

October 22, 2021

VIA EMAIL AND REGULAR MAIL

City Council  
City of Moreno Valley  
14177 Frederick Street,  
Moreno Valley, California 92553

**Re: Brown Act Demand for Cure and Correction  
(Gov't. Code §§ 54960, 54960.1 & 54960.2)**

**AND**

**Public Records Act Request  
(Gov't. Code § 6250, et seq.)**

Dear City Council:

This demand is made on behalf of Californians Aware and a group of concerned citizens alarmed by the sudden appointment of LaDonna Jempson to the District 1 seat on Moreno Valley City Council, in violation of the Ralph M. Brown Act, Government Code section 54950, *et seq.* ("Brown Act"). This action must be rescinded to ensure that the public has a meaningful opportunity to participate in the decision-making process.

### **Background**

Victoria Baca, Mayor Pro Tem and District 1 Councilmember, sadly passed away in early October, leaving both positions vacant. Prior to the October 19, 2021 regular meeting of the City Council, the City Council was comprised of five seats: Dr. Yxstian Gutierrez (Mayor), David Marquez (District 3), Ulises Cabrera (District 4), and two vacant seats (Districts 1 and 2). The City Clerk took roll call at the October 19, 2021 meeting.<sup>1</sup> Councilmembers Marquez and Cabrera were present. Mayor Gutierrez was not present.

The agenda for this meeting listed the following items:

**G.2. CITY COUNCIL DIRECTION REGARDING FILLING CITY COUNCIL DISTRICT 1 VACANCY (Report of: City Clerk)**

---

<sup>1</sup> See Council Meeting video recording at timestamp 36:40, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

October 22, 2021

Brown Act Demand & CPRA Request

Page 2

**Recommendations: That the City Council:**

1. Direct the City Clerk to prepare the application for persons interested in being appointed by the City Council to fill the District 1 vacancy, until such time the person who is officially elected to the District 1 seat at the next General Municipal Election, held on November 1, 2022, is officially installed on the City Council.

OR

2. Direct the City Clerk to prepare the requisite resolutions and related documents calling for a Special Election on April 11, 2022, for the eligible voters of District No. 1 to vote for who they want to fill the full remaining unexpired term of the vacated seat, which expires in December 2024.<sup>2</sup>

G.3. CITY COUNCIL REORGANIZATION - SELECTION OF MAYOR PRO TEM (Report of: City Clerk)

**Recommendation: That the City Council:**

1. Conduct the reorganization of the City Council by selecting one Council Member to serve as Mayor Pro Tem until December 31, 2021.<sup>3</sup>

At the outset of the meeting, Interim City Attorney Steve Quintanilla pulled Item G.3 from the agenda, pursuant to Rule 3.3.2, requiring three affirmative votes for “orders or appropriations for payment or expenditure of money” and Rule 4.1.3, requiring that the appointment for the office Mayor Pro Tem shall be by three or more affirmative votes.<sup>4</sup>

When the time came to discuss Item G.2, City Clerk Jacquez-Nares asked City Council for direction on whether she should prepare applications for appointment or the requisite paperwork calling for a special election, just as the item was described on the agenda.<sup>5</sup> However, Councilmember Marquez immediately skirted this request and instead made a motion to appoint LaDonna Jempson to the District 1 seat.<sup>6</sup>

---

<sup>2</sup> <http://morenovalleyca.iqm2.com/Citizens/FileOpen.aspx?Type=14&ID=2325&Inline=True>

<sup>3</sup> <http://morenovalleyca.iqm2.com/Citizens/FileOpen.aspx?Type=14&ID=2325&Inline=True>

<sup>4</sup> See Council Meeting video recording at timestamp 40:17, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

<sup>5</sup> See Council Meeting video recording at timestamp 1:23:59, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

<sup>6</sup> See Council Meeting video recording at timestamp 1:25:46, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

October 22, 2021

Brown Act Demand & CPRA Request

Page 3

Councilmember Cabrera quickly seconded this motion.<sup>7</sup> Quintanilla interjected, clarifying that the City Clerk needed feedback on whether the City Council wanted to consider nominees for appointment or if it wanted to call a special election.<sup>8</sup>

But Marquez and Cabrera were determined. Marquez responded that he has to “override [Quintanilla’s] decision” and that “we did vote 2-0 to appoint Ms. Jempson.”<sup>9</sup> Cabrera backed Marquez up, saying “we are actually allowed to appoint someone to that seat”<sup>10</sup> and, a few moments later, “the swearing in should take place at this moment.”<sup>11</sup> After a quick recess, Jempson was indeed sworn in and sat on the dais for the remainder of the meeting.<sup>12</sup>

The Brown Act is designed “to facilitate public participation in all phases of local government decisionmaking, and to curb misuse of the democratic process by secret legislation by public bodies.” (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.) “It is the intent of the law that [the] actions [of local public agencies] be taken openly and that their deliberations be conducted openly.” (Gov’t Code § 54950.) The California Constitution expands this right by declaring that “[t]he people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const. Art. 1, § 3(b)(2).)

Pursuant to Government Code section 54954.2(a)(1), the “body of the local agency...shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting.” According to the California Attorney General’s guide to the Brown Act, “the purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body.”<sup>13</sup> “No action of discussion shall be undertaken on any item not appearing on the posted agenda.” (Gov’t. Code § 54954.2(a)(2).)

---

<sup>7</sup> See Council Meeting video recording at timestamp 1:26:06, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

<sup>8</sup> See Council Meeting video recording at timestamp 1:26:09, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

<sup>9</sup> See Council Meeting video recording at timestamp 1:26:39, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

<sup>10</sup> See Council Meeting video recording at timestamp 1:27:29, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

<sup>11</sup> See Council Meeting video recording at timestamp 1:30:11, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

<sup>12</sup> See Council Meeting video recording at timestamp 1:40:35, available at <http://morenovalleyca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=2796&Format=Agenda>.

<sup>13</sup> The Brown Act, Open Meetings For Local Legislative Bodies, Office of the Attorney General, 2003, at pp. 16-17.

October 22, 2021

Brown Act Demand & CPRA Request

Page 4

Discussion of the appointment of LaDonna Jempson did not appear on the agenda for the meeting. Her name does not even appear on the agenda. Marquez raised the motion to appoint during Jacquez-Nares' request for direction between two options, neither of which was the immediate appointment and swearing in of a specific individual.

Additionally, the lack of surprise by Cabrera raises concern about whether there were other discussions amongst a majority of the City Council in violation of the Brown Act and if a majority of the City Council discussed and/or tacitly approved appointing Ms. Jempson outside of public view, either directly or in serial communications.

### **Demand**

In order to ensure that the public has the ability to meaningfully participate in the appointment of Councilmember Jempson, Californians Aware hereby demands that, pursuant to Government Code sections 54960 and 54960.1, the Board cure and correct its illegal actions by rescinding the appointment and swearing in of Councilmember Jempson.

Additionally, pursuant to Government Code sections 54960 and 54960.2, the City Council must agree to refrain from taking action on items not listed on the posted agenda in the future, unless one of the stated exceptions as listed in the Brown Act applies.

The City Council must notify this office of its decision to cure and correct as described, or of its refusal to do so, within 30 days. If the City Council fails or refuses to cure and correct or respond as demanded, we intend to seek judicial invalidation of the challenged actions pursuant to § 54960.1, as well as other relief set out in § 54960.

### **California Public Records Act Request**

In order for the public to have the information it needs to participate in any further discussions about this appointment, Californians Aware would like copies of the following records pursuant to the California Public Records Act:

Any and all communications, including but not limited to, emails, letters, text messages, voicemails, and memos, including any communications that exist on a personal device, from October 6, 2021 to the present, regarding LaDonna Jempson, Victoria Baca, the District 1 vacancy, and the October 19, 2021 City Council meeting:

1. From Mayor Gutierrez to Councilmembers Marquez and/or Cabrera;

October 22, 2021

Brown Act Demand & CPRA Request

Page 5

2. From Councilmember Marquez to Mayor Gutierrez and/or Councilmember Cabrera; and
3. From Councilmember Cabrera to Mayor Gutierrez and/or Councilmember Marquez.

These records should be released to Californians Aware and the public prior to any reconsideration of this appointment to ensure that the public has the information necessary to be involved in a meaningful way in the decision-making process.

Sincerely,



---

Shaila Nathu  
Assistant General Counsel  
Californians Aware  
464 E. Bonita Avenue, #10  
San Dimas, CA 91773  
(916) 487-7000

cc: Steve Quintanilla, Interim City Attorney (via email only to [cityattorney@moval.org](mailto:cityattorney@moval.org))  
Mike Lee, City Manager (via email only to [cmoffice@moval.org](mailto:cmoffice@moval.org))  
Pat Jacquez-Nares, City Clerk (via email only to [cityclerk@moval.org](mailto:cityclerk@moval.org))