public comment on an appointment.
- Failure to place agendas item with a description clear enough to be understood by members of the public.
- The City Council Voted to Appointment Councilmember Drew Tipton without properly placing it on the agenda for action"

(Petition at Exhibit C.) In addition, Petitioner indicated that his Letter intended to fulfill the requirements of Government Code section 54960.2 prior to filing a "lawsuit to challenge Mayor White and the City Council of Greenfield's conduct as applied to the City's past Brown Act violations on September 13, 2023." (*Id.*) The Letter further warned that if the City did not provide an unconditional commitment to cease violation of the Brown Act, Petitioner planned to file an action seeking declaratory and injunctive relief. (*Id.*) In addition, Petitioner requested that the City add him to their email distribution list for all future public meetings. (*Id.*)

The City Manager acknowledged receipt of the Letter and informed Petitioner that he forwarded it to the City Attorney. (Petition at Exhibit E.) Petitioner alleges that as of the date he filed the Petition, on October 27, 2023, he had not received any response to the Brown Act Letter and alleged that the City took no action to cure or correct the challenged action. (Petition at ¶ 14.)

Petitioner notes, in his Opening Brief, that on or about September 26, 2023 the City Council held a meeting ("September 26 Meeting") where the following items were included on the agenda:

> "**H-1.** **ADOPTION** of a Resolution of the city council of the City of Greenfield Ratifying the Appointment of Andrew Tipton to the City of Greenfield City Council – ***Page 1***
>
> **a.** Staff Report
> **b.** Public Comments
> **c.** Council Comments/ Review/ Action
> **Staff Recommended Action – Adopt Resolution #2023-119**
>
> **H-2.** **SWEARING IN** Councilmember Andrew Tipton"

(Op. Brief at p. 3 and Exhibit F thereto.)

At the September 26 Meeting, the City Attorney opened discussion on Item H-1 identified above by stating:

> "On September 12th, 2023, the city council considered filling the District 1 city council seat vacant an see and she [*sic*] validly appointed Andrew Tipton. On September 13th,

> 2023, the city received a Brown Act cure and correct demand alleging that the appointment had not been properly agendized [*sic*]....The city council then has 30 days to cure and correct the action. If the city council does not act, a lawsuit may be filed within the next 15 days. An alleged violation that is cured or corrected by a subsequent action of the city council will be dismissed without prejudice, meaning the city council admits no wrongdoing.
>
> The city attorney does not believe there was a Brown Act violation. However, to cure and correct the Brown Act violation allegation, the city attorney recommends that the city council ratify its previous decision to appoint Andrew Tipton to the city council. **If the city council chooses not to ratify the resolution, it will not change the previously made appointment.** And with that, I will turn it back to the Mayor"

(Thompson Decl. at Exhibit 5, Transcript of September 26 Meeting at 4:5-25 through 5:1-8 (emphasis added).)

Mayor White then opened the matter for public comment and apparently no comments were made. (*Id.* at 5:9-13.) Thereafter, Councilmember Rodriguez who voted against the appointment of Mr. Tipton, stated that:

> "...in closed session, City Attorney Thompson shared with us this information this information which she just announced to all of you guys. The important takeaways that I took from that are of course we don't want to be in violation of...we don't want to have a Brown Act violation, we don't want to open the city up to possible litigation. From the city attorney's report, it basically concludes that this is like a formality to protect the city from litigation potentially, but regardless of what our vote is tonight, I just want to reiterate what you said, that the appointment is—has been made, that the appointment was legally made, and so whether or not we voted yes or no on the ratification of that, Mr. Tipton will be appointed—or has been appointed already and will take seat tonight, will be sworn in and take seat tonight."

(*Id.* at 5:19-25 through 6:1-9.) Immediately thereafter, the City Attorney stated, "[t]hat's correct." (*Id.* at 6:10.) Mayor White then asked for a motion, followed by Councilmember Ortiz moving so and Councilmember Rodriguez seconded the motion. Thereafter, Councilmembers Ortiz, Rodriguez and Mayor White all voted in favor of the motion to ratify the September 12 appointment and, Councilmember Martinez, who was not at the September 12 Meeting (but attempted to attended via Zoom), voted against the ratification. (*Id.* at 6:11-25.) Mr. Tipton was then sworn in as a Councilmember. (*Id.* at 7:2-25 through 8:1.)

Petitioner claims that, as of the date of filing his Opening Brief (April 4, 2024), he had not received any written correspondence from the Council informing him of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action. (Pet. Brief at 4.)

At oral argument in the hearing before the Court on July 3, 2024, it was conceded by counsel for Respondent City that no writing was in fact sent to Petitioner by City in response to the 'cure or correct' demand.

II. Discussion

Preliminary Issue – City's City's/ Respondent's Objections to the Declaration of Shaila Nathu in Support of Petitioner's Opening Brief

The City objects to the Declaration of Shaila Nathu submitted in support of Petitioner's Opening Brief. Specifically, the City objects to Paragraphs 1, 2, 3, 4, 6, 7, 8, 9, and 10 of the Nathu Declaration where Paragraph 1 attests to the facts stated in the Declaration are based on Ms. Nathu's personal knowledge, except for those matters expressly stated on information and belief, and matters which she believes to be true; Paragraphs 2-4 refer the Court to video recordings (Youtube link) of different portions of the September 12 Meeting; and Paragraphs 6 through 10 refer the Court to video recordings (Youtube link) of the September 26 Meeting.

City's objections on the grounds that the references to the video recordings of the September 12 and 26 Meetings are inadmissible pursuant to California Rules of Court, Rule 2.1040(b)(1) which require a transcript before offering an electronic sound or sound and video recording are well-taken and are SUSTAINED. However, they are somewhat moot given that the City submitted transcripts of both hearings with the Declaration of Jennifer Thompson filed in Support of Respondent's Response to Petitioner's Opening Brief. (*See* Thompson Decl. at Exhibits 4 and 5.)[3]

The City's objection to the first Paragraph of the Declaration is OVERRULED, as are all remaining objections.

Discussion on the Merits

Petitioner alleges that a writ of mandate should issue based on the City's failure to:

(1) notify the public that the Council would be discussing, deliberating, and taking action on the appointment of Mr. Tipton in violation of Sections 54954.2, subds. (a)(1) and (a)(3);
(2) notify the public that it would be appointing and individual to fill the Council vacancy depriving the public of its opportunity to directly address the Council on this item;
(3) rectify the significant violations to the public's right of access to public meetings even though the Council ratified the appointment in a subsequent meeting; and

[3] There are three exceptions to this Rule, none of which are applicable in this instance. (CRC Rule 2.1040, subd. (b)(3) (stating that a transcript is not required if the proceedings are uncontested, the parties stipulate that the sound/ video portion of the recording is not relevant to the case, or for good cause the judge orders otherwise).)

(4) failure to inform Petitioner in writing of its action to cure or correct the appointment in violation of Section 54960.1 subd. (b)(2).

A. Standard of Review

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board or person to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person." (CCP § 1085(a).)

A traditional writ of mandate under section 1085 is a method of compelling the performance of a legal, usually ministerial duty. (*Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 583-584.) "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clean d beneficial right to performance." (*Id.* at 584.) When an administrative decision is reviewed under section 1085, judicial review is limited to an examination of the proceedings before the agency to determine whether its action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether it did not follow the procedure and give the notices required by law. *Id.*

B. Overview of the Brown Act

The Brown Act is codified at Government Code section 54950 et seq. The purpose of the Act is to ensure the public's right to attend public meetings, to facilitate public participation in all phases of local government decision-making, and to curb misuse of the democratic process by secret legislation of public bodies. (*Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461.) A major objective of the Brown Act is to facilitate public participation in all phases of local government decision-making and to curb misuse of democratic process by secret legislation by public bodies. (*Sacramento Newspaper Guild v. Sacramento County Bd. of Supers.* (1968) 263 Cal.App.2d 41, 50.) The Brown Act "is a remedial statute that must be construed liberally so as to accomplish its purpose." (*Shapiro v. Board of Directors* (2005) 134 Cal.App.4th 170, 181 (citing *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.* (2001) 87 Cal.App.4th 862, 869.)

To accomplish these vital goals, the Brown Act, *inter alia*, (1) requires that an agenda be posted at least 72 hours before a regular meeting and (2) forbids action on any item not on that agenda. (Gov. Code § 54954.2, subd. (a)(1) * (2); *Epstein*, supra, at 868.) The section of the Brown Act requiring an agenda for regular meetings states:

> "At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of

business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's internet website, if the local agency has one...."

(Gov. Code § 54954.2, subd. (a)(1).) This agenda requirement acts as a limitation on what the public body is authorized to do at the meeting, because the statute further states that "[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda....."[4] (Gov. Code § 54954.2, subd. (a)(3).)

C. Was The Agenda Requirement of the Brown Act Violated?

Petitioner's argument that the agenda violated the Brown Act by: (1) failing to notify the public that the Council would be discussing, deliberating, and taking action on the appointment of Mr. Tipton; and (2) proceeding with the appointment method to fill the Council vacancy, thereby depriving the public of its opportunity to directly address the Council on whether the vacancy should be filled by appointment or another method such as special election.

To state a claim for a violation of the Brown Act, a plaintiff must show: "(1) the local legislative body violated one or more Brown Act provisions; (2) the legislative body took action in connection with the violation; (3) a timely demand for the legislative body to cure or correct the improper action; (4) the legislative body did not cure or correct the action; and (5) prejudice from the Brown Act violation." (*Julian Volunteer Fire Ass'n v. Julian-Cuyamaca Fire Prot. Dist.* (2021) 62 Cal.App.5th 583, 601.)[5]

Discussing, Deliberating and Taking Action on the Appointment of Mr. Tipton

First, Petitioner focuses on the language of the agenda item emphasizing that the notice only indicates that the Council would be "consider[ing]" filling the vacant position and had not previously decided on the process by which it would fill the vacancy. Petitioner emphasizes that there was no indication on the agenda that the Council intended to appoint someone, could fill the vacancy by appointment, nor did it disclose whether the Council had a specific person in mind to appoint to the position.

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[4] There are certain enumerated exceptions under subsection (a)(3), none of which are applicable here.

[5] The parties do not appear to dispute that the Petitioner made a timely demand for the Council to cure or correct the improper action. The evidence also supports this conclusion because Petitioner sent his demand letter on September 13, 2023, the day after the September 12 Meeting. As will be set forth more fully below, the parties dispute whether the Council cured or corrected the action during the September 26 Meeting; ultimately, however, the Council failed to cure or correct the action. Therefore, these threshold issues do not preclude the Court from considering the Petition.

In response, the City argues that the agenda made no mention of procedure to fill the vacant seat, but instead, clearly identifies that "filling" the vacancy would be considered. The City further argues that whether to appoint or hold a special election are necessary components of the ultimate goal of filling the vacant seat are not distinct items of business, and therefore, do not require separate notice. (Res. Opp. at 9, citing *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167, 1170 (concluding that the planning commission violated the Brown Act when the agenda failed to notify that a mitigated negative declaration would be approved along with the consideration of approving a subdivision application to divide a parcel of land).)

Applying the agenda requirement of the Brown Act to the undisputed facts of this case, including the circumstances of filling the prior vacancies and its posted agenda, the Court concludes that the Council violated that requirement.

The Brown Act unambiguously states that an agenda shall describe "each item of business to be transacted or discussed" at the meeting. (Gov. Code § 54954.2(a)(1).) Here, the Council failed to disclose that in its September 12 Meeting agenda that it would be considering the appointment of Mr. Tipton and that it would utilize the appointment method to fill the vacancy. The September 12 Meeting agenda only indicates that the Council would "consider" filling the vacant seat. (Petition at Exhibit A.) "Filling" the vacancy referred to the process by which the vacancy would be filled (i.e., by appointment or special election), and does not clearly articulate that the vacancy would be filled by appointment. In view of the fact that City had previously stated in its agenda for identical action - to fill a Council vacancy - that 'appointment' would be undertaken, the omission form September 12 Meeting agenda was misleading and rendered the disclosure inadequate to justify appointment at that session.

In addition, the Council Memorandum for the September 12 Meeting clearly focuses on the options available to the Council to fill the vacancy. There is no mention of appointing a specific person. Indeed, the Council Memorandum only identifies two options available to the Council: (1) appoint a successor; or (2) call a special election. Under the appointment option, the Council Memorandum or Staff Report advised:

> "One common approach to fill a vacancy by appointment is for the Council to notice the vacancy and invite applications. Another approach is for Councilmembers to nominate individuals for consideration and ask that such nominees submit a letter of interest. Council may also interview applicants and/ or nominees, or simply discuss the candidates based on applications or letters of interest submitted, or other information known about the candidates. All interviews, discussions, and the final appointment with respect to the new Councilmember must be made in public. Appointment of a vacancy is not permitted closed session discussion or decision."

(Petition at Exhibit A.) This description of the appointment option does not contemplate or suggest appointment of an individual at the September 12 Meeting, but rather indicates that *if*

appointment was the selected method, the process by which the Council *may* proceed to find an suitable candidate.

Any consideration of a specific candidate, such as Mr. Tipton, should be a separate item of business and should have been expressly disclosed on the agenda. It is insufficient for the agenda to merely reference "filling the vacancy" in general and then for the Council to nominate a candidate from the dais and immediately vote on the appointment thereafter. This is especially true considering the recommended appointment process outlined in the Staff Report.[6]

Additionally, an item such as the appointment of a specific person is a matter of at least potential public interest since it would concern who would take the seat of an elected official without an official vote from the public. It is anticipated that such issues would motivate members of the public to participate in the process and have their voices heard, involvement which the Brown Act seeks to facilitate.

As noted above, the purpose of the Brown Act is to ensure that the public is adequately notified of what will be addressed at a meeting in order to facilitate public participation and avoid secret legislation or decision making. (Gov. Code § 54950; *Los Angeles Times Communications v. Los Angeles County Bd. of Supervisors* (2003) 112 Cal.App.4th 1313, 1321-1322.) That purpose would be impaired if a public agency could refuse to disclose in its meeting agenda that it will be considering the appointment of a specific person, namely Mr. Tipton. This is especially true in the context that Mr. Tipton, an incumbent, lost the councilmember seat in the prior election. An approach that stifles public participation would allow a potentially controversial issue to be quietly proposed and decided without having to open the discussion to meaningful public input—precisely what the Brown Act was designed to prevent. (Gov. Code § 54950; see also, *Epstein*, supra 87 Cal.App.4th at 869.)

The evidence presented to the Court supports a finding that the City only advised the public that the Council would be considering how to fill the councilmember vacancy. There is no indication on the agenda item that the Council previously determined the method by which the vacancy would be filled, nor is there any suggestion that the Council would nominate, consider, or appoint a specific person to the councilmember seat. Accordingly, the Court concludes that the agenda requirements of the Brown Act were violated.

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[6] If the Council intended to appoint Mr. Tipton at the September 12 Meeting, the agenda should have included an item similar to the February 8, 2023 and July 19, 2023 agenda items where Councilmembers Rodriguez and Dominguez were appointed. Under the Brown Act, the legislature finds and declares that public agencies, like the Council, exist to aid the conduct of the people's business and that their actions and deliberations be conducted openly. (Gov. Code § 54950.) The purpose of the Brown Act is also to facilitate public participation in the decisionmaking process and should be construed liberally in favor of openness so as to accomplish its purpose. (*Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.* (2021) 62 Cal.App.5th 583 (construing liberally in favor of openness in conducting public business).)

Petitioner's Alternative Contention that the September 12 Agenda Failed to Fully Disclose the Selected Method of Filling the Vacancy

Petitioner appears to argue, in the alternative, that the September 12 Meeting agenda item also failed to adequately disclose that the Council had selected appointment as the method by which it would fill the vacancy. Specifically, Petitioner asserts that the agenda did not clearly notify the public that a special election was not an option. Petitioner alleges that during the September 12 Meeting the Council diverted discussion to the appointment of a specific individual before clearly determining the process by which the vacancy would be filled.

In response, Respondent generally suggests that the Petitioner had adequate notice that the Council was likely considering appointment because during the December 13 Meeting, a motion was made (but failed) to appoint Mr. Tipton.

The agenda for the September 12 Meeting does not specifically identify that "appointment" was the method by which the Council would proceed to fill the vacancy. Similarly, there is no reference on the agenda that a special election would not be held.

That said, ultimately, the agenda for September 12 did indicate that selection of a method for filling the vacancy was to be discussed. And there was discussion at the September 12 Meeting about whether an appointment process or special election was preferred. As noted above, several members of the public who were at the September 12 Meeting commented on their desired process. Roughly nine members of the public (based on a review of the transcript provided by the City) made comments at the September 12 Meeting, the majority of those who made comments advocated for either appointment or special election.

Accordingly, it appears that the Council substantially complied with the Brown Act with the identified agenda item, by taking of public comment on the issue of how to proceed with filling the vacancy, and ultimately selecting the appointment method to fill the vacancy (albeit *sub silentio*). Therefore, the Court finds that the City did not violate the agenda requirements of Brown Act by failing to include an agenda item that specifically identifies that the Council will fill the vacancy by appointment; disclosing consideration of a process to be employed was sufficient.

If There Was a Brown Act Violation on September 12, the City's September 26, 2023 'Ratification' was Inadequate to Cure It.

The City contends that even assuming *arguendo*, the Brown Act had been violated, the subsequent ratification was sufficient to cure the defect. (Res. Opp. at 11, citing Gov. Code § 5490.1(e) and *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672, 684-685 (indicating that any nullification action shall be dismissed with prejudice if a local agency cures or corrects the alleged Brown Act violation).) The City argues, in a circular fashion, that Petitioner's suggestion that the only effective means to cure the Brown Act violation was to rescind the appointment, "ignores well established law that once appointed, the City Council did

not have the power to remove a sitting councilmember." (Res. Opp. at 11 (citing Gov. Code § 1777.))

The City suggests that Mr. Tipton could have only been removed by a recall election and that the Council was without authority to rescind the appointment of Mr. Tipton because he was, by the September 26 Meeting, a sitting councilmember. Thus, in the City's view, its only recourse or option to cure any defects was to provide the public opportunity to comment on Mr. Tipton's September 12th appointment. The City contends this occurred at the September 26 Meeting which properly notified the public that it would be considering a "Resolution of the City Council of the City of Greenfield Ratifying the Appointment of Andrew Tipton to the City of Greenfield City Council...." (Res. Opp. at 12, citing September 26 Agenda, attached to the Nathu Decl. at Exhibit F.)

This argument does not pass muster when it is noted that Mr. Tipton was not sworn in as a Council member until after the 'ratification' vote on September 26. (See Thompson Decl., Exhibit 5, Transcript of September 26, 2023 Meeting, at 6:10-25 through 8:23.)

The Petitioner, on the other hand, argues that the September 26 Meeting was a sham. In doing so, Petitioner points to the comments made at the opening of the September 26 Meeting where City Attorney Thompson stated that, "[i]f the city council chooses not to ratify the resolution, it will not change the previously made appointment." (Thompson Decl. at Exhibit 5, Sept. 26 Transcript 5:5-7.) Petitioner also highlights Councilmember Rodriguez's comment that she learned from the City Attorney that regardless of the legality of the prior appointment "whether or not we voted yes or not on the ratification of that, Mr. Tipton will be appointed—or has been appointed already and will take seat tonight, will be sworn in and take seat tonight." (*Id.* at 6:4-9.)

Here, Petitioner's September 13, 2023 letter clearly articulates the alleged Brown Act violations during the September 12 Meeting and demanded that the Council cure its actions. (Petition, Exhibit C.) Specifically, Petitioner identified that members of the public were not properly notified that appointment to the City Council would be voted on, members of the public were not allowed to make public comments on an appointment, the City failed to properly include an agenda item with a description clear enough to be understood by members of the public, and that the City improperly voted to appoint Mr. Tipton without properly placing it on the agenda for action.

"Nothing in the Brown Act is construed to prevent a legislative body from curing or correcting an action by the legislative body challenged by an action for mandamus or injunction." (2 Cal. Jur. Admin. Law § 169 (citing Gov. Code § 54960.1, subd. (a).) "To avoid liability under the Brown Act, a public entity may cure a challenged action, ***but the cure generally requires that the action be thoroughly reconsidered at a properly noticed meeting, not merely ratified at a public meeting***." (2 Cal. Jur. Admin. Law § 169, citing *Julian Volunteer Fire Co. Assn., supra*, 62 Cal.App.5th at 601 (stating that "[t]o avoid liability, the public entity

may cure the challenged action, but a 'cure' generally requires that the action be thoroughly reconsidered at a properly noticed public meeting, not merely ratified at a public meeting" (citing *Page v. MiraCosta Community College Dist.* (2009) 180 Cal.App.4th 471, 501; Asimow et al., Cal Practice Guide: Administrative Law (The Rutter Group 2020) ¶ 28:495.)

The evidence before the Court clearly demonstrates that the Council's appointment of Mr. Tipton was not thoroughly reconsidered at the September 26 Meeting. Indeed, the agenda item for the September 26 Meeting identified "Adoption of a Resolution" that "ratifi[ed]" the appointment Mr. Tipton to the City Council. (Nathu Decl. at Exhibit F.) There is no indication on the agenda that Mr. Tipton's appointment would be thoroughly reconsidered at the September 26 Meeting. Notably, the second item under the "City Council Business" on the agenda is to swear in Councilmember Andrew Tipton. (*Ibid.*)

While the Council opened up the meeting for public comment after it introduced the pending resolution, as noted above, the City Attorney and Councilmember Rodriguez's comments clearly articulated that failure to pass the resolution would not affect the appointment of Mr. Tipton. In other words, the City Attorney and Councilmember Rodriguez (albeit mistakenly on the advice of the City Attorney) indicated that nothing, including a negative vote on the pending resolution, would alter the appointment of Mr. Tipton.

In short, the September 26 Meeting was nothing more than a ratification of the September 12 Meeting and failed to reconsider thoroughly the Council's September 12 actions that violated the Brown Act. Accordingly, the City cannot avoid liability under the Brown Act through its apparent attempts to cure the violations by ratification of its September 12 acts at the September 26 Meeting.

Prejudice

The City alternatively argues that even if the Petitioner has satisfied the procedure requirements to set aside the Council's decision, Petitioner has failed to demonstrate prejudice. The City argues that Petitioner suffered no prejudice due to the Brown Act violations. The City contends that Petitioner cannot demonstrate prejudice because the Council extensively discussed the appointment of Mr. Tipton at the September 12 Meeting. (Opp. at 14.) The City further asserts that the public was not deprived of its opportunity to directly address Council given the opportunities at the September 12 and 26 Meetings. According to the City, "no members of the public appeared to comment on the ratification." (Opp. at 14 (citing Thompson Decl. ¶ 5, 3:12-5:13.).) The City further contends that Mayor White and Councilmember Ortiz previously voted to appoint Mr. Tipton to a councilmember seat nearly a year prior the meetings at issue and it is unlikely that additional members of the public would have succeeded in "dissuading them from appointing Mr. Tipton at the September 12, 2023 Council Meeting." (Res. Opp. at 14, citing Thompson Decl. at Exhibit 3 (excerpt no. 3, beginning 1:28:34 through 1:30:51.))

Petitioner argues that demonstration of prejudice is not required under Section 54960.1, but that regardless, the Petitioner has alleged facts demonstrating prejudice. In support of its argument that a demonstration of prejudice is not required, Petitioner suggests that Section 54960.1(a) authorizes nullification of an action if a legislative body is shown to have violated requirements in one of the enumerated sections and does not require a demonstration of prejudice. (Reply at 5.) Petitioner cites to several cases for his proposition of whether a demonstration of prejudice is required. (*Id.* 6-7.)

City is correct that a showing of prejudice is required. The applicable case law states that even if a plaintiff has satisfied the threshold procedural requirements to set aside an agency's action based on a Brown Act violation, the alleged violation will not necessarily invalidate a decision, unless the plaintiff demonstrates prejudice. (*Olson v. Hornbook Community Services Dist.* (2019) 33 Cal.App.5th 502, 519 (citing Gov. Code § 54960.1, subd. (d)(1) (providing that any action alleged to have violated the specific sections shall not be determined to be null and void if the action was taken in substantial compliance with that section); and quoting *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1378 (stating "even where a plaintiff has satisfied the threshold procedural requirements to set aside an agency's action, Brown Act violations will not necessarily invalidate decision…Plaintiffs must show prejudice."))

Ultimately, here, Petitioner has demonstrated prejudice. The agenda items and descriptions are the only means by which the public will know what the Council will discuss at a meeting. A comparison of the agenda for the February 8, 2023 Meeting as well as the July 18, 2023 Meeting at which appointments were made to fill a council vacancies makes the misleading and prejudicial nature of the Sept. 12 agenda apparent. Petitioner has presented evidence that the agenda items for the September 12 Meeting included a vague description that did not specify that the Council would be considering the appointment of Mr. Tipton. Instead, the agenda item only references that the Council would "consider filling [the] vacancy" and the Staff Report specifically recommends that the Council "determine a process to fill the District 1 Councilmember seat and direct Staff to proceed accordingly…[and] recommends that the City Council fill the vacancy by appointment." (Petition, Exhibits A and B.) While the Staff Report recommends that the Council "fill the vacancy by appointment," in the context of the entire Staff Report, it is clear that this language is directed at which of the two methods the Staff recommended (i.e., appointment or call a special election). This is further evidenced by the Staff's rationale for the recommendation that appointment would be less costly and take less time. (Petition at Exhibit B.).

In comparison, the February 8 and 9, 2023 and July 18, 2023 agendas at which the prior council seat vacancies were filled both state: "Consideration of Filling Vacant City Council Seat … Staff Recommended Action – Appoint Councilmember."

With respect to City's argument that no members of the public spoke to oppose the appointment of Mr. Tipton on September 26, the Court notes Petitioner has provided evidence that at the September 26 Meeting, before any public member was invited to comment, the City Attorney appeared to discourage any public comment stating "[i]f the city council chooses not to ratify the resolution, it will not change the previously made appointment." (Thompson Decl. at Exhibit 5, 5:5-7).

Petitioner's demonstration of prejudice is sufficient. Petitioner and other members of the public were not able to directly speak to the appointment of Mr. Tipton as it was not clearly articulated in the notice, Staff Report, or meeting (until the vote took place), that the Council would be voting to nominate and appoint Mr. Tipton to the position that evening. As a result, Petitioner has adequately demonstrated prejudice and the Court is not precluded from setting aside the Council's action.

Substantial Compliance

The City argues, in the alternative, that the Council substantially complied with the requirements of the Brown Act precluding this Court from ruling that the appointment of Mr. Tipton is null and void. (Res. Opp. at 14 (citing Gov. Code 54960.1(d) (stating that an action alleged to have been taken in violation of Section 54954.2 "shall not be determined to be null and void if...the action taken was in substantial compliance" with the law).) The City contends that the Petitioner and the public had adequate notice that the Council would be considering "filling the vacancy" and that any argument that the agenda failed to notify the public that a special election would not be held is "at best, a technical argument." (Res. Opp. at 15.) The City asserts that those interested in filling the vacant seat had notice that it was going to be discussed (and acted upon) and the Council did not prevent public discussion of it.

Petitioner argues that even if the City substantially complied with its obligations under the Brown Act, substantial compliance is "only an answer to a demand to void the action taken, and not a roadblock to declaratory or injunctive relief on whether this complies with the Brown Act's notice requirements." (Reply at 8.) In other words, Petitioner appears to argue that substantial compliance does not bar this Court from granting the declaratory and injunctive relief requested.

"An agency fulfills its agenda obligations under the Brown Act so long as it substantially complies with statutory requirements, where 'substantial compliance' means 'actual compliance in respect to the substance essential to every reasonable objective of the statute.'" (2 Cal. Jur. 3d Admin. Law § 140 (citing *San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637.) "Under the Brown Act's requirement of a 'brief general description of each item of business to be transacted or discussed' at a public meeting, the agenda drafters must give the public a fair chance to participate in matters of particular or general concern by providing the public with more than mere clues from which they must guess or surmise the essential nature of

the business to be considered by a local agency." (2 Cal. Jur. 3d Admin. Law § 140 (citing *San Diegans for Open Government*, supra, 4 Cal.App.5th 637.))

Here, as set forth above, the September 12 Meeting agenda did not notice the essential nature of the appointment of Mr. Tipton to the vacant councilmember seat. This is not an instance of a technical error. (See for example, *Castaic Lake Water Agency v. Newhall County Water Dist.* (2015) 238 Cal.App.4th 1196 (finding that a water agency that published an agenda which stated that its board of directors would conduct a conference with its legal counsel in closed session and discuss potential litigation substantially complied with the Brown Act when the notice cited to Gov. Code § 54956 subd. (c) instead of subdivision (d)(4).); *Olson*, supra, 33 Cal.App.5th at 521 (finding that the Board substantially complied with the Brown Act requirements even though it failed to identify the correct amount of payment to the State Compensation Insurance Fund on the agenda).)

The September 12 Meeting agenda and accompanying Staff Report clearly only contemplate the process of filling the vacancy. There is no reference or suggestion that the Council would nominate and appoint Mr. Tipton as a Councilmember. Accordingly, the Court should find that the City did not substantially comply with its statutory requirements nor fulfill its agenda obligations under the Brown Act.

The City's Failure to Inform Petitioner in Writing of its Action to Cure or Correct the Appointment Government Code Section 54960.1, subd. (b)(2) Further Supports a Finding that the Council Did Not Adequately Cure or Correct the Challenged Action.

Petitioner argues that the City failed to adhere to the requirements of Government Code Section 54960.1 (c)(2) which requires the City to notify the Petitioner "in writing of its actions to cure or correct" the alleged Brown Action violation or notify the Petitioner "of its decision not to cure or correct the challenged action." Petitioner emphasizes that he received **no** written response to his September 13, 2023 Letter.

As noted above, City does not dispute that it did not respond to the Petitioner's Letter in writing.[7]

Government Code section 54960.1 identifies the procedure that an interested person may take to commence an action by mandamus or injunction for violation of the Brown Act, including issuing a demand letter to the legislative body to cure or correct the alleged violation. Subsection (c)(2) specifically states:

> "(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or

[7] It is noted that the September 26 Meeting transcript indicates that the City Attorney stated at the beginning that "[o]n September 13th, 2023, the city received a Brown Act cure and correct demand alleging that the appointment had not been properly agendized [*sic*]." (Thompson Decl., at Exhibit 5, September 26 Meeting Transcript, 4:9-10.)

correct or inform the demanding party in writing of its decision not cure or correct the challenged action."

Government Code section 54960.1(c)(3) provides that if the legislative body takes no action within the 30 day period, it " ... shall be deemed a decision not to cure or correct the challenged action ... ."

It is undisputed that the City did not inform the Petitioner in writing of its actions to cure or correct or inform the Petition of its decision not to cure or correct the challenged action. Therefore, the City has failed to comply with Section 54960.1.

Petitioner does not indicate he is seeking any affirmative relief for the failure to provide a written response. It appears to the Court that the failure to provide such a response only bears upon the deadline for filing an action to challenge, or the ability of a legislative body to correct and cure, a Brown Act violation. If there was an error or omission to correct or cure, the effect of the failure to correct or cure within certain time limits appears simply to be (a) to start the time running for the filing of an action (Gov C 54960.1(c)(2), (3)) and (b) to preclude a cure or correction which would mandate a dismissal of the action with prejudice (Gov C 54960.1(e)).

Petitioner's Opening Brief only indicates that the City's failure to provide a response in writing is merely a violation of Section 54960.1(c)(2). However, noncompliance has not been shown by Petitioner to constitute a *violation* of the Brown Act or provide any independent basis for affirmative relief under the circumstances here presented. Thus to the extent it is raised, the effect of the failure to correct or cure within certain time limits simply started the time running for the filing of an action (Gov C 54960.1(c)(2), (3) and precluded any cure or correction which would mandate a dismissal of the action with prejudice (Government Code 54960.1(e).]

Petitioner's Constitutional Argument Not Adequately Briefed.

Finally, it is noted that Petitioner's Second Cause of Action asks the Court to rule that the Council's acts violate California Constitution, Article 1, Section 3(b). While the Petitioner's Opening Brief references the general principles of these cited portions of the Constitution, ultimately, the Petitioner does not fully address this claim but rather it appears to be subsumed in the Petitioner's primary claim for violation of the Brown Act. As a result, it appears that this claim may either be part of the overall claim for an open meetings violation or is abandoned.

Additional Argument Raised at Oral Argument: Notice Issue Was Not Raised in September 13, 2023 Demand Letter

At oral argument, the City argued that Petitioner's September 13, 2023 Demand Letter did not argue that the notice was not specific enough, but rather only raised the specificity issue, for the first time, in Petitioner's Reply Brief. To the extent this argument has been raised, it is noted that the September 13 Letter demanded that the City cure, correct and cease the identified violations, including proper notification that an appointment to the City Council would be voted

on, and "failure to place agenda items with a description clear enough to be understood by members of the public." (Petition at Exhibit C.) In other words, it appears that Petitioner's September 13 Letter sufficiently raised the issue of the City's lack of specificity in the September 12, 2023 Agenda Item.

III. Conclusion

Under the circumstances here presented, and in particular the City's prior agenda language when it filled earlier vacancies on the City Council, the Court concludes that the Agenda posted for the September 12, 2023 meeting was inadequate to disclose to the public action to appoint a councilmember to fill the City Council vacancy. The inadequate disclosure rendered the action which followed, appointing Mr. Tipton to the vacancy, null and void. The subsequent attempt to validate the appointment by ratification on September 26, 2023 was ineffective.

The Petition is, therefore, granted, and the Court reserves ruling on the issue of any award to Petitioner for attorney's fees and costs pending further motion by Petitioner.

Petitioner to prepare writ and judgment.

Dated: 7/11/24

Thomas W. Wills
Judge of the Superior Court

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CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the **Order After Submission**, for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Monterey, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

Shaila Nathu
548 Market Street, PMB 25162
San Francisco, CA 94104-5401

Quentin Christian Cedar
404 North Spalding Avenue
Fresno, CA 93720-3370

Dated: JUL 11 2024

Katy Grant, Clerk of the Court,

By: P Conder
P Conder, Deputy Clerk

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