



COUNTY OF FRESNO

Lisa A. Smittcamp
District Attorney

VIA EMAIL

January 7, 2025

To the outgoing, current, and incoming members of the Selma City Council,

I hope that you have all had a happy New Year. I write to respond to the letter you sent dated December 23rd, 2024, authored by Neal Costanzo. While you have asked for a retraction of my letter dated December 17th, 2024, such a retraction will not be forthcoming. My observations and reasoning in that letter were both factual and sensible. However, based on additional submissions to the District Attorney's Office, it appears that there are members of the public who have extrapolated the implications of my prior letter beyond sound factual and legal footing. Therefore, I am writing this follow up letter to provide clarification to the councilmembers and the public.

To begin with, California Elections Code Section 10263 is not a criminal statute- meaning, it is not a statute the violation of which carries a criminal penalty. It functions primarily as a procedural requirement for the installation of new officers. This, Mr. Costanzo and I agree, is primarily a procedural issue (quoting from my letter from December 17th that "this Office sees the problem as a procedural issue that can be remedied", and from Neal Costanzo's reply from the same day, "The problem, if one existed, would clearly be a purely procedural issue that the Council can and will remedy."). This understanding was further evidenced by the special meeting later called by the City on December 19th, where the only item on the agenda outside of closed session was, "1. CONSIDERATION OF RESOLUTION DECLARING RESULTS OF MUNICIPAL ELECTION HELD ON NOVEMBER 5, 2024." The City would not have placed that item on the agenda if it believed that its actions on December 12th were wholly effective.

Whether the remedy undertaken on the December 19th special meeting was effective will NOT be litigated by this Office. Absent evidence of criminality, the choices a municipality may make are its own- and again, violations of Elections Code Section 10263 do not carry a criminal penalty. The reason that this Office's inquiry began into the matter was when a submission was received regarding the special meeting of December 12th, 2024, which included an allegation that, alongside the Elections Code Section 10263 issue, that a potential violation of

the Brown Act had occurred- portions of which do carry potential criminal penalties. Under my analysis of the events that transpired, this Office determined that NO violation of the Brown Act had occurred- but because the violation of Elections Code Section 10263 had been noted, a letter was sent to inform the council so that curative action could be taken, in the interest of good, open and effective government. The message intended to be conveyed was that, through adherence to the procedure laid out in the Elections Code, the City might avoid unnecessary litigation from third parties that might later want to challenge future votes made by the city. The letter issued was not couched as a command or a demand by this Office, but a word of caution. Such a letter was well within the spirit and bounds of Government Code Section 54960.1, which authorizes the district attorney to, as part of its interest in compliance with the law and specifically the Brown Act, issue demands of the legislative body to cure or correct actions alleged to have been in violation of the Brown Act. Here, something less than a demand was issued, since this Office noted a violation of Elections Code 10263, but not the Brown Act, and a letter was sent to inform the legislative body of such.

This Office's reasoning that no Brown Act violation had occurred incorporates the idea that the essence of the Brown Act is that the people's business be conducted openly- quoting from Government Code Section 54950, that "actions be taken openly and that their deliberations be conducted openly". Furthermore, a "meeting" is defined under Government Code Section 54952.2(a) as "any congregation of a majority of a legislative body". Therefore, regarding the City Council's special meeting of December 12th, there are multiple reasons why a violation of the Brown Act did not occur- the first being that, if the installation of the new councilmembers was procedurally ineffective given that a resolution adopting the results had not yet been passed, then there was not present a majority of the legislative body. If a majority of the council was not present to hear, discuss, deliberate, or take action, then no "meeting" took place. Furthermore, despite there not being a "meeting" as defined by Government Code Section 54950, such actions as attempted, whether having the force of a majority vote behind them or not, were taken openly, pursuant to notices being posted, and in a public place normally reserved for such events. In other words – nothing was secret. Thus, the entire reason for the Brown Act, that the business of government be conducted openly, was and continues to be upheld.

Furthermore, I would agree with your December 23rd letter's contention that the members whose terms have expired cannot hold an incoming council hostage. The new councilmembers were validly elected. No procedural issue with their installation changes the fact that they are the fairly and validly elected new councilmembers, and being duly elected, they must be seated. Elections have consequences, and the choices that the council makes are what their constituents have voted for. If, as in years past, the meetings that were scheduled to take place during the holidays were cancelled as a matter of course, with no reference to the current election results in mind, then it would appear that business was proceeding in an established and normal manner, and the next regularly scheduled meeting would be the one set for January 21st, 2025. This appears to be the pattern supported by the record of publicly

available council meeting agendas going back roughly a decade. However, if those meetings had been cancelled outside of the established pattern, and specifically with the intent to delay the installation of new councilmembers, then that would appear to be an ultimately futile attempt to delay the installation of newly elected councilmembers- and frankly, in a perfect world, should be beneath the dignity of the outgoing councilmembers. If no actual effort was made by certain councilmembers to attend the special meetings that were legitimately called, despite being available, that also should be beneath the dignity of the office. Neither can the outgoing council cancel any further meetings in an attempt to delay the matter, as that would be well outside the established pattern by your city and invite the conclusion that the delay was purposeful.

You are all elected officials. I urge you to put your differences aside and act with sober minded civic responsibility, incorporating the decorum, restraint, and magnanimity your positions deserve.

Respectfully,

A handwritten signature in cursive script that reads "Victor Lai".

Victor Lai
Senior Deputy District Attorney
Public Integrity Unit
Fresno County Office of the District Attorney