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December 17, 2024

Via Email Only: vlai@fresnocountyca.gov
Victor Lai
Senior Deputy District Attorney
Public Integrity Unit
Fresno County Office of the District Attorney

**Re: Your December 17, 2024, Letter to Mayor Scott Robertson and the Current,
Outgoing and Incoming Members of the City Council**

Dear Mr. Lai:

While you claim you are not taking sides in local politics of the City of Selma and that decisions of the Selma City Council are purely civil matters, it appears that is exactly what you are doing.

As you point out, the peaceful and orderly transfer of power is the bedrock principle upon which our Nation was founded. It is also the bedrock principle upon which the actions taken on December 12, 2024, were based.

You somewhat accurately describe what occurred at the December 12, 2024, meeting of the City Council. As you know, the results of the election were certified by the Registrar of Voters on December 3, 2024. You misstate the provisions of Elections Code §10263 which in relevant part read as follows:

“Upon the completion of the canvas and before installing the new officers, the governing body shall adopt a resolution reciting the fact of the election and other matters that are enumerated in §10264. The governing body shall declare the elected persons for whom the highest number of votes were cast for each office.

...

(b)For a consolidated election, the governing body shall meet at its usual place of meeting no later than the next regularly scheduled city council meeting following presentation of a 28-day canvas of the returns, or at a special meeting called for this purpose to declare the results and to install the newly elected officers.”

This was a consolidated election. You can see from the City of Selma website that the next regularly scheduled meeting following the certification of the results by the Registrar of Voters (the 28-day canvas of the returns) would have been December 16, 2024. Because the

regular meeting for December 16 was directed to be cancelled by the City Council, the Mayor, beginning November 18, 2024, during the course of an open meeting sought consensus from the existing council members to conduct a special meeting for the purpose of adopting the aforementioned resolution and installing the newly elected officers. Three members, the two that are no longer council members and Council member Trujillo refused to agree to the setting of a special meeting for the purpose of installing the new officers and adopting the aforementioned resolution. The plain meaning of 10263(b) is that the adoption of the resolution is to take place and the new officers installed into office “no later than the next regularly scheduled city council meeting” following certification of the election’s results by the Registrar of Voters “or at a special meeting called for this purpose”.

The command of the statute is clear. The outgoing city council has no discretion whatsoever to refuse to adopt the resolution and install the newly elected officers “at its usual place of meeting no later than the next regularly scheduled city council meeting”. §10262 requires the elections official to conduct the canvas which is governed by §§15302 and 15303. On completing the canvas, the elections official must certify the results to the governing body. (§12062). For a consolidated election, the city elections official shall certify the results to the governing body, and the governing body must comply with the applicable provisions of 10263 no later than the next regularly scheduled city council meeting. (§10262(b)). When there is a consolidated election, the governing body is required to declare the results and install the newly elected officers no later than the next regularly scheduled City Council meeting after the certification of the results. The section is interpreted at length in *Alliance San Diego v. City of San Diego* (2023) 94 Cal.App.5th 419, which holds that the certification of the results to the City Council is a purely ministerial act which the governing body has absolutely no authority to refuse to comply with. Yet, that is exactly what three members of the City Council refused to do.

Consequently, recognizing the failure to perform this ministerial duty as giving rise to the potential for the prosecution of a writ of mandate against the City of Selma, and consequent awards of attorney’s fees for enforcing an important public right, the Mayor rightly arranged for and posted an agenda for a special meeting on December 12, 2024, through City staff. Although the special meeting was supposed to have occurred on December 9, to accommodate the calendars of the then City Attorney, that date was moved to December 12, 2024. Under Government Code §54955, there being less than a quorum present, the Mayor properly adjourned the meeting at approximately 6:02 to a different time, to commence at 6:07 on that date. He did not announce any intent to acquire a quorum, he simply called a recess and swore in the new members as he is statutorily entitled to do. (Govt. Code §40603 (elected Mayor may administer oaths)). The new members were then seated and there was in fact a quorum for conduct of the meeting.

Your claim that the Mayor was prohibited from acting in this manner and your implicit suggestion that the new officers have not been duly and properly installed into office by administration of the oath is plainly contrary to law. A primary maximum jurisprudence in this state is “that which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom performance is due. (Civil Code §3529). Here, we had a City Council that was willingly refusing to install the new members or adopt the resolution certifying the election results no later than the next regularly scheduled meeting following certification of the results by the Registrar of Voters. The presumption of performance of the ministerial duty means that which ought to have been done is presumed to have been done. There is nothing defective in the procedure employed by the Mayor to adhere to the command of the statute. Unfortunately, because the City Attorney abandoned her client, left the meeting room and the

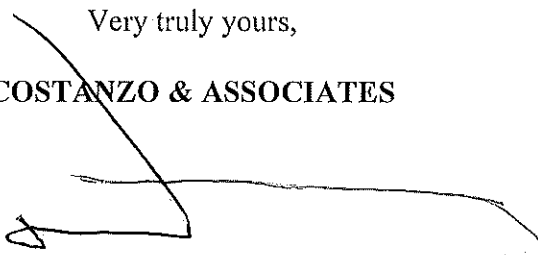
Deputy City Manager directed the City Clerk to stop the video recording of the meeting, the live stream of the meeting did not occur, but that is not a condition to the conduct of a meeting.

The suggestion of a violation of Government Code §36810 is curious. The section allows less than a quorum of the Council to adjourn a meeting to compel attendance of absent members in a manner and under the penalties prescribed by ordinance. The City of Selma does not have an ordinance that prescribes methods or penalties to compel attendance. Subdivision (f) of SMC Section 1-5-1 provides that less than a majority may adjourn from time to time and compel attendance of absent members. It does not provide any penalty to absent members for the failure to appear or any method of which to compel their presence.

There is nothing in the law anywhere that grants the authority to a District's Attorney's office to address the manner in which a city council performs its lawful functions and a majority of the Council willingly absenting themselves from a meeting at which the City Council is required to take specific actions on or before a specific date. The actions taken by the elected Mayor and the meeting conducted by the newly installed City Council on December 12, 2024, were perfectly legitimate; but even if it were not, your office has no jurisdiction whatsoever to offer gratuitous comments about its view of procedures provided for by statute with respect to the installation of duly elected city council members. The Selma City Council did not lack any quorum to transact business. It is your rationale that is defective, not the procedure necessarily employed because of the brazen refusal of the previous council to perform their ministerial duties. The problem, if one existed, would clearly be a purely procedural issue that the Council can and will remedy. For your information, the City Council is setting a special meeting for December 19, and has directed its City Manager to cause the appropriate resolution declaring the results of the election to be prepared and ready for adoption on that date.

Very truly yours,

COSTANZO & ASSOCIATES


Neal E. Costanzo

NEC/js

C/C Scott Robertson
Sarah Guerra
John Trujillo