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September 25, 2018

VIA U.S. MAIL AND E-MAIL

Holly Wolcott, City Clerk
City of Los Angeles
200 N. Spring Street, Rm. 395
Los Angeles, CA 90012

Hon. Herb Wesson, President
Los Angeles City Council
200 N. Spring Street, Rm. 430
Los Angeles, CA 90012

Re: Objection to Violations of the Brown Act in Connection with Proposed City Hall Exclusion Policy, CF 16-1104-S1
Item No. 19 on Meeting Agenda for September 25, 2018

Dear Ms. Wolcott and President Wesson:

This office represents or has been contacted by persons and/or organizations directly impacted by the City of Los Angeles/City Council proposed amendments to City Council Rules Rule 7 and 63.

We are informed that the City will begin consideration of the proposed amendments at its September 25, 2018 meeting. City Council Rule 77 mandates that the City Council not vote on the matter until the proposed amendments are presented to the City Council at its first consideration of the proposed rule amendments and the matter is held over for one week.

The proposed rule amendments appear to be a response to the federal court ruling in Walsh v. Bryant Enge et al. (Case No. 3:15-cv-01666-SI). In that case the federal trial court invalidated a City of Portland, Oregon ordinance that purported to authorize City officials to ban individuals from City Hall and its meetings for a potentially indefinitely period of time. The Court, applying principles of First Amendment law found the rule in the ordinance was unconstitutional on its face and as applied to the Plaintiff, Mr. Walsh.

The trial court observed:

> "Maintaining decorum does not, however, require prolonged and prospective exclusions from a forum intended for public discourse and debate. The Ninth Circuit has emphasized that

> in a city council meeting, the council may exclude individuals for actual disruption, but the council may not exclude people for 'constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption. The City cannot define disruption so as to include non-disruption. . . .' [Citation omit.] According to the Ninth Circuit, 'Actual disruption means actual disruption.' [Citation omit.] Defendants have not pointed to any appellate court decision, nor was the Court able to locate any such decision, allowing an incident, or even several incidents, of actual disruption to justify the prospective exclusion of an individual from future public meetings. Defendants have a simple alternative to the prospective exclusion ordinance. They can order any disruptive individual to leave the meeting that he or she is disrupting for the duration of that meeting." Walsh v. Bryant Enge (December 31, 2015), p.24.

We presume that the City Council has been planning for some time to enact this prospective restraint of speech for the purpose of punishing certain individuals who speak out with critical words for the City and its officials. Many of these individuals use a highly theatrical approach to their criticism of City officials, including the use of profanity. As this Council knows, the mere use of profanity at a public meeting is not considered to be a disruption.

The proposed rules have no discernible objective standard for the meaning of a disruption. Although the proposed rules appear to be targeted to certain frequent individual speakers at City Council meetings, an attack on the speaking rights of those individuals places in danger the speaking rights of all who would dare criticize the City or its officials. Additionally, the proposed rules provide no administrative remedy to appeal the determination of a chair of a committee or the City Council.

In short, the proposed rule amendments violate the First Amendment and California Constitution. The single letter in the Council file, purporting to document one person offended by a single individual is no legitimate basis – particularly since there is no evidence that any frequent speaker at City Council meetings has ever demonstrated an

immediate breach of safety or physical threat.[1] Discomfort with the use of profanity is no legitimate basis to infer or imagine a threat to anyone's personal safety.

Finally, the City's effort to exclude persons who momentarily disrupt a City meeting, perhaps in exercise of their free speech rights, for weeks at time is unconstitutional because the listeners in the room, the Council members, and the tens of thousands of persons watching on the municipal cable channel are completely deprived of the receipt of information needed to further the public discussion goals of the limited public forum of a City Council meeting.

For the foregoing reasons, the proposed rule amendments must be rejected by the City Council.

Very truly yours,

s/Daniel Wright

DANIEL WRIGHT
FOR
THE SILVERSTEIN LAW FIRM

DEW/vl

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[1] Furthermore, it appears the one item in the record related to one person's discomfort at a meeting was solicited by Mr. Wesson. Such a solicited letter is not credible evidence of any sincere fear of harm from public speakers who engage in certain theatrics some Council members dislike.