



Agenda

City Council Special Meeting

City Council Chambers | 50 Natoma Street, Folsom CA 95630

March 08, 2022

5:30 PM

Welcome to Your City Council Meeting

We welcome your interest and involvement in the city's legislative process. This agenda includes information about topics coming before the City Council and the action recommended by city staff. You can read about each topic in the staff reports, which are available on the city website and in the Office of the City Clerk. The City Clerk is also available to answer any questions you have about City Council meeting procedures.

Participation

If you would like to provide comments to the City Council, please:

Fill out a blue speaker request form, located at the back table.

Submit the form to the City Clerk before the item begins.

When it's your turn, the City Clerk will call your name and invite you to the podium.

Speakers have three minutes, unless the presiding officer (usually the mayor) changes that time.

Reasonable Accommodations

In compliance with the Americans with Disabilities Act, if you are a person with a disability and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (916) 461-6035, (916) 355-7328 (fax) or CityClerkDept@folsom.ca.us. Requests must be made as early as possible and at least two full business days before the start of the meeting.

More information about City Council meetings is available at the end of this agenda



CITY OF
FOLSOM
DISTINCTIVE BY NATURE

City Council Special Meeting

Folsom City Council Chambers
50 Natoma Street, Folsom, CA
www.folsom.ca.us

Tuesday, March 08, 2022 5:30 PM

Kerri Howell, Mayor

Rosario Rodriguez, Vice Mayor
YK Chalamcherla, Councilmember

Sarah Aquino, Councilmember
Mike Kozlowski, Councilmember

SPECIAL AGENDA

Members of the public wishing to participate in this meeting via teleconference may participate either online or by telephone via WebEx.

Meeting Number: 2559 199 4006

Meeting Password: 03 08 2022

Join the meeting by WebEx online:

<https://cityoffolsom.my.webex.com/cityoffolsom.my/j.php?MTID=m6afb0c0cccfa8bd06d6d3a39adfca959>

To make a public comment using the WebEx online platform, please use the “raise hand” feature at the bottom center of the screen. Please make sure to enable audio controls once access has been given by the City Clerk to speak. Please wait to be called upon by the City Clerk.

Join the meeting by WebEx telephone: Dial 1-415-655-0001

*To make a public comment by phone, please press *3 to raise your hand. Please make sure to enable audio controls by pressing *6 once access has been given by the City Clerk to speak. Please wait to be called upon by the City Clerk.*

Verbal comments via virtual meeting must adhere to the principles of the three-minute speaking time permitted for public comment at City Council meetings.

CALL TO ORDER

ROLL CALL:

Councilmembers: Aquino, Chalamcherla, Kozlowski, Rodriguez, Howell

ADJOURNMENT TO CLOSED SESSION FOR THE FOLLOWING PURPOSES:

1. Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2): Allegation of Brown Act violation by Scott Rafferty
2. Conference with Legal Counsel - Existing Litigation - Pursuant to Government Code section 54956.9(d)(1): The Heritage Preservation League of Folsom v. City of Folsom, Sacramento County Superior Court Case No. 34-2022-80003820
3. Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2): One potential case

RECONVENE

Announcement of Final Action, If Any

ADJOURNMENT

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SCOTT J. RAFFERTY

ATTORNEY AT LAW

**1913 WHITECLIFF COURT
WALNUT CREEK CA 94596**

**(202)-380-5525
RAFFERTY@GMAIL.COM**

February 21, 2022

Ms. Christa Freemantle
Clerk, City of Folsom
50 E. Natoma Street
Folsom CA 95630

by electronic and postal mail
cc: Mayor Kerri Howell, members of
the City Council, City Attorney

Dear Ms. Freemantle:

This letter constitutes a demand specified by Section¹ 54960.1(b) that the City of Folsom cease and desist from violations of the Brown Act committed in connection with the public hearing the Council conducted on February 11, 2022. The Council purported to conduct these hearings pursuant to Elections Code, Section 10010. This letter also satisfies the requirement of Section 54960.2 and enables my clients to file an additional action to determine that the actions specified herein were taken in violation of the Brown Act. To the extent set forth herein, the City of Folsom may respond to this demand by making an unconditional commitment to cease and desist from the challenged practices.

The unlawfully conducted hearings are already the subject of litigation before the Superior Court. Because Elections Code, Section 10010 precludes actions designed to mislead the public, to prevent their active participation, or to exhaust their attention by conducting hearings over a protracted period, the City Council cannot effectively cure or correct the effects of these violations simply by redoing the hearing. This would burden the public with attending more hearings, after "actions" (as defined in the Brown Act) have been taken and when the underlying decisions can only be reversed in by a judicial decree from the Superior Court (or the District Court for the Eastern District of California). Therefore, I will be writing the City Attorney separately to propose additional actions that are necessary to prevent an expansion of the current litigation.

The violations include:

¹ "Section" refers to the Government Code, except as noted.

Rafferty to Freemantle, Brown Act Demand Letter, February 15, 2022, page 2

1. The failure to make available all non-exempt documents relating to council districts that were distributed to the council in advance of its February 11, 2022 meeting.
2. The failure to permit the public to inspect the written slides presented on February 11, 2022 during the meeting.
3. The redaction of the time and date of electronic communications to conceal when they were received and when they became subject to public disclosure.
4. The continuing failure, even after the meeting, to allow inspection of writings subject to §54957.5, including those identified in (1)-(3) and the data files presented at those meetings.
5. The reception during the February 11, 2022 meeting of text messages relayed by the City Manager, even though her telephone number had not been published as identified as a means for providing public input.

These violations are exceptionally flagrant. A.B. 361 recently amended Section 54953(e)(2)(B) to require that

In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

Ms. Anderson knew that her cellphone had not been provided in the public notice, let alone in each instance in which the time of the teleconference was given. She acted with the specific intent of depriving Plaintiffs and other advocates of district elections equal access to the limited public forum created by the Brown Act, based on their viewpoint, in violation of civil rights guaranteed the First Amendment.

Similarly, deputy city clerk Lydia Konopka refused to provide the staff report and comments distributed to a majority of the City Council, which must be provided “without delay” under the Brown Act. Instead, she committed to “be in contact when the records are available for review.” That was on February 10, 2022.

The failure to produce these records invalidates actions taken on February 8 and February 15, 2022, and make it inappropriate to continue the hearing on February 22, 2022. This letter demands that you cure and correct the violations by restarting any hearing process, which may not be possible given statutory deadlines. However, there is no other basis to continue the hearing, since the documents were not made available in time for the public to make meaningful comment on the selection of the preferred maps.

Rafferty to Freemantle, Brown Act Demand Letter, February 15, 2022, page 3

This letter also demands that the City cease and desist from failing to make Brown Act documents available to the public at the meeting, which includes posting them in the case of a teleconferenced meeting and making them available on paper in the council chambers.

Thank you for your prompt attention to these matters.

Sincerely,

A handwritten signature in black ink that reads "Scott Rafferty". The signature is written in a cursive, slightly slanted style.

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